

Secretary of the Interior shall have full power and authority to consent to or approve of the alienation of such allotments, in whole or in part, in his discretion, by deed, will, lease, or any other form of conveyance, and such consent or approval by the Secretary of the Interior on and after September 21, 1922, had in all such cases shall have the same force and legal effect as though the consent or approval of the President had previously been obtained: *Provided, however,* That the approval by the Secretary of the Interior of wills by Indian allottees or their heirs involving lands held under such patents shall not operate to remove the restrictions against alienation unless such order of approval by said Secretary shall specifically so direct.

(Sept. 21, 1922, ch. 367, §6, 42 Stat. 995.)

**§ 393. Leases of restricted allotments**

The restricted allotment of any Indian may be leased for farming and grazing purposes by the allottee or his heirs, subject only to the approval of the superintendent or other officer in charge of the reservation where the land is located, under such rules and regulations as the Secretary of the Interior may prescribe: *Provided,* That this provision shall not apply to the Five Civilized Tribes.

(Mar. 3, 1921, ch. 119, 41 Stat. 1232.)

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, §§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.

**§ 393a. Lands of Five Civilized Tribes**

From and after thirty days from February 11, 1936 the restricted lands belonging to Indians of the Five Civilized Tribes in Oklahoma of one-half or more Indian blood, enrolled or unenrolled, may be leased for periods of not to exceed five years for farming and grazing purposes, under such rules and regulations as the Secretary of the Interior may prescribe and not otherwise. Such leases shall be made by the owner or owners of such lands, if adults, subject to approval by the superintendent or other official in charge of the Five Civilized Tribes Agency, and by such superintendent or other official in charge of said agency in cases of minors and of Indians who are non compos mentis.

(Feb. 11, 1936, ch. 50, 49 Stat. 1135.)

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, §§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.

**§ 394. Leases of arid allotted lands**

Whenever it shall appear to the satisfaction of the Secretary of the Interior that the allotted lands of any Indian are arid but susceptible of

irrigation and that the allottee, by reason of old age or other disability, cannot personally occupy or improve his allotment or any portion thereof, such lands, or such portion thereof, may be leased for a period not exceeding ten years, under such terms, rules, and regulations as may be prescribed by the Secretary of the Interior.

(May 18, 1916, ch. 125, §1, 39 Stat. 128.)

**§ 395. Leases of allotted lands where allottee is incapacitated**

Whenever it shall be made to appear to the Secretary of the Interior that, by reason of age, disability, or inability, any allottee of Indian lands cannot personally, and with benefit to himself, occupy or improve his allotment or any part thereof, the same may be leased upon such terms, regulations, and conditions as shall be prescribed by the Secretary for a term not exceeding five years, for farming purposes only.

(May 31, 1900, ch. 598, 31 Stat. 229.)

CODIFICATION

Act May 31, 1900, is applicable to "any allottee of Indian lands" and authorizes leases "for a term not exceeding five years, for farming purposes only" and supersedes the following prior provisions:

- Act June 7, 1897, ch. 3, 30 Stat. 85.
- Act June 10, 1896, ch. 398, 29 Stat. 340.
- Act Mar. 2, 1895, ch. 188, 28 Stat. 900.
- Act Aug. 15, 1894, ch. 290, 28 Stat. 305.

OTHER LEASING PROVISIONS

Special provisions for leasing allotted lands on certain reservations named in Utah and in Wyoming, for cultivation under irrigation, were made by act Apr. 30, 1908, ch. 153, 35 Stat. 95, 97.

Special provisions permitting Indians to whom lands have been allotted on the Yakima Indian reservation in the State of Washington, to lease such lands for agricultural purposes for a term not exceeding 5 years, or unimproved lands for a term not exceeding 10 years were made by acts May 31, 1900, ch. 598, 31 Stat. 246; Mar. 1, 1899, ch. 324, 30 Stat. 941.

**§ 396. Leases of allotted lands for mining purposes**

All lands allotted to Indians in severalty, except allotments made to members of the Five Civilized Tribes and Osage Indians in Oklahoma, may by said allottee be leased for mining purposes for any term of years as may be deemed advisable by the Secretary of the Interior; and the Secretary of the Interior is authorized to perform any and all acts and make such rules and regulations as may be necessary for the purpose of carrying the provisions of this section into full force and effect: *Provided,* That if the said allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, or, if determined, some or all of them cannot be located, the Secretary of the Interior may offer for sale leases for mining purposes to the highest responsible qualified bidder, at public auction, or on sealed bids, after notice and advertisement, upon such terms and conditions as the Secretary of the Interior may prescribe. The Secretary of the Interior shall have the right to reject all bids whenever in his judgment the interests of the Indians will be served by so doing, and to readvertise such lease for sale.

(Mar. 3, 1909, ch. 263, 35 Stat. 783; Aug. 9, 1955, ch. 615, § 3, 69 Stat. 540.)

