

civil action for judicial review of any decision made by the Secretary under this subchapter, the Secretary shall have the burden of proof of demonstrating by a preponderance of the evidence—

(1) the validity of the grounds for the decision; and

(2) the consistency of the decision with the requirements and policies of this subchapter.

(Pub. L. 93-638, title IV, §415, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 878.)

#### § 5376. Application of other provisions

Section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991 (Public Law 101-512; 104 Stat. 1959), shall apply to compacts and funding agreements entered into under this subchapter.

(Pub. L. 93-638, title IV, §416, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 878.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991, referred to in text, is section 314 of Pub. L. 101-512, which is set out as a note under section 5321 of this title.

#### § 5377. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this subchapter.

(Pub. L. 93-638, title IV, §417, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 878.)

#### Editorial Notes

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5368 of this title prior to repeal by Pub. L. 116-180.

#### SUBCHAPTER V—TRIBAL SELF-GOVERNANCE—INDIAN HEALTH SERVICE

#### Editorial Notes

##### CODIFICATION

Subchapter is comprised of title V of Pub. L. 93-638, as added by Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 712. Another title V of Pub. L. 93-638, as added by Pub. L. 106-568, title XIII, §1302, Dec. 27, 2000, 114 Stat. 2936, was redesignated title VIII, and is classified to subchapter VII (§5421 et seq.) of this chapter.

#### § 5381. Definitions

##### (a) In general

In this subchapter:

##### (1) Construction project

The term “construction project”—

(A) means an organized noncontinuous undertaking to complete a specific set of predetermined objectives for the planning, environmental determination, design, construction, repair, improvement, or expansion of

buildings or facilities, as described in a construction project agreement; and

(B) does not include construction program administration and activities described in paragraphs (1) through (3) of section 5304(m) of this title, that may otherwise be included in a funding agreement under this subchapter.

##### (2) Construction project agreement

The term “construction project agreement” means a negotiated agreement between the Secretary and an Indian tribe, that at a minimum—

(A) establishes project phase start and completion dates;

(B) defines a specific scope of work and standards by which it will be accomplished;

(C) identifies the responsibilities of the Indian tribe and the Secretary;

(D) addresses environmental considerations;

(E) identifies the owner and operations and maintenance entity of the proposed work;

(F) provides a budget;

(G) provides a payment process; and

(H) establishes the duration of the agreement based on the time necessary to complete the specified scope of work, which may be 1 or more years.

##### (3) Gross mismanagement

The term “gross mismanagement” means a significant, clear, and convincing violation of a compact, funding agreement, or regulatory, or statutory requirements applicable to Federal funds transferred to an Indian tribe by a compact or funding agreement that results in a significant reduction of funds available for the programs, services, functions, or activities (or portions thereof) assumed by an Indian tribe.

##### (4) Inherent Federal functions

The term “inherent Federal functions” means those Federal functions which cannot legally be delegated to Indian tribes.

##### (5) Inter-tribal consortium

The term “inter-tribal consortium” means a coalition of two<sup>1</sup> more separate Indian tribes that join together for the purpose of participating in self-governance, including tribal organizations.

##### (6) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

##### (7) Self-governance

The term “self-governance” means the program of self-governance established under section 5382 of this title.

##### (8) Tribal share

The term “tribal share” means an Indian tribe’s portion of all funds and resources that support secretarial programs, services, functions, and activities (or portions thereof) that are not required by the Secretary for performance of inherent Federal functions.

<sup>1</sup> So in original. Probably should be followed by “or”.