

(E) establish procedures for nonbinding mediation or resolution of any dispute between the Indian tribe and the United States relating to the trust asset management plan;

(F) include a process for the Indian tribe and the Federal agencies affected by the trust asset management plan to conduct evaluations to ensure that trust assets are being managed in accordance with the plan; and

(G) identify any Federal regulations that will be superseded by the plan.

(3) Technical assistance and information

On receipt of a written request from an Indian tribe, the Secretary shall provide to the Indian tribe any technical assistance and information, including budgetary information, that the Indian tribe determines to be necessary for preparation of a proposed plan.

(b) Approval and disapproval of proposed plans

(1) Approval

(A) In general

Not later than 120 days after the date on which an Indian tribe submits a proposed Indian trust asset management plan under subsection (a), the Secretary shall approve or disapprove the proposed plan.

(B) Requirements for disapproval

The Secretary shall approve a proposed plan unless the Secretary determines that—

(i) the proposed plan fails to address a requirement under subsection (a)(2);

(ii) the proposed plan includes 1 or more provisions that are inconsistent with subsection (c); or

(iii) the cost of implementing the proposed plan exceeds the amount of funding available for the management of trust assets that would be subject to the proposed plan.

(2) Action on disapproval

(A) Notice

If the Secretary disapproves a proposed plan under paragraph (1)(B), the Secretary shall provide to the Indian tribe a written notice of the disapproval, including any reason why the proposed plan was disapproved.

(B) Action by tribes

If a proposed plan is disapproved under paragraph (1)(B), the Indian tribe may resubmit an amended proposed plan by not later than 90 days after the date on which the Indian tribe receives the notice under subparagraph (A).

(3) Failure to approve or disapprove

If the Secretary fails to approve or disapprove a proposed plan in accordance with paragraph (1), the plan shall be considered to be approved.

(4) Judicial review

An Indian tribe may seek judicial review of a determination of the Secretary under this subsection in accordance with subchapter II of chapter 5, and chapter 7, of title 5, (commonly known as the “Administrative Procedure Act”), if—

(A) the Secretary disapproves the proposed plan of the Indian tribe under paragraph (1); and

(B) the Indian tribe has exhausted all other administrative remedies available to the Indian tribe.

(c) Applicable laws

Subject to section 5614 of this title, an Indian trust asset management plan, and any activity carried out under the plan, shall not be approved unless the proposed plan is consistent with any treaties, statutes, and Executive orders that are applicable to the trust assets, or the management of the trust assets, identified in the plan.

(d) Termination of plan

(1) In general

An Indian tribe may terminate an Indian trust asset management plan on any date after the date on which a proposed Indian trust asset management plan is approved by providing to the Secretary—

(A) a notice of the intent of the Indian tribe to terminate the plan; and

(B) a resolution of the governing body of the Indian tribe authorizing the termination of the plan.

(2) Effective date

A termination of an Indian trust asset management plan under paragraph (1) takes effect on October 1 of the first fiscal year following the date on which a notice is provided to the Secretary under paragraph (1)(A).

(Pub. L. 114-178, title II, §204, June 22, 2016, 130 Stat. 434.)

Editorial Notes

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (a)(2)(D), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which was classified principally to subchapter II (§450 et seq.) of chapter 14 of this title prior to editorial reclassification as chapter 46 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5614. Forest land management and surface leasing activities

(a) Definitions

In this section:

(1) Forest land management activity

The term “forest land management activity” means any activity described in section 304(4) of the National Indian Forest Resources Management Act (25 U.S.C. 3103(4)).

(2) Interested party

The term “interested party” means an Indian or non-Indian individual, entity, or government the interests of which could be adversely affected by a tribal trust land leasing decision made by an applicable Indian tribe.

(3) Surface leasing transaction

The term “surface leasing transaction” means a residential, business, agricultural, or wind or solar resource lease of land the title to which is held—

(A) in trust by the United States for the benefit of an Indian tribe; or

(B) in fee by an Indian tribe, subject to restrictions against alienation under Federal law.

(b) Approval by Secretary

The Secretary may approve an Indian trust asset management plan that includes a provision authorizing the Indian tribe to enter into, approve, and carry out a surface leasing transaction or forest land management activity without approval of the Secretary, regardless of whether the surface leasing transaction or forest land management activity would require such an approval under otherwise applicable law (including regulations), if—

(1) the resolution or other action of the governing body of the Indian tribe referred to in section 5612(c)(2)(A) of this title expressly authorizes the inclusion of the provision in the Indian trust asset management plan; and

(2) the Indian tribe has adopted regulations expressly incorporated by reference into the Indian trust asset management plan that—

(A) with respect to a surface leasing transaction—

(i) have been approved by the Secretary pursuant to subsection (h)(4) of section 415 of this title; or

(ii) have not yet been approved by the Secretary in accordance with clause (i), but that the Secretary determines at or prior to the time of approval under this paragraph meet the requirements of subsection (h)(3) of section 415 of this title; or

(B) with respect to forest land management activities, the Secretary determines—

(i) are consistent with the regulations of the Secretary adopted under the National Indian Forest Resources Management Act (25 U.S.C. 3101 et seq.); and

(ii) provide for an environmental review process that includes—

(I) the identification and evaluation of any significant effects of the proposed action on the environment; and

(II) a process consistent with the regulations referred to in clause (i) for ensuring that—

(aa) the public is informed of, and has a reasonable opportunity to comment on, any significant environmental impacts of the proposed forest land management activity identified by the Indian tribe; and

(bb) the Indian tribe provides responses to relevant and substantive public comments on any such impacts before the Indian tribe approves the forest land management activity.

