

Title note set out under section 5301 of this title and Tables.

The Indian Civil Rights Act of 1968, referred to in section 1(b)(13) of the provisions of subsec. (c) setting out the model agreement, is title II of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 77, which is classified generally to subchapter I (§1301 et seq.) of chapter 15 of this title. For complete classification of this Act to the Code, see Tables.

Section 16 of the Act of June 18, 1934, referred to in section 1(b)(15)(A) of the provisions of subsec. (c) setting out the model agreement, is section 16 of act June 18, 1934, ch. 576, 48 Stat. 987, which was classified to section 476 of this title prior to editorial reclassification as section 5123 of this title.

The Act of July 3, 1952, referred to in section 1(b)(15)(A) of the provisions of subsec. (c) setting out the model agreement, is act July 3, 1952, ch. 549, 66 Stat. 323, which enacted section 82a of this title and provisions set out as a note under section 82a of this title.

The Indian Health Care Improvement Act, referred to in section 1(d)(2) of the provisions of subsec. (c) setting out the model agreement, is Pub. L. 94-437, Sept. 30, 1976, 90 Stat. 1400, which is classified principally to chapter 18 (§1601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

#### CODIFICATION

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

#### PRIOR PROVISIONS

A prior section 108 of Pub. L. 93-638 was renumbered section 5(f) and was classified to section 450c(f) of this title prior to editorial reclassification as section 5305(f) of this title.

#### AMENDMENTS

2020—Subsec. (a)(2). Pub. L. 116-180, §205(1), inserted “subject to subsections (a) and (b) of section 5321 of this title,” before “contain”.

Subsec. (c). Pub. L. 116-180, §205(3), substituted “two performance monitoring visits” for “one performance monitoring visit” in the introductory provisions of section 1(b)(7)(C) of the provisions setting out the model agreement.

Pub. L. 116-180, §205(2), inserted “subject to subsections (a) and (b) of section 102 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5321),” before “such other provisions” in section 1(f)(2)(A)(ii) of the provisions setting out the model agreement.

2000—Subsec. (c). Pub. L. 106-568 substituted “, section 16 of the Act of June 18, 1934” for “and section 16 of the Act of June 18, 1934” and “and the Act of July 3, 1952 (25 U.S.C. 82a), shall not apply” for “shall not apply” in section 1(b)(15)(A) of the provisions setting out the model agreement.

#### Statutory Notes and Related Subsidiaries

##### QUARTERLY PAYMENTS OF FUNDS TO TRIBES

Pub. L. 105-83, title III, §311, Nov. 14, 1997, 111 Stat. 1590, provided that: “Notwithstanding Public Law 103-413 [see Short Title of 1994 Amendment note set out under section 5301 of this title], quarterly payments of funds to tribes and tribal organizations under annual funding agreements pursuant to section 108 of Public Law 93-638 [25 U.S.C. 5329], as amended, beginning in fiscal year 1998 and thereafter [sic], may be made on the first business day following the first day of a fiscal quarter.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104-208, div. A, title I, §101(d) [title III, §311], Sept. 30, 1996, 110 Stat. 3009-181, 3009-221.

Pub. L. 104-134, title I, §101(c) [title III, §311], Apr. 26, 1996, 110 Stat. 1321-156, 1321-197; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.

#### § 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 5322<sup>1</sup> 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.)

<sup>1</sup> 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

of subsection (d) of this section and concurrent with the United States Court of Claims, over any civil action or claim against the Secretary for money damages arising under contracts authorized by this chapter. In an action brought under this paragraph, the district courts may order appropriate relief including money damages, injunctive relief against any action by an officer of the United States or any agency thereof contrary to this chapter or regulations promulgated thereunder, or mandamus to compel an officer or employee of the United States, or any agency thereof, to perform a duty provided under this chapter or regulations promulgated hereunder (including immediate injunctive relief to reverse a declination finding under section 5321(a)(2) of this title or to compel the Secretary to award and fund an approved self-determination contract).

**(b) Revision of contracts**

The Secretary shall not revise or amend a self-determination contract with a tribal organization without the tribal organization's consent.

**(c) Application of laws to administrative appeals**

The Equal Access to Justice Act (Public<sup>1</sup> Law 96-481, Act of October 1,<sup>1</sup> 1980; 92<sup>1</sup> Stat. 2325, as amended), section 504 of title 5, and section 2412 of title 28 shall apply to administrative appeals pending on or filed after October 5, 1988, by tribal organizations regarding self-determination contracts.

**(d) Application of chapter 71 of title 41**

Chapter 71 of title 41 shall apply to self-determination contracts, except that all administrative appeals relating to such contracts shall be heard by the Interior Board of Contract Appeals established pursuant to section 8 of such Act (41 U.S.C. 607).<sup>2</sup>

**(e) Application of subsection (d)**

Subsection (d) of this section shall apply to any case pending or commenced on or after March 17, 1986, before the Boards of Contract Appeals of the Department of the Interior or the Department of Health and Human Services<sup>2</sup> except that in any such cases finally disposed of before October 5, 1988, the thirty-day period referred to in section 504(a)(2) of title 5 shall be deemed to commence on October 5, 1988.

(Pub. L. 93-638, title I, § 110, as added Pub. L. 100-472, title II, § 206(a), Oct. 5, 1988, 102 Stat. 2294; amended Pub. L. 100-581, title II, § 212, Nov. 1, 1988, 102 Stat. 2941; Pub. L. 101-301, §§ 1(a)(2), 2(b), May 24, 1990, 104 Stat. 206, 207; Pub. L. 103-413, title I, § 104(2), (3), Oct. 25, 1994, 108 Stat. 4268.)

**Editorial Notes**

## REFERENCES IN TEXT

This chapter, referred to in subsec. (a), 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.

<sup>1</sup> So in original. Probably should be "Public", "21", and "94", respectively.

<sup>2</sup> See References in Text note below.