

**§ 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 tribes with expertise in mineral development both in the initial formulation of rules and regulations and any future revision or amendment of such rules and regulations. Where there is pending before the Secretary for his approval a Minerals Agreement of the type authorized by section 2102 of this title which was submitted prior to December 22, 1982, the Secretary shall evaluate and approve or disapprove such agreement based upon section 2103 of this title, but shall not withhold or delay such approval or disapproval on the grounds that the rules and regulations implementing this chapter have not been promulgated.

(Pub. L. 97-382, § 8, Dec. 22, 1982, 96 Stat. 1940.)

**§ 2108. Tribal right to develop mineral resources**

Nothing in this chapter shall impair any right of an Indian tribe organized under section 16 or 17 of the Act of June 18, 1934 (48 Stat. 987), as amended [25 U.S.C. 5123, 5124], to develop their mineral resources as may be provided in any constitution or charter adopted by such tribe pursuant to that Act [25 U.S.C. 5101 et seq.].

(Pub. L. 97-382, § 9, Dec. 22, 1982, 96 Stat. 1940.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to chapter 45 (§ 5101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of this title and Tables.

**CHAPTER 24—INDIAN LAND CONSOLIDATION**

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**§ 2201. Definitions**

For the purpose of this chapter—

(1) “Indian tribe” or “tribe” means any Indian tribe, band, group, pueblo, or community for which, or for the members of which, the United States holds lands in trust;

(2) “Indian” means—

(A) any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land;

(B) any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479)<sup>1</sup> and the regulations promulgated thereunder; and

(C) with respect to the inheritance and ownership of trust or restricted land in the State of California pursuant to section 2206 of this title, any person described in subparagraph (A) or (B) or any person who owns a trust or restricted interest in a parcel of such land in that State.<sup>2</sup>

(3) “Secretary” means the Secretary of the Interior;

(4)(i) “trust or restricted lands” means lands, title to which is held by the United States in trust for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation; and (ii) “trust or restricted interest in land” or “trust or restricted interest in a parcel of land” means an interest in land, the title to which interest is held in trust by the United States for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation.<sup>2</sup>

(5) “heirs of the first or second degree” means parents, children, grandchildren, grandparents, brothers and sisters of a decedent.<sup>2</sup>

(6) “parcel of highly fractionated Indian land” means a parcel of land that the Secretary, pursuant to authority under a provision of this chapter, determines to have, as evidenced by the Secretary’s records at the time of the determination—

(A) 50 or more but less than 100 co-owners of undivided trust or restricted interests, and no 1 of such co-owners holds a total undivided trust or restricted interest in the parcel that is greater than 10 percent of the entire undivided ownership of the parcel; or

(B) 100 or more co-owners of undivided trust or restricted interests;

(7) the term “land” means any real property;

(8) “person” or “individual” means a natural person;

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. The period probably should be a semicolon.

(9) “eligible heirs” means, for purposes of section 2206 of this title, any of a decedent’s children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are—

(A) Indian; or

(B) lineal descendants within 2 degrees of consanguinity of an Indian; or

(C) owners of a trust or restricted interest in a parcel of land for purposes of inheriting by descent, renunciation, or consolidation agreement under section 2206 of this title, another trust or restricted interest in such parcel from the decedent; and

(10) “without regard to waste” means, with respect to a life estate interest in land, that the holder of such estate is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen.

(Pub. L. 97-459, title II, §202, Jan. 12, 1983, 96 Stat. 2517; Pub. L. 106-462, title I, §103(1), Nov. 7, 2000, 114 Stat. 1992; Pub. L. 108-374, §6(b), Oct. 27, 2004, 118 Stat. 1804; Pub. L. 110-453, title II, §207(a), Dec. 2, 2008, 122 Stat. 5030.)

#### REFERENCES IN TEXT

The Indian Reorganization Act, referred to in par. (2)(B), is act June 18, 1934, ch. 576, 48 Stat. 984, which was classified generally to subchapter V (§461 et seq.) of chapter 14 of this title prior to editorial reclassification as chapter 45 (§5101 et seq.) of this title. The term “Indian” was defined for purposes of this Act in section 479 of this title prior to editorial reclassification as section 5129 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of this title and Tables.