#### AMENDMENTS

1955—Act Aug. 9, 1955, authorized Secretary of the Interior to lease allotted lands for mining purposes where the allottee is deceased and the heirs to or devisees of any interest in the allotment either have not been determined or cannot be located.

#### LEASES OF CERTAIN ALLOTTED LANDS

Pub. L. 106-462, title II, §201, Nov. 7, 2000, 114 Stat. 2007, authorized the Secretary of the Interior to approve oil or gas leases affecting individually owned Navajo Indian allotted lands in certain circumstances and defined pertinent terms with respect to such leases.

Pub. L. 105-188, §1, July 7, 1998, 112 Stat. 620, as amended by Pub. L. 106-67, §1(2), Oct. 6, 1999, 113 Stat. 979, authorized Secretary of the Interior to approve any mineral lease or agreement that affects individually owned land located within Fort Berthold Indian Reservation in North Dakota or certain former Indian reservations located in Oklahoma upon consent of majority interest and best interest determination.

#### § 396a. Leases of unallotted lands for mining purposes; duration of leases

On and after May 11, 1938, unallotted lands within any Indian reservation or lands owned by any tribe, group, or band of Indians under Federal jurisdiction, except those specifically excepted from the provisions of sections 396a to 396g of this title, may, with the approval of the Secretary of the Interior, be leased for mining purposes, by authority of the tribal council or other authorized spokesmen for such Indians, for terms not to exceed ten years and as long thereafter as minerals are produced in paying quantities.

(May 11, 1938, ch. 198, §1, 52 Stat. 347.)

#### REPEAL OF INCONSISTENT ACTS

Act May 11, 1938, ch. 198, §7, 52 Stat. 348, provided that: "All Act [Acts] or parts of Acts inconsistent herewith are hereby repealed."

#### § 396b. Public auction of oil and gas leases; requirements

Leases for oil- and/or gas-mining purposes covering such unallotted lands shall be offered for sale to the highest responsible qualified bidder, at public auction or on sealed bids, after notice and advertisement, upon such terms and subject to such conditions as the Secretary of the Interior may prescribe. Such advertisement shall reserve to the Secretary of the Interior the right to reject all bids whenever in his judgment the interest of the Indians will be served by so doing, and if no satisfactory bid is received, or the accepted bidder fails to complete the lease, or the Secretary of the Interior shall determine that it is unwise in the interest of the Indians to accept the highest bid, said Secretary may re-advertise such lease for sale, or with the consent of the tribal council or other governing tribal authorities, a lease may be made by private negotiations: *Provided*, That the foregoing provisions shall in no manner restrict the right of tribes organized and incorporated under sections 16 and 17 of the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. 5123, 5124], to lease lands for mining purposes as therein provided and in accordance

with the provisions of any constitution and charter adopted by any Indian tribe pursuant to the Act of June 18, 1934 [25 U.S.C. 5101 et seq.].

(May 11, 1938, ch. 198, §2, 52 Stat. 347.)

#### REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, is act June 18, 1934, ch. 576, 48 Stat. 984, popularly known as the Indian Reorganization Act, which 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.

#### REPEAL OF INCONSISTENT ACTS

For repeal of inconsistent acts, see section 7 of act May 11, 1938, set out as a note under section 396a of this title.

#### § 396c. Lessees of restricted lands to furnish bonds for performance

On and after May 11, 1938, lessees of restricted Indian lands, tribal or allotted, for mining purposes, including oil and gas, shall furnish corporate surety bonds, in amounts satisfactory to the Secretary of the Interior, guaranteeing compliance with the terms of their leases: *Provided*, That personal surety bonds may be accepted where the sureties deposit as collateral with the said Secretary of the Interior any public-debt obligations of the United States guaranteed as to principal and interest by the United States equal to the full amount of such bonds, or other collateral satisfactory to the Secretary of the Interior, or show ownership to unencumbered real estate of a value equal to twice the amount of the bonds.

(May 11, 1938, ch. 198, §3, 52 Stat. 348.)

#### REPEAL OF INCONSISTENT ACTS

For repeal of inconsistent acts, see section 7 of act May 11, 1938, set out as a note under section 396a of this title.

#### § 396d. Rules and regulations governing operations; limitations on oil or gas leases

All operations under any oil, gas, or other mineral lease issued pursuant to the terms of sections 396a to 396g of this title or any other Act affecting restricted Indian lands shall be subject to the rules and regulations promulgated by the Secretary of the Interior. In the discretion of the said Secretary, any lease for oil or gas issued under the provisions of sections 396a to 396g of this title shall be made subject to the terms of any reasonable cooperative unit or other plan approved or prescribed by said Secretary prior or subsequent to the issuance of any such lease which involves the development or production of oil or gas from land covered by such lease.

(May 11, 1938, ch. 198, §4, 52 Stat. 348.)

#### REPEAL OF INCONSISTENT ACTS

For repeal of inconsistent acts, see section 7 of act May 11, 1938, set out as a note under section 396a of this title.

#### § 396e. Officials authorized to approve leases

The Secretary of the Interior may, in his discretion, authorize superintendents or other offi-