

WAIS Document Retrieval From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 24, 2002]
[Document not affected by Public Laws enacted between
January 24, 2002 and December 19, 2002]
[CITE: 25USC81]

TITLE 25--INDIANS

CHAPTER 3--AGREEMENTS WITH INDIANS

SUBCHAPTER II--CONTRACTS WITH INDIANS

Sec. 81. Contracts and agreements with Indian tribes

(a) Definitions

In this section:

- (1) The term ``Indian lands'' means lands the title to which is held by the United States in trust for an Indian tribe or lands the title to which is held by an Indian tribe subject to a restriction by the United States against alienation.
- (2) The term ``Indian tribe'' has the meaning given that term in section 450b(e) of this title.
- (3) The term ``Secretary'' means the Secretary of the Interior.

(b) Approval

No agreement or contract with an Indian tribe that encumbers Indian lands for a period of 7 or more years shall be valid unless that agreement or contract bears the approval of the Secretary of the Interior or a designee of the Secretary.

(c) Exception

Subsection (b) of this section shall not apply to any agreement or contract that the Secretary (or a designee of the Secretary) determines is not covered under that subsection.

(d) Unapproved agreements

The Secretary (or a designee of the Secretary) shall refuse to approve an agreement or contract that is covered under subsection (b) of this section if the Secretary (or a designee of the Secretary) determines that the agreement or contract--

- (1) violates Federal law; or
- (2) does not include a provision that--
 - (A) provides for remedies in the case of a breach of the agreement or contract;
 - (B) references a tribal code, ordinance, or ruling of a court of competent jurisdiction that discloses the right of the Indian tribe to assert sovereign immunity as a defense in an action brought against the Indian tribe; or
 - (C) includes an express waiver of the right of the Indian tribe to assert sovereign immunity as a defense in an action

brought against the Indian tribe (including a waiver that limits the nature of relief that may be provided or the jurisdiction of a court with respect to such an action).

(e) Regulations

Not later than 180 days after March 14, 2000, the Secretary shall issue regulations for identifying types of agreements or contracts that are not covered under subsection (b) of this section.

(f) Construction

Nothing in this section shall be construed to--

- (1) require the Secretary to approve a contract for legal services by an attorney;
- (2) amend or repeal the authority of the National Indian Gaming Commission under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.); or
- (3) alter or amend any ordinance, resolution, or charter of an Indian tribe that requires approval by the Secretary of any action by that Indian tribe.

(R.S. Sec. 2103; Pub. L. 85-770, Aug. 27, 1958, 72 Stat. 927; Pub. L. 106-179, Sec. 2, Mar. 14, 2000, 114 Stat. 46.)

References in Text

The Indian Gaming Regulatory Act, referred to in subsec. (f)(2), is Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, as amended, which is classified principally to chapter 29 (Sec. 2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

Codification

R.S. Sec. 2103 derived from acts Mar. 3, 1871, ch. 120, Sec. 3, 16 Stat. 570; May 21, 1872, ch. 177, Secs. 1, 2, 17 Stat. 136.

Amendments

2000--Pub. L. 106-179 amended section generally, substituting present provisions for provisions which required agreements with Indian tribes or Indians to be in writing, to bear the approval of the Secretary, to contain the names of all parties in interest, to state the time and place of making, purpose, and contingencies, and to have a fixed time limit to run, and provisions which declared agreements made in violation of this section to be null and void and which authorized recovery of amounts in excess of approved amounts, with one half of recovered amounts to be paid into the Treasury.

1958--Par. Second. Pub. L. 85-770 struck out requirement that contracts with Indian tribes be executed before a judge of a court of record.

Par. Sixth. Pub. L. 85-770 struck out par. Sixth enumerating contractual elements to be certified to by the judge.

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, Secs. 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Section Referred to in Other Sections

This section is referred to in sections 81a, 415, 416a, 4501, 458cc, 458aaa-10, 2701, 2711 of this title.