This chapter, referred to in par. (6), was in the original “this Act”, which was translated as reading “this title”, meaning title II of Pub. L. 97-459, to reflect the probable intent of Congress.

#### AMENDMENTS

2008—Par. (4). Pub. L. 110-453, §207(a)(1), designated existing provisions as cls. (i) and (ii) and, in cl. (ii), substituted “an interest in land, the title to which interested” for “an interest in land, title to which”.

Par. (7). Pub. L. 110-453, §207(a)(2), added par. (7) and struck out former par. (7) which read as follows: “‘land’ means any real property, and includes within its meaning for purposes of this chapter improvements permanently affixed to real property;”.

2004—Par. (2). Pub. L. 108-374, §6(b)(1), added par. (2) and struck out former par. (2) which read as follows: “‘Indian’ means any person who is a member of any Indian tribe or is eligible to become a member of any Indian tribe, or any person who has been found to meet the definition of ‘Indian’ under a provision of Federal law if the Secretary determines that using such law’s definition of Indian is consistent with the purposes of this chapter;”.

Par. (4). Pub. L. 108-374, §6(b)(2), added par. (4) and struck out former par. (4) which read as follows: “‘trust or restricted lands’ means lands, title to which is held by the United States in trust for an Indian or an Indian tribe or lands title to which is held by Indians or an Indian tribe subject to a restriction by the United States against alienation; and”.

Pars. (6) to (10). Pub. L. 108-374, §6(b)(3), added pars. (6) to (10).

2000—Par. (1). Pub. L. 106-462, §103(1)(A), substituted “(1) ‘Indian tribe’ or ‘tribe’” for “(1) ‘tribe’”.

Par. (2). Pub. L. 106-462, §103(1)(B), added par. (2) and struck out former par. (2) which read as follows: “‘Indian’ means any person who is a member of a tribe or

any person who is recognized as an Indian by the Secretary of the Interior;”.

Par. (5). Pub. L. 106-462, §103(1)(C)–(E), added par. (5).

#### NOTICE; EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-374, §8, Oct. 27, 2004, 118 Stat. 1809, as amended by Pub. L. 109-221, title V, §501(b)(3), May 12, 2006, 120 Stat. 344, provided that:

“(a) NOTICE.—

“(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Oct. 27, 2004], the Secretary shall notify Indian tribes and owners of trust or restricted lands of the amendments made by this Act [see Short Title of 2004 Amendment note below].

“(2) SPECIFICATIONS.—The notice required under paragraph (1) shall be designed to inform Indian owners of trust or restricted land of—

“(A) the effect of this Act and the amendments made by this Act, with emphasis on the effect of the provisions of this Act and the amendments made by this Act, on the testate disposition and intestate descent of their interests in trust or restricted land;

“(B) estate planning options available to the owners, including any opportunities for receiving estate planning assistance or advice;

“(C) the use of negotiated sales, gift deeds, land exchanges, and other transactions for consolidating the ownership of land; and

“(D) a toll-free telephone number to be used for obtaining information regarding the provisions of this Act and any trust assets of such owners.

“(3) REQUIREMENTS.—The Secretary shall provide the notice required under paragraph (1)—

“(A) by direct mail for those Indians with interests in trust and restricted lands for which the Secretary has an address for the interest holder;

“(B) through the Federal Register;

“(C) through local newspapers in areas with significant Indian populations, reservation newspapers, and newspapers that are directed at an Indian audience; and

“(D) through any other means determined appropriate by the Secretary.

“(4) CERTIFICATION.—After providing notice under this subsection, the Secretary shall—

“(A) certify that the requirements of this subsection have been met; and

“(B) publish notice of that certification in the Federal Register.

“(b) EFFECTIVE DATES.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this Act [see Short Title of 2004 Amendment note below] apply on and after the date that is 1 year after the date on which the Secretary makes the certification required under subsection (a)(4) [such certification made June 20, 2005, see 70 F.R. 37107].

