

(2) Forest Service or Bureau of Land Management land bordering on or adjacent to the Indian forest land or rangeland under the jurisdiction of the Indian tribe—

(A) poses a fire, disease, or other threat to—

(i) the Indian forest land or rangeland under the jurisdiction of the Indian tribe; or

(ii) a tribal community; or

(B) is in need of land restoration activities;

(3) the agreement or contracting activities applied for by the Indian tribe are not already covered by a stewardship contract or other instrument that would present a conflict on the subject land; and

(4) the Forest Service or Bureau of Land Management land described in the application of the Indian tribe presents or involves a feature or circumstance unique to that Indian tribe (including treaty rights or biological, archaeological, historical, or cultural circumstances).

**(d) Notice of denial**

If the Secretary denies a tribal request under subsection (b)(1), the Secretary may issue a notice of denial to the Indian tribe, which—

(1) identifies the specific factors that caused, and explains the reasons that support, the denial;

(2) identifies potential courses of action for overcoming specific issues that led to the denial; and

(3) proposes a schedule of consultation with the Indian tribe for the purpose of developing a strategy for protecting the Indian forest land or rangeland of the Indian tribe and interests of the Indian tribe in Federal land.

**(e) Proposal evaluation and determination factors**

In entering into an agreement or contract in response to a request of an Indian tribe under subsection (b)(1), the Secretary may—

(1) use a best-value basis; and

(2) give specific consideration to tribally-related factors in the proposal of the Indian tribe, including—

(A) the status of the Indian tribe as an Indian tribe;

(B) the trust status of the Indian forest land or rangeland of the Indian tribe;

(C) the cultural, traditional, and historical affiliation of the Indian tribe with the land subject to the proposal;

(D) the treaty rights or other reserved rights of the Indian tribe relating to the land subject to the proposal;

(E) the indigenous knowledge and skills of members of the Indian tribe;

(F) the features of the landscape of the land subject to the proposal, including watersheds and vegetation types;

(G) the working relationships between the Indian tribe and Federal agencies in coordinating activities affecting the land subject to the proposal; and

(H) the access by members of the Indian tribe to the land subject to the proposal.

**(f) No effect on existing authority**

Nothing in this Act—

(1) prohibits, restricts, or otherwise adversely affects the participation of any Indian tribe in stewardship agreements or contracting under the authority of section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105-277) (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (117 Stat. 275)) or other authority invoked pursuant to this Act; or

(2) invalidates any agreement or contract under that authority.

**(g) Report**

Not later than 4 years after July 22, 2004, the Secretary shall submit to Congress a report that describes the Indian tribal requests received and agreements or contracts that have been entered into under this Act.

(Pub. L. 108-278, § 2, July 22, 2004, 118 Stat. 868; Pub. L. 115-325, title II, § 202(b)(1), Dec. 18, 2018, 132 Stat. 4459.)

**Editorial Notes**

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (f), and (g), is Pub. L. 108-278, July 22, 2004, 118 Stat. 868, which enacted this section and provisions set out as notes under sections 3101 and 3115b of this title.

Section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999, referred to in subsecs. (b)(1) and (f)(1), was section §101(e) [title III, §347] of Pub. L. 105-277, div. A, as amended, which was set out as a note under section 2104 of Title 16, Conservation, prior to repeal by Pub. L. 113-79, title VIII, §8205(b), Feb. 7, 2014, 128 Stat. 921. Provisions similar to §101(e) [title III, §347] of Pub. L. 105-277, div. A, as amended, were enacted by Pub. L. 108-148, title VI, §604, as added Pub. L. 113-79, title VIII, §8205(a), Feb. 7, 2014, 128 Stat. 918 and are classified to section 6591c of Title 16, Conservation.

CODIFICATION

Section was enacted as part of the Tribal Forest Protection Act of 2004, and not as part of the National Indian Forest Resources Management Act which comprises this chapter.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-325 substituted “In this Act” for “In this section” in introductory provisions.

**§ 3115b. Tribal forest management demonstration project**

**(a) In general**

The Secretary of the Interior and the Secretary may carry out demonstration projects by which federally recognized Indian Tribes or Tribal organizations may contract to perform administrative, management, and other functions of programs of the Tribal Forest Protection Act of 2004 (25 U.S.C. 3115a et seq.) through contracts entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304 et seq.).

**(b) Requirements**

With respect to any contract or project carried out under subsection (a)—

(1) on National Forest System land, the Secretary shall carry out all functions delegated to the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304 et seq.);

(2) the Secretary or the Secretary of the Interior, as applicable, shall make any decisions required to be made under—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) the Tribal Forest Protection Act of 2004 (25 U.S.C. 3115a et seq.); and

(3) the contract or project shall be entered into under, and in accordance with, section 403(b)(2) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5363(b)(2)).