(c) Types of transactions

(1) In general

At the discretion of the Indian tribe, an Indian trust asset management plan may authorize the Indian tribe to carry out a surface leasing transaction, a forest land management activity, or both.

(2) Selection of specific transactions and activities

At the discretion of the Indian tribe, the Indian tribe may include in the integrated resource management plan any 1 or more of the transactions and activities authorized to be included in the plan under subsection (b).

(d) Technical assistance

(1) In general

The Secretary may provide technical assistance, on request of an Indian tribe, for development of a regulatory environmental review process required under subsection (b)(2)(B)(ii).

(2) Indian Self-Determination and Education Assistance Act

The technical assistance to be provided by the Secretary pursuant to paragraph (1) may be made available through contracts, grants, or agreements entered into in accordance with, and made available to entities eligible for, contracts, grants, or agreements under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).¹

(e) Federal environmental review

Notwithstanding subsection (b), if an Indian tribe carries out a project or activity funded by a Federal agency, the Indian tribe shall have the authority to rely on the environmental review process of the applicable Federal agency, rather than any tribal environmental review process under this section.

(f) Documentation

If an Indian tribe executes a surface leasing transaction or forest land management activity, pursuant to tribal regulations under subsection (b)(2), the Indian tribe shall provide to the Secretary²

(1) a copy of the surface leasing transaction or forest land management activity documents, including any amendments to, or renewals of, the applicable transaction; and

(2) in the case of tribal regulations, a surface leasing transaction, or forest land management activities that allow payments to be made directly to the Indian tribe, documentation of the payments that is sufficient to enable the Secretary to discharge the trust responsibility of the United States under subsection (g).

(g) Trust responsibility

(1) In general

The United States shall not be liable for losses sustained—

(A) by an Indian tribe as a result of the execution of any forest land management activity pursuant to tribal regulations under subsection (b); or

(B) by any party to a lease executed pursuant to tribal regulations under subsection (b).

(2) Authority of Secretary

Pursuant to the authority of the Secretary to fulfill the trust obligation of the United

¹ See References in Text note below.

² So in original. Probably should be followed by a dash.

States to Indian tribes under Federal law (including regulations), the Secretary may, on reasonable notice from the applicable Indian tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the Indian tribe under this section.

(h) Compliance

(1) In general

An interested party, after exhausting any applicable tribal remedies, may submit to the Secretary a petition, at such time and in such form as the Secretary determines to be appropriate, to review the compliance of an applicable Indian tribe with any tribal regulations approved by the Secretary under this subsection.

(2) Violations

If the Secretary determines under paragraph (1) that a violation of tribal regulations has occurred, the Secretary may take any action the Secretary determines to be necessary to remedy the violation, including rescinding the approval of the tribal regulations and re-assuming responsibility for the approval of leases of tribal trust land.

(3) Documentation

If the Secretary determines under paragraph (1) that a violation of tribal regulations has occurred and a remedy is necessary, the Secretary shall—

(A) make a written determination with respect to the regulations that have been violated;

(B) provide to the applicable Indian tribe a written notice of the alleged violation, together with the written determination; and

(C) prior to the exercise of any remedy, the rescission of the approval of the regulation involved, or the reassumption of the trust asset transaction approval responsibilities, provide to the applicable Indian tribe—

(i) a hearing on the record; and

(ii) a reasonable opportunity to cure the alleged violation.

(Pub. L. 114–178, title II, § 205, June 22, 2016, 130 Stat. 436.)

Editorial Notes

REFERENCES IN TEXT

The National Indian Forest Resources Management Act, referred to in subsec. (b)(2)(B)(i), is title III of Pub. L. 101–630, Nov. 28, 1990, 104 Stat. 4532, which is classified generally to chapter 33 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (d)(2), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which was classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title prior to editorial reclassification as chapter 46 (§ 5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5615. Effect of subchapter

(a) Liability

Subject to section 5614 of this title and this section, nothing in this subchapter or an Indian

trust asset management plan approved under section 5613 of this title shall independently diminish, increase, create, or otherwise affect the liability of the United States or an Indian tribe participating in the project for any loss resulting from the management of an Indian trust asset under an Indian trust asset management plan.

(b) Deviation from standard practices

The United States shall not be liable to any party (including any Indian tribe) for any term of, or any loss resulting from the terms of, an Indian trust asset management plan that provides for management of a trust asset at a less-stringent standard than the Secretary would otherwise require or adhere to in absence of an Indian trust asset management plan.

(c) Effect of termination of plan

Subsection (b) applies to losses resulting from a transaction or activity described in that subsection even if the Indian trust asset management plan is terminated under section 5613(d) of this title or rescinded under section 5614(h) of this title.

(d) Effect on other laws

(1) In general

Except as provided in sections 5613 and 5614 of this title and subsection (e), nothing in this subchapter amends or otherwise affects the application of any treaty, statute, regulation, or Executive order that is applicable to Indian trust assets or the management or administration of Indian trust assets.

(2) Indian Self-Determination Act

Nothing in this subchapter limits or otherwise affects the authority of an Indian tribe, including an Indian tribe participating in the project, to enter into and carry out a contract, compact, or other agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)¹ (including regulations).

(e) Separate approval

An Indian tribe may submit to the Secretary tribal regulations described in section 5614(b) of this title governing forest land management activities for review and approval under this subchapter if the Indian tribe does not submit or intend to submit an Indian trust asset management plan.

(f) Trust responsibility

Nothing in this subchapter enhances, diminishes, or otherwise affects the trust responsibility of the United States to Indian tribes or individual Indians.

(Pub. L. 114–178, title II, § 206, June 22, 2016, 130 Stat. 439.)

Editorial Notes

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (d)(2), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which was classified prin-

¹ See References in Text note below.