“(2) EXCEPTIONS.—The following provisions of law apply as of the date of enactment of this Act [Oct. 27, 2004]:

“(A) Subsections (e) and (f) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) (as amended by this Act).

“(B) Subsection (g) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) (as in effect on March 1, 2006).

“(C) The amendments made by section 4, section 5, paragraphs (1), (3), (4), (5), (6), (7), (8), (9), (10), and (11) of section 6(a), section 6(b)(3), and section 7 of this Act [see Tables for classification].”

#### SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109-157, §1, Dec. 30, 2005, 119 Stat. 2949, provided that: “This Act [amending sections 464, 2204 to 2206, 2212, 2214, and 2216 of this title, enacting provisions set out as a note under section 464 of this title, and amending provisions set out as a note under this section] may be cited as the ‘Indian Land Probate Reform Technical Corrections Act of 2005’.”

## SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108-374, §1, Oct. 27, 2004, 118 Stat. 1773, provided that: "This Act [enacting sections 2220 and 2221 of this title, amending this section and sections 348, 464, 2204 to 2206, 2212 to 2216, and 2218 of this title, and enacting provisions set out as notes under this section] may be cited as the 'American Indian Probate Reform Act of 2004'."

## SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-462, §1, Nov. 7, 2000, 114 Stat. 1991, provided that: "This Act [enacting sections 2205, 2206, and 2212 to 2219 of this title, amending this section and sections 348, 372, 373, 464, 2204, and 2207 of this title, repealing sections 331 to 333, 2205, and 2206 of this title, and enacting provisions set out as notes under this section and sections 396 and 2206 of this title] may be cited as the 'Indian Land Consolidation Act Amendments of 2000'."

## SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102-238, §1, Dec. 17, 1991, 105 Stat. 1908, provided that: "This Act [amending sections 2203, 2703, and 2718 of this title, enacting provisions set out as a note under section 1437f of Title 42, The Public Health and Welfare, and repealing provisions set out as a note under section 1437f of Title 42] may be cited as the 'Technical Amendments to Various Indian Laws Act of 1991'."

## SHORT TITLE

Pub. L. 97-459, title II, §201, Jan. 12, 1983, 96 Stat. 2517, provided that: "This title [enacting this chapter] may be cited as the 'Indian Land Consolidation Act'."

## REGULATIONS

Pub. L. 108-374, §10, Oct. 27, 2004, 118 Stat. 1810, provided that: "The Secretary is authorized to adopt such regulations as may be necessary to implement the provisions of this Act [see Short Title of 2004 Amendment note above]."

## SEVERABILITY

Pub. L. 108-374, §9, Oct. 27, 2004, 118 Stat. 1810, as amended by Pub. L. 109-157, §8(a)(2), Dec. 30, 2005, 119 Stat. 2952, provided that: "If any provision of this Act [see Short Title of 2004 Amendment note above] or of any amendment made by this Act, or the application of any such provision to any person or circumstance, is held to be invalid for any reason, the remainder of this Act and of amendments made by this Act, and the application of the provisions and of the amendments made by this Act to any other person or circumstance shall not be affected by such holding, except that each of subclauses (II), (III), and (IV) of section 205(c)(2)(I)(i) of the Indian Land Consolidation Act (25 U.S.C. 2204(c)(2)(I)(i)) is deemed to be inseverable from the other 2, such that if any 1 of those 3 subclauses is held to be invalid for any reason, neither of the other 2 of such subclauses shall be given effect."

