

Federal Register and made available to any Indian Tribe participating in self-governance.

**(4) Annual review**

**(A) In general**

The Secretary shall annually review and publish in the Federal Register, after consultation with Indian Tribes participating in self-governance, revised lists and programmatic targets.

**(B) Contents**

In preparing the revised lists and programmatic targets, the Secretary shall consider all programs that were eligible for contracting in the original list published in the Federal Register in 1995, except for programs specifically determined not to be contractible as a matter of law.

**(d) Report on Central Office funds**

Not later than January 1, 2020, the Secretary shall, in consultation with Indian Tribes, develop a funding formula to determine the individual Tribal share of funds controlled by the Central Office of the Bureau of Indian Affairs and the Office of the Special Trustee for inclusion in the compacts.

(Pub. L. 93-638, title IV, §412, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 876.)

**Editorial Notes**

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 5365 of this title prior to repeal by Pub. L. 116-180.

**§ 5373. Regulations**

**(a) In general**

**(1) Promulgation**

Not later than 90 days after October 21, 2020, the Secretary shall initiate procedures under subchapter III of chapter 5 of title 5 to negotiate and promulgate such regulations as are necessary to carry out this subchapter.

**(2) Publication of proposed regulations**

Proposed regulations to implement this subchapter shall be published in the Federal Register not later than 21 months after October 21, 2020.

**(3) Expiration of authority**

The authority to promulgate regulations under paragraph (1) shall expire on the date that is 30 months after October 21, 2020.

**(b) Committee**

**(1) Membership**

A negotiated rulemaking committee established pursuant to section 565 of title 5 to carry out this section shall have as its members only representatives of the Federal Government and Tribal government.

**(2) Lead agency**

Among the Federal representatives described in paragraph (1), the Office of Self-Governance shall be the lead agency for the Department.

**(c) Adaptation of procedures**

The Secretary shall adapt the negotiated rule-making procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes.

**(d) Effect**

**(1) Repeal**

The Secretary may repeal any regulation that is inconsistent with this chapter.

**(2) Conflicting provisions**

Subject to section 101(a) of the PROGRESS for Indian Tribes Act and except with respect to programs described under section 5363(c) of this title, this subchapter shall supersede any conflicting provision of law (including any conflicting regulations).

**(3) Effectiveness without regard to regulations**

The lack of promulgated regulations on an issue shall not limit the effect or implementation of this subchapter.

(Pub. L. 93-638, title IV, §413, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 877.)

**Editorial Notes**

**REFERENCES IN TEXT**

This chapter, referred to in subsec. (d)(1), was in the original “this Act”, meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Section 101(a) of the PROGRESS for Indian Tribes Act, referred to in subsec. (d)(2), is section 101(a) of Pub. L. 116-180, which is set out as a note under section 5361 of this title.

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 5367 of this title prior to repeal by Pub. L. 116-180.

**§ 5374. Effect of circulars, policies, manuals, guidance, and rules**

Unless expressly agreed to by a participating Indian Tribe in a compact or funding agreement, the participating Indian Tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Department, except for—

(1) the eligibility provisions of section 5324(g) of this title; and

(2) regulations promulgated pursuant to section 5373 of this title.

(Pub. L. 93-638, title IV, §414, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 878.)

**§ 5375. Appeals**

Except as provided in section 5366(d) of this title, in any administrative action, appeal, or 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.

##### (b) Indian tribe

In any case in which an Indian tribe has authorized another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out programs, services, functions, or ac-

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