(Pub. L. 115–334, title VIII, §8703, Dec. 20, 2018, 132 Stat. 4877.)

### Editorial Notes

#### REFERENCES IN TEXT

The Tribal Forest Protection Act of 2004, referred to in subssecs. (a) and (b)(2)(B), is Pub. L. 108–278, July 22, 2004, 118 Stat. 868. For complete classification of this Act to the Code, see section 1 of Pub. L. 108–278, set out as a Short Title of 2004 Amendment note under section 3101 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subssecs. (a) and (b)(1), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to chapter 46 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see section 1 of Pub. L. 93–638, set out as a Short Title note under section 5301 of this title and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (b)(2)(A), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, 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.

#### CODIFICATION

Section was enacted as part of the Agriculture Improvement Act of 2018, and not as part of the National Indian Forest Resources Management Act which comprises this chapter.

### Statutory Notes and Related Subsidiaries

#### PURPOSE

Pub. L. 115–325, title II, §202(a), Dec. 18, 2018, 132 Stat. 4459, provided that: “The purpose of this section [amending section 3115a of this title and enacting provisions set out as notes under this section] is to establish a biomass demonstration project for federally recognized Indian tribes and Alaska Native corporations to promote biomass energy production.”

#### ALASKA NATIVE BIOMASS DEMONSTRATION PROJECT

Pub. L. 115–325, title II, §202(c), Dec. 18, 2018, 132 Stat. 4461, provided that:

“(1) DEFINITIONS.—In this subsection:

“(A) FEDERAL LAND.—The term ‘Federal land’ means—

“(i) land of the National Forest System (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)) administered by the Secretary of Agriculture, acting through the Chief of the Forest Service; and

“(ii) public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)), the surface of which is adminis-

tered by the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

“(B) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

“(C) SECRETARY.—The term ‘Secretary’ means—

“(i) the Secretary of Agriculture, with respect to land under the jurisdiction of the Forest Service; and

“(ii) the Secretary of the Interior, with respect to land under the jurisdiction of the Bureau of Land Management.

“(D) TRIBAL ORGANIZATION.—The term ‘tribal organization’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

“(2) AGREEMENTS.—For each of fiscal years 2017 through 2021, the Secretary shall enter into an agreement or contract with an Indian tribe or a tribal organization to carry out a demonstration project to promote biomass energy production (including biofuel, heat, and electricity generation) by providing reliable supplies of woody biomass from Federal land.

“(3) DEMONSTRATION PROJECTS.—In each fiscal year for which projects are authorized, at least 1 new demonstration project that meets the eligibility criteria described in paragraph (4) shall be carried out under contracts or agreements described in paragraph (2).

“(4) ELIGIBILITY CRITERIA.—To be eligible to enter into a contract or agreement under this subsection, an Indian tribe or tribal organization shall submit to the Secretary an application—

“(A) containing such information as the Secretary may require; and

“(B) that includes a description of the demonstration project proposed to be carried out by the Indian tribe or tribal organization.

“(5) SELECTION.—In evaluating the applications submitted under paragraph (4), the Secretary shall—

“(A) take into consideration whether a proposed project would—

“(i) increase the availability or reliability of local or regional energy;

“(ii) enhance the economic development of the Indian tribe;

“(iii) result in or improve the connection of electric power transmission facilities serving the Indian tribe with other electric transmission facilities;

“(iv) improve the forest health or watersheds of Federal land or non-Federal land;

“(v) demonstrate new investments in infrastructure; or

“(vi) otherwise promote the use of woody biomass; and

“(B) exclude from consideration any merchantable logs that have been identified by the Secretary for commercial sale.

“(6) IMPLEMENTATION.—The Secretary shall—

“(A) ensure that the criteria described in paragraph (4) are publicly available by not later than 120 days after the date of enactment of this subsection [Dec. 18, 2018]; and

“(B) to the maximum extent practicable, consult with Indian tribes and appropriate tribal organizations likely to be affected in developing the application and otherwise carrying out this subsection.

“(7) REPORT.—Not later than September 20, 2019, the Secretary shall submit to Congress a report that describes, with respect to the reporting period—

“(A) each individual application received under this subsection; and

“(B) each contract and agreement entered into pursuant to this subsection.

“(8) TERM.—A contract or agreement entered into under this subsection—

“(A) shall be for a term of not more than 20 years; and

“(B) may be renewed in accordance with this subsection for not more than an additional 10 years.”