## CONGRESSIONAL FINDINGS

Pub. L. 108-374, §2, Oct. 27, 2004, 118 Stat. 1773, provided that: "Congress finds that—

"(1) the Act of February 8, 1887 (commonly known as the 'Indian General Allotment Act') (25 U.S.C. 331 et seq.), which authorized the allotment of Indian reservations, did not permit Indian allotment owners to provide for the testamentary disposition of the land that was allotted to them;

"(2) that Act provided that allotments would descend according to State law of intestate succession based on the location of the allotment;

"(3) the reliance of the Federal Government on the State law of intestate succession with respect to the descent of allotments has resulted in numerous problems affecting Indian tribes, members of Indian tribes, and the Federal Government, including—

"(A) the increasingly fractionated ownership of trust and restricted land as that land is inherited by successive generations of owners as tenants in common;

"(B) the application of different rules of intestate succession to each interest of a decedent in or to trust or restricted land if that land is located within the boundaries of more than 1 State, which application—

"(i) makes probate planning unnecessarily difficult; and

"(ii) impedes efforts to provide probate planning assistance or advice;

"(C) the absence of a uniform general probate code for trust and restricted land, which makes it difficult for Indian tribes to work cooperatively to develop tribal probate codes; and

"(D) the failure of Federal law to address or provide for many of the essential elements of general probate law, either directly or by reference, which—

"(i) is unfair to the owners of trust and restricted land (and heirs and devisees of owners); and

"(ii) makes probate planning more difficult;

"(4) a uniform Federal probate code would likely—

"(A) reduce the number of fractionated interests in trust or restricted land;

"(B) facilitate efforts to provide probate planning assistance and advice and create incentives for owners of trust and restricted land to engage in estate planning;

"(C) facilitate intertribal efforts to produce tribal probate codes in accordance with section 206 of the Indian Land Consolidation Act (25 U.S.C. 2205); and

"(D) provide essential elements of general probate law that are not applicable on the date of enactment of this Act [Oct. 27, 2004] to interests in trust or restricted land; and

"(5) the provisions of a uniform Federal probate code and other forth [sic] in this Act [see Short Title of 2004 Amendment note above] should operate to further the policy of the United States as stated in the Indian Land Consolidated Act Amendments of 2000, Public Law 106-462, [§]102, November 7, 2000, 114 Stat. 1992 [set out as a note below]."

Pub. L. 106-462, title I, §101, Nov. 7, 2000, 114 Stat. 1991, provided that: "Congress finds that—

"(1) in the 1800's and early 1900's, the United States sought to assimilate Indian people into the surrounding non-Indian culture by allotting tribal lands to individual members of Indian tribes;

"(2) as a result of the allotment Acts and related Federal policies, over 90,000,000 acres of land have passed from tribal ownership;

"(3) many trust allotments were taken out of trust status, often without their owner's consent;

"(4) without restrictions on alienation, allotment owners were subject to exploitation and their allotments were often sold or disposed of without any tangible or enduring benefit to their owners;

"(5) the trust periods for trust allotments have been extended indefinitely;

"(6) because of the inheritance provisions in the original treaties or allotment Acts, the ownership of many of the trust allotments that have remained in trust status has become fractionated into hundreds or thousands of undivided interests, many of which represent 2 percent or less of the total interests;

"(7) Congress has authorized the acquisition of lands in trust for individual Indians, and many of those lands have also become fractionated by subsequent inheritance;

"(8) the acquisitions referred to in paragraph (7) continue to be made;

"(9) the fractional interests described in this section often provide little or no return to the beneficial owners of those interests and the administrative costs borne by the United States for those interests are inordinately high;

“(10) in *Babbitt v. Youpee* (117 S.[.] Ct. 727 (1997)), the United States Supreme Court found the application of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) to the facts presented in that case to be unconstitutional, forcing the Department of the Interior to address the status of thousands of undivided interests in trust and restricted lands;

“(11)(A) on February 19, 1999, the Secretary of the Interior issued a Secretarial Order which officially reopened the probate of all estates where an interest in land was ordered to escheat to an Indian tribe pursuant to section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206); and

“(B) the Secretarial Order also directed appropriate officials of the Bureau of Indian Affairs to distribute such interests ‘to the rightful heirs and beneficiaries without regard to 25 U.S.C. 2206’;

“(12) in the absence of comprehensive remedial legislation, the number of the fractional interests will continue to grow exponentially;

“(13) the problem of the fractionation of Indian lands described in this section is the result of a policy of the Federal Government, cannot be solved by Indian tribes, and requires a solution under Federal law.[.]

