

§ 5330. Rescission of contract or grant and assumption of control of program, etc.; authority; grounds; procedure; correction of violation as prerequisite to new contract or grant agreement; construction with occupational safety and health requirements

Each contract or grant agreement entered into pursuant to sections 5321 and 5322¹ of this title shall provide that in any case where the appropriate Secretary determines that the tribal organization's performance under such contract or grant agreement involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons; or (2) gross negligence or mismanagement in the handling or use of funds provided to the tribal organization pursuant to such contract or grant agreement, or in the management of trust fund, trust lands or interests in such lands pursuant to such contract or grant agreement, such Secretary may, under regulations prescribed by him and after providing notice and a hearing on the record to such tribal organization, rescind such contract or grant agreement, in whole or in part, and assume or resume control or operation of the program, activity, or service involved if he determines that the tribal organization has not taken corrective action as prescribed by the Secretary to remedy the contract deficiency, except that the appropriate Secretary may, upon written notice to a tribal organization, and the tribe served by the tribal organization, immediately rescind a contract or grant, in whole or in part, and resume control or operation of a program, activity, function, or service, if the Secretary finds that (i) there is an immediate threat of imminent harm to the safety of any person, or imminent substantial and irreparable harm to trust funds, trust lands, or interests in such lands, and (ii) such threat arises from the failure of the contractor to fulfill the requirements of the contract. In such cases, the Secretary shall provide the tribal organization with a hearing on the record within ten days or such later date as the tribal organization may approve. Such Secretary may decline to enter into a new contract or grant agreement and retain control of such program, activity, or service until such time as he is satisfied that the violations of rights or endangerment of health, safety, or welfare which necessitated the rescission has been corrected. In any hearing or appeal provided for under this section, the Secretary shall have the burden of proof to establish, by clearly demonstrating the validity of the grounds for rescinding, assuming, or reassuming the contract that is the subject of the hearing. Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970, as amended [29 U.S.C. 651 et seq.].

(Pub. L. 93-638, title I, § 109, Jan. 4, 1975, 88 Stat. 2212; Pub. L. 100-581, title II, § 211, Nov. 1, 1988, 102 Stat. 2941; Pub. L. 101-301, § 2(a)(10), May 24, 1990, 104 Stat. 207; Pub. L. 103-413, title I, § 104(1), Oct. 25, 1994, 108 Stat. 4268.)

¹ See Codification note below.

Editorial Notes

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in text, is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

CODIFICATION

Sections 5321 and 5322 of this title, referred to in text, was in the original "sections 102, 103, and 104 of this Act", and was translated as meaning sections 102 and 103 of Pub. L. 93-638 because section 104 of Pub. L. 93-638 was renumbered section 103 and former section 103(a) and (b) and the first sentence of section 103(c) of Pub. L. 93-638 were repealed and the remainder of section 103 of Pub. L. 93-638 was redesignated as section 102(d) by Pub. L. 100-472, title II, §§ 201(b)(1), 202, Oct. 5, 1988, 102 Stat. 2289.

Section was formerly classified to section 450m of this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1994—Pub. L. 103-413 inserted "or in the management of trust fund, trust lands or interests in such lands pursuant to such contract or grant agreement," after "pursuant to such contract or grant agreement," and "in whole or in part," after "rescind such contract or grant agreement", substituted "action as prescribed by the Secretary to remedy the contract deficiency, except that the appropriate Secretary may, upon written notice to a tribal organization, and the tribe served by the tribal organization, immediately rescind a contract or grant, in whole or in part, and resume control or operation of a program, activity, function, or service, if the Secretary finds that (i) there is an immediate threat of imminent harm to the safety of any person, or imminent substantial and irreparable harm to trust funds, trust lands, or interests in such lands, and (ii) such threat arises from the failure of the contractor to fulfill the requirements of the contract. In such cases, the Secretary" for "action as prescribed by him: *Provided*, That the appropriate Secretary may, upon notice to a tribal organization, immediately rescind a contract or grant and resume control or operation of a program, activity, or service if he finds that there is an immediate threat to safety and, in such cases, he", struck out second period after "the tribal organization may approve", and inserted before last sentence "In any hearing or appeal provided for under this section, the Secretary shall have the burden of proof to establish, by clearly demonstrating the validity of the grounds for rescinding, assuming, or reassuming the contract that is the subject of the hearing."

1990—Pub. L. 101-301 substituted "providing notice and a hearing" for "providing notice and hearing".

1988—Pub. L. 100-581 inserted "on the record" after "providing notice and hearing".

Pub. L. 100-581 which directed amendment of this section by substituting "in such cases, he shall provide the tribal organization with a hearing on the record within ten days or such later date as the tribal organization may approve." for "in such cases, he shall hold a hearing within ten days thereof" was executed by substituting the new language for "in such cases, he shall hold a hearing on such action within ten days thereof" to reflect the probable intent of Congress.

§ 5331. Contract disputes and claims

(a) Civil actions; concurrent jurisdiction; relief

The United States district courts shall have original jurisdiction over any civil action or claim against the appropriate Secretary arising under this chapter and, subject to the provisions