#### TRIBAL BIOMASS DEMONSTRATION PROJECT

Pub. L. 108-278, § 3, as added by Pub. L. 115-325, title II, § 202(b)(2), Dec. 18, 2018, 132 Stat. 4459, provided that:

“(a) STEWARDSHIP CONTRACTS OR SIMILAR AGREEMENTS.—For each of fiscal years 2017 through 2021, the Secretary shall enter into stewardship contracts or similar agreements (excluding direct service contracts) with Indian tribes to carry out demonstration projects to promote biomass energy production (including biofuel, heat, and electricity generation) on Indian forest land and in nearby communities by providing reliable supplies of woody biomass from Federal land.

“(b) DEMONSTRATION PROJECTS.—In each fiscal year for which projects are authorized, at least 4 new demonstration projects that meet the eligibility criteria described in subsection (c) shall be carried out under contracts or agreements described in subsection (a).

“(c) ELIGIBILITY CRITERIA.—To be eligible to enter into a contract or agreement under this section, an Indian tribe shall submit to the Secretary an application—

“(1) containing such information as the Secretary may require; and

“(2) that includes a description of—

“(A) the Indian forest land or rangeland under the jurisdiction of the Indian tribe; and

“(B) the demonstration project proposed to be carried out by the Indian tribe.

“(d) SELECTION.—In evaluating the applications submitted under subsection (c), the Secretary shall—

“(1) take into consideration—

“(A) the factors set forth in paragraphs (1) and (2) of section 2(e) [25 U.S.C. 3115a(e)(1), (2)]; and

“(B) whether a proposed project would—

“(i) increase the availability or reliability of local or regional energy;

“(ii) enhance the economic development of the Indian tribe;

“(iii) result in or improve the connection of electric power transmission facilities serving the Indian tribe with other electric transmission facilities;

“(iv) improve the forest health or watersheds of Federal land or Indian forest land or rangeland;

“(v) demonstrate new investments in infrastructure; or

“(vi) otherwise promote the use of woody biomass; and

“(2) exclude from consideration any merchantable logs that have been identified by the Secretary for commercial sale.

“(e) IMPLEMENTATION.—The Secretary shall—

“(1) ensure that the criteria described in subsection (c) are publicly available by not later than 120 days after the date of enactment of this section [Dec. 18, 2018]; and

“(2) to the maximum extent practicable, consult with Indian tribes and appropriate intertribal organizations likely to be affected in developing the application and otherwise carrying out this section.

“(f) REPORT.—Not later than September 20, 2019, the Secretary shall submit to Congress a report that describes, with respect to the reporting period—

“(1) each individual tribal application received under this section; and

“(2) each contract and agreement entered into pursuant to this section.

“(g) INCORPORATION OF MANAGEMENT PLANS.—In carrying out a contract or agreement under this section, on receipt of a request from an Indian tribe, the Secretary shall incorporate into the contract or agreement, to the maximum extent practicable, management plans (including forest management and integrated resource management plans) in effect on the Indian forest land or rangeland of the respective Indian tribe.

“(h) TERM.—A contract or agreement entered into under this section—

“(1) shall be for a term of not more than 20 years; and

“(2) may be renewed in accordance with this section for not more than an additional 10 years.”

[For definitions of terms used in section 3 of Pub. L. 108-278, set out above, see section 3115a(a) of this title.]

#### DEFINITION OF “SECRETARY”

“Secretary” as meaning the Secretary of Agriculture, see section 2 of Pub. L. 115-334, set out as a note under section 9001 of Title 7, Agriculture.

### § 3116. Obligated service; breach of contract

#### (a) Obligated service

Where an individual enters into an agreement for obligated service in return for financial assistance under any provision of this chapter, the Secretary shall adopt such regulations as are necessary to provide for the offer of employment to the recipient of such assistance as required by such provision. Where an offer of employment is not reasonably made, the regulations shall provide that such service shall no longer be required.

#### (b) Breach of contract; repayment

Where an individual fails to accept a reasonable offer of employment in fulfillment of such obligated service or unreasonably terminates or fails to perform the duties of such employment, the Secretary shall require a repayment of the financial assistance provided, prorated for the amount of time of obligated service performed, together with interest on such amount which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

(Pub. L. 101-630, title III, § 317, Nov. 28, 1990, 104 Stat. 4544.)

### § 3117. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this chapter.

(Pub. L. 101-630, title III, § 318, Nov. 28, 1990, 104 Stat. 4544.)

### § 3118. Regulations

Except as otherwise provided by this chapter, the Secretary is directed to promulgate final regulations for the implementation of the<sup>1</sup> chapter within eighteen months from November 28, 1990. All regulations promulgated pursuant to this chapter shall be developed by the Secretary with the participation of the affected Indian tribes.

(Pub. L. 101-630, title III, § 319, Nov. 28, 1990, 104 Stat. 4544.)

### § 3119. Severability

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision or circumstance and the remainder of this chapter shall not be affected thereby.

<sup>1</sup> So in original. Probably should be “this”.