“(14) any devise or inheritance of an interest in trust or restricted Indian lands is a matter of Federal law; and

“(15) consistent with the Federal policy of tribal self-determination, the Federal Government should encourage the recognized tribal government that exercises jurisdiction over a reservation to establish a tribal probate code for that reservation.”

#### DECLARATION OF POLICY

Pub. L. 106-462, title I, §102, Nov. 7, 2000, 114 Stat. 1992, provided that: “It is the policy of the United States—

“(1) to prevent the further fractionation of trust allotments made to Indians;

“(2) to consolidate fractional interests and ownership of those interests into usable parcels;

“(3) to consolidate fractional interests in a manner that enhances tribal sovereignty;

“(4) to promote tribal self-sufficiency and self-determination; and

“(5) to reverse the effects of the allotment policy on Indian tribes.”

#### AUTHORIZATION OF APPROPRIATIONS

Pub. L. 106-462, title I, §105, Nov. 7, 2000, 114 Stat. 2007, provided that: “There are authorized to be appropriated not to exceed \$8,000,000 for fiscal year 2001 and each subsequent fiscal year to carry out the provisions of this title [enacting sections 2205, 2206, and 2212 to 2219 of this title, amending this section and sections 348, 372, 373, 2204, 2207, and 5107 of this title, repealing sections 331 to 333, 2205, and 2206 of this title, and enacting provisions set out as notes under this section and section 2206 of this title] (and the amendments made by this title) that are not otherwise funded under the authority provided for in any other provision of Federal law.”

### § 2202. Other applicable provisions

The provisions of section 5108 of this title shall apply to all tribes notwithstanding the provisions of section 5125 of this title: *Provided*, That nothing in this section is intended to supersede any other provision of Federal law which authorizes, prohibits, or restricts the acquisition of land for Indians with respect to any specific tribe, reservation, or state(s).

(Pub. L. 97-459, title II, §203, Jan. 12, 1983, 96 Stat. 2517.)

### § 2203. Adoption of land consolidation plan with approval of Secretary

#### (a) Statement of purpose; sales or exchanges: terms and conditions

Notwithstanding any other provision of law, any tribe, acting through its governing body, is authorized, with the approval of the Secretary to adopt a land consolidation plan providing for the sale or exchange of any tribal lands or interest in lands for the purpose of eliminating undivided fractional interests in Indian trust or restricted lands or consolidating its tribal land-holdings: *Provided*, That—

(1) except as provided by subsection (c), the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 per centum of the fair market value as determined by the Secretary;

(2) if the tribal land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchanged;

(3) any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other land or interests in land;

(4) the Secretary shall maintain a separate trust account for each tribe selling or exchanging land pursuant to this section consisting of the proceeds of the land sales and exchanges and shall release such funds only for the purpose of buying lands under this section; and

(5) any tribe may retain the mineral rights to such sold or exchanged lands and the Secretary shall assist such tribe in determining the value of such mineral rights and shall take such value into consideration in determining the fair market value of such lands.

#### (b) Conveyancing requirement; specific findings for nonexecution

The Secretary must execute such instrument of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to an approved tribal land consolidation plan unless he makes a specific finding that such sale or exchange is not in the best interest of the tribe or is not in compliance with the tribal land consolidation plan.

#### (c) Below market value conveyance of Cherokee Nation of Oklahoma homesites

The Secretary may execute instruments of conveyance for less than fair market value to effectuate the transfer of lands used as homesites held, on December 17, 1991, by the United States in trust for the Cherokee Nation of Oklahoma. Only the lands used as homesites, and described in the land consolidation plan of the Cherokee Nation of Oklahoma approved by the Secretary on February 6, 1987, shall be subject to this subsection.

(Pub. L. 97-459, title II, §204, Jan. 12, 1983, 96 Stat. 2517; Pub. L. 98-608, §1(1), Oct. 30, 1984, 98 Stat. 3171; Pub. L. 102-238, §3, Dec. 17, 1991, 105 Stat. 1908.)