

§ 4115. Environmental review**(a) In general****(1) Release of funds**

In order to ensure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law that further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of grant amounts provided under this chapter, and to ensure to the public undiminished protection of the environment, the Secretary, in lieu of the environmental protection procedures otherwise applicable, may by regulation provide for the release of amounts for particular projects to tribes which assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were the Secretary to undertake such projects as Federal projects.

(2) Regulations**(A) In general**

The Secretary shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality.

(B) Contents

The regulations issued under this paragraph shall—

- (i) provide for the monitoring of the environmental reviews performed under this section;
- (ii) in the discretion of the Secretary, facilitate training for the performance of such reviews; and
- (iii) provide for the suspension or termination of the assumption of responsibilities under this section.

(3) Effect on assumed responsibility

The duty of the Secretary under paragraph (2)(B) shall not be construed to limit or reduce any responsibility assumed by a recipient of grant amounts with respect to any particular release of funds.

(b) Procedure

The Secretary shall approve the release of funds subject to the procedures authorized by this section only if, not less than 15 days prior to such approval and prior to any commitment of funds to such projects, the tribe has submitted to the Secretary a request for such release accompanied by a certification that meets the requirements of subsection (c) of this section. The approval of the Secretary of any such certification shall be deemed to satisfy the responsibilities of the Secretary under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for projects to be carried out pursuant thereto that are covered by such certification.

(c) Certification

A certification under the procedures authorized by this section shall—

- (1) be in a form acceptable to the Secretary;
- (2) be executed by the chief executive officer or other officer of the tribe under this chapter qualified under regulations of the Secretary;
- (3) specify that the tribe has fully carried out its responsibilities as described under subsection (a) of this section; and
- (4) specify that the certifying officer—

(A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or such other provisions of law apply pursuant to subsection (a) of this section; and

(B) is authorized and consents on behalf of the tribe and such officer to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the certifying officer as such an official.

(d) Environmental compliance

The Secretary may waive the requirements under this section if the Secretary determines that a failure on the part of a recipient to comply with provisions of this section—

- (1) will not frustrate the goals of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] or any other provision of law that furthers the goals of that Act;
- (2) does not threaten the health or safety of the community involved by posing an immediate or long-term hazard to residents of that community;
- (3) is a result of inadvertent error, including an incorrect or incomplete certification provided under subsection (c)(1) of this section; and
- (4) may be corrected through the sole action of the recipient.

(Pub. L. 104-330, title I, §105, Oct. 26, 1996, 110 Stat. 4028; Pub. L. 106-568, title X, §1003(d), Dec. 27, 2000, 114 Stat. 2926; Pub. L. 106-569, title V, §503(d), Dec. 27, 2000, 114 Stat. 2962.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in text, is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

This chapter, referred to in subsecs. (a)(1) and (c)(2), was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

2000—Subsec. (d). Pub. L. 106-568 and Pub. L. 106-569 amended section identically, adding subsec. (d).

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4116. Regulations

(a) Transition requirements

(1) In general

Not later than 90 days after October 26, 1996, the Secretary shall, by notice issued in the Federal Register, establish any requirements necessary to provide for the transition (upon the effectiveness of this chapter and the amendments made by this chapter) from the provision of assistance for Indian tribes and Indian housing authorities under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] and other related provisions of law to the provision of assistance in accordance with this chapter and the amendments made by this chapter.

(2) Public comments; general notice of proposed rulemaking

The notice issued under paragraph (1) shall—
(A) invite public comments regarding such transition requirements and final regulations to carry out this chapter; and

(B) include a general notice of proposed rulemaking (for purposes of section 564(a) of title 5) of the final regulations under subsection (b) of this section.

(b) Final regulations

(1) Timing

The Secretary shall issue final regulations necessary to carry out this chapter not later than September 1, 1997, and such regulations shall take effect not later than the effective date of this chapter.

(2) Negotiated rulemaking procedure

(A) In general

Notwithstanding sections 563(a) and 565(a) of title 5, all regulations required under this chapter, including any regulations that may be required pursuant to amendments made to this chapter after October 26, 1996, shall be issued according to a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5.

(B) Committee

(i) In general

Not later than 180 days after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 and any other Act to reauthorize this chapter, the Secretary shall establish a negotiated rulemaking committee, in accordance with the procedures under that subchapter, for the development of proposed regulations under subparagraph (A).

(ii) Adaptation

In establishing the negotiated rulemaking committee, the Secretary shall—

(I) adapt the procedures under the subchapter described in clause (i) to the unique government-to-government relationship between the Indian tribes and the United States, and shall ensure that the membership of the committee include only representatives of the Federal

Government and of geographically diverse small, medium, and large Indian tribes; and

(II) shall not preclude the participation of tribally designated housing entities should tribes elect to be represented by such entities.

(C) Subsequent negotiated rulemaking

The Secretary shall—

(i) initiate a negotiated rulemaking in accordance with this section by not later than 90 days after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 and any other Act to reauthorize this chapter; and

(ii) promulgate regulations pursuant to this section by not later than 2 years after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 and any other Act to reauthorize this chapter.

(D) Review

Not less frequently than once every 7 years, the Secretary, in consultation with Indian tribes, shall review the regulations promulgated pursuant to this section in effect on the date on which the review is conducted.

(e) Effective date

This section shall take effect on October 26, 1996.

(Pub. L. 104-330, title I, §106, Oct. 26, 1996, 110 Stat. 4029; Pub. L. 107-292, §6, Nov. 13, 2002, 116 Stat. 2054; Pub. L. 110-411, title I, §105, Oct. 14, 2008, 122 Stat. 4324.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

For the effective date of this chapter, referred to in subsecs. (a)(1) and (b)(1), as Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of this title.

The United States Housing Act of 1937, referred to in subsec. (a)(1), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008, referred to in subsec. (b)(2)(B)(i), (C), is the date of enactment of Pub. L. 110-411, which was approved Oct. 14, 2008.

AMENDMENTS

2008—Subsec. (b)(2)(B)(i). Pub. L. 110-411, §105(1), substituted “Not later than 180 days after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 and any other Act to reauthorize this chapter, the Secretary” for “The Secretary”.

Subsec. (b)(2)(C), (D). Pub. L. 110-411, §105(2), added subpars. (C) and (D).