

plete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

#### PRIOR PROVISIONS

A prior section 2021, Pub. L. 95-561, title XI, §1141, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4012, related to proration of pay, prior to the general amendment of this chapter by Pub. L. 107-110. See section 2012 of this title.

Another prior section 2021, Pub. L. 95-561, title XI, §1140A, formerly §1141, as added Pub. L. 98-511, title V, §512, Oct. 19, 1984, 98 Stat. 2398; renumbered §1140A and amended Pub. L. 99-89, §9(a)(1), (b), Aug. 15, 1985, 99 Stat. 383, related to proration of pay, prior to the general amendment of this chapter by Pub. L. 103-382.

A prior section 2022, Pub. L. 95-561, title XI, §1142, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4012, related to extracurricular activities, prior to the general amendment of this chapter by Pub. L. 107-110. See section 2012 of this title.

Another prior section 2022 and prior sections 2022a and 2022b were omitted in the general amendment of this chapter by Pub. L. 103-382.

Section 2022, Pub. L. 95-561, title XI, §1140B, formerly §1142, as added Pub. L. 98-511, title V, §512, Oct. 19, 1984, 98 Stat. 2398; renumbered §1140B, and amended Pub. L. 99-89, §9(a)(1), (c), Aug. 15, 1985, 99 Stat. 383, related to extracurricular activities.

Section 2022a, Pub. L. 95-561, title XI, §1141, as added Pub. L. 100-297, title V, §5116(2), Apr. 28, 1988, 102 Stat. 381, related to early childhood development program.

Section 2022b, Pub. L. 95-561, title XI, §1142, as added Pub. L. 100-297, title V, §5119, Apr. 28, 1988, 102 Stat. 383, related to tribal departments of education.

A prior section 2023, Pub. L. 95-561, title XI, §1143, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4012; amended Pub. L. 106-554, §1(a)(4) [div. B, title XVI, §1607(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-335, related to early childhood development program, prior to the general amendment of this chapter by Pub. L. 107-110. See section 2019 of this title.

Another prior section 2023, Pub. L. 95-561, title XI, §1143, as added Pub. L. 98-511, title V, §512, Oct. 19, 1984, 98 Stat. 2398, related to employee housing, rental rates, and waiver of rentals during non-session periods and non-pay status, prior to repeal by Pub. L. 99-89, §9(a)(2), Aug. 15, 1985, 99 Stat. 383.

Prior sections 2024 to 2026 were omitted in the general amendment of this chapter by Pub. L. 107-110.

Section 2024, Pub. L. 95-561, title XI, §1144, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4013; amended Pub. L. 105-244, title IX, §901(d), Oct. 7, 1998, 112 Stat. 1828, related to tribal departments of education. See section 2020 of this title.

Section 2025, Pub. L. 95-561, title XI, §1145, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4015, related to payments to grantees.

Section 2026, Pub. L. 95-561, title XI, §1146, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4015; amended Pub. L. 106-554, §1(a)(4) [div. B, title XVI, §1607(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-335, defined terms. See section 2021 of this title.

### CHAPTER 23—DEVELOPMENT OF TRIBAL MINERAL RESOURCES

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### § 2101. Definitions

For the purposes of this chapter, the term—

(1) "Indian" means any individual Indian or Alaska Native who owns land or interests in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States;

(2) "Indian tribe" means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in land title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; and

(3) "Secretary" means the Secretary of the Interior.

(Pub. L. 97-382, §2, Dec. 22, 1982, 96 Stat. 1938.)

#### SHORT TITLE

Pub. L. 97-382, §1, Dec. 22, 1982, 96 Stat. 1938, provided: "That this Act [enacting this chapter] may be cited as the 'Indian Mineral Development Act of 1982'."

### § 2102. Minerals Agreements

#### (a) Authorization for tribes; approval by Secretary

Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into any joint venture, operating, production sharing, service, managerial, lease or other agreement, or any amendment, supplement or other modification of such agreement (hereinafter referred to as a "Minerals Agreement") providing for the exploration for, or extraction, processing, or other development of, oil, gas, uranium, coal, geothermal, or other energy or nonenergy mineral resources (hereinafter referred to as "mineral resources") in which such Indian tribe owns a beneficial or restricted interest, or providing for the sale or other disposition of the production or products of such mineral resources.

#### (b) Inclusion of individual holdings; approval by parties and Secretary

Any Indian owning a beneficial or restricted interest in mineral resources may include such resources in a tribal Minerals Agreement subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

(Pub. L. 97-382, §3, Dec. 22, 1982, 96 Stat. 1938.)

### § 2103. Secretary's determination on Minerals Agreements

#### (a) Time; enforcement

The Secretary shall approve or disapprove any Minerals Agreement submitted to him for approval within (1) one hundred and eighty days after submission or (2) sixty days after compliance, if required, with section 4332(2)(C) of title 42 or any other requirement of Federal law, whichever is later. Any party to such an agreement may enforce the provisions of this subsection pursuant to section 1361 of title 28.

#### (b) Factors for consideration; extent of required study

In approving or disapproving a Minerals Agreement, the Secretary shall determine if it

is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement and shall consider, among other things, the potential economic return to the tribe; the potential environmental, social, and cultural effects on the tribe; and provisions for resolving disputes that may arise between the parties to the agreement: *Provided*, That the Secretary shall not be required to prepare any study regarding environmental, socioeconomic, or cultural effects of the implementation of a Minerals Agreement apart from that which may be required under section 4332(2)(C) of title 42.

**(c) Prior notice of proposed finding; privileged information**

Not later than thirty days prior to formal approval or disapproval of any Minerals Agreement, the Secretary shall provide written findings forming the basis of his intent to approve or disapprove such agreement to the affected Indian tribe. Notwithstanding any other law, such findings and all projections, studies, data or other information possessed by the Department of the Interior regarding the terms and conditions of the Minerals Agreement, the financial return to the Indian parties thereto, or the extent, nature, value or disposition of the Indian mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged proprietary information of the affected Indian or Indian tribe.

**(d) Delegation; final action; appeal; burden on Secretary**

The authority to disapprove agreements under this section may only be delegated to the Assistant Secretary of the Interior for Indian Affairs. The decision of the Secretary or, where authority is delegated, of the Assistant Secretary of the Interior for Indian Affairs, to disapprove a Minerals Agreement shall be deemed a final agency action. The district courts of the United States shall have jurisdiction to review the Secretary's disapproval action and shall determine the matter de novo. The burden is on the Secretary to sustain his action.

**(e) Nonliability of United States; continuing obligations**

Where the Secretary has approved a Minerals Agreement in compliance with the provisions of this chapter and any other applicable provision of law, the United States shall not be liable for losses sustained by a tribe or individual Indian under such agreement: *Provided*, That the Secretary shall continue to have a trust obligation to ensure that the rights of a tribe or individual Indian are protected in the event of a violation of the terms of any Minerals Agreement by any other party to such agreement: *Provided further*, That nothing in this chapter shall absolve the United States from any responsibility to Indians, including those which derive from the trust relationship and from any treaties, Executive orders, or agreement between the United States and any Indian tribe.

(Pub. L. 97-382, § 4, Dec. 22, 1982, 96 Stat. 1938.)

**§ 2104. Secretary's review of prior Minerals Agreements**

**(a) Time; criteria; notice of modifications; time for compliance; effect of noncompliance**

The Secretary shall review, within ninety days of December 22, 1982, any existing Minerals Agreement, which does not purport to be a lease, entered into by any Indian tribe and approved by the Secretary after January 1, 1975, but prior to December 22, 1982, to determine if such agreement complies with the purposes of this chapter. Such review shall be limited to the terms of the agreement and shall not address questions of the parties' compliance therewith. The Secretary shall notify the affected tribe and other parties to the agreement of any modifications necessary to bring an agreement into compliance with the purposes of this chapter. The tribe and other parties to such agreement shall within ninety days after notice make such modifications. If such modifications are not made within ninety days, the provisions of this chapter may not be used as a defense in any proceeding challenging the validity of the agreement.

**(b) Review before promulgation of regulations; not Federal action**

The review required by subsection (a) of this section may be performed prior to the promulgation of regulations required under section 2107 of this title and shall not be considered a Federal action within the meaning of that term in section 4332(2)(C) of title 42.

(Pub. L. 97-382, § 5, Dec. 22, 1982, 96 Stat. 1939.)

**§ 2105. Effect of other provisions**

Nothing in this chapter shall affect, nor shall any Minerals Agreement approved pursuant to this chapter be subject to or limited by, sections 396a to 396g of this title, or any other law authorizing the development or disposition of the mineral resources of an Indian or Indian tribe.

(Pub. L. 97-382, § 6, Dec. 22, 1982, 96 Stat. 1940.)

**§ 2106. Assistance to tribes or individuals during Minerals Agreement negotiations**

In carrying out the obligations of the United States, the Secretary shall ensure that upon the request of an Indian tribe or individual Indian and to the extent of his available resources, such tribe or individual Indian shall have available advice, assistance, and information during the negotiation of a Minerals Agreement. The Secretary may fulfill this responsibility either directly through the use of Federal officials and resources or indirectly by providing financial assistance to the Indian tribe or individual Indian to secure independent assistance.

(Pub. L. 97-382, § 7, Dec. 22, 1982, 96 Stat. 1940.)

**§ 2107. Regulations; consultation with Indian organizations; pending agreements**

Within one hundred and eighty days of December 22, 1982, the Secretary of the Interior shall promulgate rules and regulations to facilitate implementation of this chapter. The Secretary shall, to the extent practicable, consult with national and regional Indian organizations and