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TITLE 22—FOREIGN RELATIONS
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Subchapter Q—Leases and Permits on Restricted Indian Lands

PART 171—LEASING OF INDIAN ALLOTTED AND TRIBAL LANDS FOR FARMING, GRAZING, AND BUSINESS

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Section 171.1 Form and term of lease. Except as otherwise indicated in this part, the following table shows the periods for which Indian land may be leased for farming, grazing, and business purposes, the form ⁵ to be used in each case, and the number of copies to be made. The periods have been fixed by law and must not be exceeded in any case. They represent the maximum, and leases should be made for the shortest term for which advantageous contracts can be secured with responsible parties:

Kind	Farming						Grazing			Business		
	Dry			Irrigable			Years	Form	Copies	Years	Form	Copies
	Years	Form	Copies	Years	Form	Copies						
Allotted-----	5	5-180	5	10	5-180	5	5	5-180	5	5	---	5
Tribal-----	5	5-371A	4	10	5-371A	4	5	5-175A	4	---	---	4

*[Sec. 1, Regs., May 9, 1929, as amended Feb. 24, 1931]

*§§ 171.1 to 171.36, inclusive, (with the exceptions noted in the text,) issued under the authority contained in 26 Stat. 795, sec. 1, 28 Stat. 305, sec. 1, 31 Stat. 229, sec. 4, 36 Stat. 856, sec. 1, 39 Stat. 128, sec. 1, 41 Stat. 1232; 25 U.S.C. 397, 402, 395, 403, 394, 393.

⁵ See footnote on page 27.

†The source of §§ 171.1 to 171.36, inclusive, (except for amendments noted in the text,) is Regulations governing the granting of leases and permits on allotted and tribal lands (except those of the Osage and Five Civilized Tribes Reservations,) for agricultural, grazing, and business purposes, Secretary of the Interior, May 9, 1929.

171.2 Leasing of land by allottees. Restricted Indian land may be leased for farming and grazing purposes by the allottee or his heirs, subject only to the approval of the local Superintendent. It is therefore not necessary that such leases be transmitted to this Office. Leases of incompetent adults and of minors (except as provided in § 171.4) should be negotiated by the Superintendent and the rental paid to him for deposit to the allottee's credit as individual Indian moneys.*† [Sec. 2]

171.3 Leases; incompetent allottees. Leases on the lands of adults should be made only with the consent of the allottee, who should sign the contract as lessor except as to Indians who are mentally incompetent or clearly incapable of acting for their best interests and who without good cause refuse either to use the land themselves or lease it. In such cases the Superintendent should obtain the allottee's reasons, in writing if possible, and report all the facts to the Commissioner of Indian Affairs with the recommendation that he be authorized to sign for the allottees.*† [Sec. 3]

171.4 Leasing privilege. Any adult allottees deemed by the Superintendent to have the requisite knowledge, experience, and business capacity may be permitted to negotiate their own leases and collect the rentals therefor. All such leases, however, must be approved by the Superintendent. This privilege should be granted in writing, and with some liberality, and be subject to revocation at any time the allottee proves himself unworthy of it by wasteful expenditure of the money. Indians of this class may also be permitted to negotiate leases on the land of their minor children, but not to collect the rentals, which shall be paid to the Superintendent for deposit to the minors' credit as individual Indian money. Such leases must be approved by the Superintendent.*† [Sec. 4]

171.5 Reserve from leasing. Allotted Indian lands should be leased only to the manifest advantage of the owners, and every able-bodied restricted Indian should be required to withhold from lease a sufficient acreage to serve as a "homeplace" and farm unless the allottee resides elsewhere and is otherwise gainfully employed.*† [Sec. 5]

171.6 Nonresidents; minors; non compos mentis. Leases upon the land of Indians non compos mentis, nonresident allottees whose whereabouts are unknown to the Superintendent and who therefore can not be reached, and all minors shall be made by the Superintendent as ex-officio guardian. Superintendents shall not make leases for competent nonresident allottees whose whereabouts are known without their written authority. Leases on the land of minors should not, except for special reasons beneficial to the minors' interests, extend beyond the age of majority under the State laws. Any Indian who supports his dependent minor children and desires to use their land for farming or grazing purposes may do so without charge and use

*†For statutory and source citations, see note to § 171.1.

or dispose of the resultant crops and livestock without accounting therefor.* [Sec. 6, Regs., as amended Dec. 18, 1936]

171.7 Leases for undetermined heirs. Leases of inherited lands where the heirs have not been officially determined may be made by the Superintendent and should be limited, except in unusual cases, to the period of 1 year. Rentals shall be deposited to the credit of the estate pending the formal determination of the heirs. After the heirs of an estate have been determined leases on the land should be made by the heirs.* [Sec. 7, Regs., as amended Dec. 18, 1936]

171.8 Leases; approval over objection of minority interests. When the heirs owning a substantial majority in interest are desirous of leasing their inherited trust or restricted lands, the Superintendent is authorized to approve such a lease provided the heirs holding a minority interest in the estate have been notified of the proposed lease and have not objected to such a lease. In case the heirs holding such minority interest have objected to the approval of a lease on such inherited lands, the Superintendent, if in his judgment owners of the majority interest are best served, may approve the lease, and in such case, the share of the rentals that would accrue thereunder to the owners of the minority interest shall be held in escrow by the Superintendent to be paid to such heirs upon their request or when and if they sign the lease. Such minority owners may, however, be permitted through partition or other arrangement with their co-heirs to make use of such part of the land as may be equivalent to their undivided interests in the whole, in which event the rentals otherwise due them and held in escrow shall be refunded to the lessee. Approved leases executed by the heirs holding a majority interest shall be regarded as covering the entire acreage included in the lease and no refund of any portion of the rentals paid thereunder shall be made to the lessee save when by partition or other arrangement, heirs not parties to the lease have been permitted to use a portion of the land included in the lease. In all cases in which the heirs holding a minority interest in the inherited lands do not agree to the leasing of such lands the following covenant shall be included in the lease before execution thereof by the parties:

The following heir(s) to the land covered by this lease; namely, ----- who hold a minority interest therein, having refused to agree with the heirs holding a majority interest therein to lease the land, it is understood and agreed by the parties to this lease that if during the existence of the lease the said named heirs holding a minority interest shall desire to use and do actually use an area equal to their share of the undivided interest in the leased premises, or do have partitioned to them their proper share of the leased land, thus preventing the lessee from using the entire area covered by the lease, proper credit shall be given to the lessee and at the expiration of the lease the proper share of the lease rental held in escrow by the superintendent for the dissenting heirs to the lease shall be paid to the lessee. It is further agreed that at any time during the life of the lease the holders of the minority interest shall be permitted to sign the lease.

*[Sec. 7, Regs., as amended Dec. 18, 1936]

171.9 Appraisalment; advertising; letting; preference right. The State laws should be followed in making, holding, or transferring leases of restricted Indian land. The rental value of land to be leased through the agency should be carefully appraised by a com-

petent employee versed in land values and every effort made to obtain the highest possible rental therefor (not less than the appraisal) by so advertising as to obtain the most competition possible. Offers may be made either by sealed bids or at public auction, as conditions render advisable, and the method adopted should be stated in the advertisement. The lease shall be awarded to the highest satisfactory bidder, except that, other things being equal, in the case of sealed bids, if the old lessee has been a satisfactory tenant and submits other than the high bid, he may be given an opportunity to meet it when so specified in the advertisement. When a tract not already under lease is advertised therefor and the occupant of contiguous land submits other than the high bid, he may likewise be given the privilege of meeting it if so provided in the advertisement. The preferences herein accorded for meeting the high bid shall not maintain if an Indian has submitted a bid other than the high bid when he shall be given the first right to meet the high bid in order that Indian land may be used by Indians wherever practicable. In case several adjacent occupants submit bids on the same tract, if the matter cannot be settled locally, report all facts to the Commissioner of Indian Affairs, with recommendation as to which one should be given the option. If it is deemed impracticable to advertise in any case, the facts should be reported to the Commissioner of Indian Affairs, who, if he thinks the circumstances justify, may waive this procedure.* [Sec. 8, Regs., May 9, 1929, as amended May 20, 1935]

171.10 Business leases. Whenever it is deemed advisable to lease allotted Indian land for business purposes, the Superintendent should report the facts, object, terms, and conditions of the proposed lease to the Commissioner of Indian Affairs, who, if he deems it proper, may grant authority therefor, and no lease of this nature should be made without such prior approval.*† [Sec. 9]

171.11 Leases; tribal lands. Tribal lands of any Indian tribe may be leased for agricultural purposes with the consent of the council. This includes both treaty and Executive order reservation. The term "tribal council" is interpreted to mean the council, business committee, or other body authorized to represent the tribe in such matters, and the approval should be given in writing. Comply with § 171.9 as to advertising.*† [Sec. 10]

171.12 Tribal lands; approval of permit or lease. The letting of tribal lands for farming, grazing, or business purposes shall be accomplished through leases for stated periods, or through permits revocable in the discretion of the Commissioner of Indian Affairs, after advertising as provided for in § 171.9. Any permit covering the use of tribal lands for farming, grazing, or business purposes where the annual rental does not exceed \$1,000 should be approved by the Superintendent and need not be submitted to the Washington Office, except where the leasing laws expressly provide for approval by the Secretary. Permits calling for an annual rental in excess of \$1,000, and all leases, regardless of the amount of rental involved, should be submitted to the Washington Office for consideration.* [Sec. 11, Regs., as amended Nov. 6, 1930]

*†For statutory and source citations, see note to § 171.1.

171.13 Organized tribes. The regulations in this part shall apply to tribes organized pursuant to the Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), as amended June 15, 1935 (49 Stat. 378) and May 1, 1936 (49 Stat. 1250), and the Oklahoma Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., Sup., 501-509), except where inconsistent with the provisions of the constitution, bylaws, or charter granted to such tribes pursuant thereto, or any ordinance or resolution adopted by such tribes pursuant to the authority of such constitution, bylaws and charter. The provisions of the constitution, bylaws, charter and ordinances and resolutions, adopted by such tribes pursuant thereto, dealing with leases and permits of tribal lands shall govern where they conflict with the provisions of the regulations in this part.* (Secs. 16, 17, 48 Stat. 987, 988, sec. 9, 49 Stat. 1968; 25 U.S.C. 476, 477, 25 U.S.C., Sup., 509) [Sec. 12, Regs., May 9, 1929, as added May 18, 1938]

171.14 Limit on execution prior to effective date. No lease or permit shall be negotiated more than 7 months prior to the date it is to become effective.*† [Sec. 13]

171.15 Acreage limit. As a rule, no person, firm, or corporation shall be permitted to lease more than 640 acres of land under irrigation. There shall be no limit on the amount of land which may be leased by any person, firm or corporation for grazing purposes. The maximum limit specified for agricultural and irrigated land hereunder may be waived by the Commissioner of Indian Affairs when local conditions and the best interests of the Indians appear to justify such action.* [Sec. 13, Regs., May 9, 1929, as amended Nov. 6, 1930]

171.16 Payment of rentals. Leases and permits must provide that the rentals shall be paid annually or semiannually in advance and be supported by an adequate bond, with at least two individual sureties or a private corporate surety company, in an amount not less than the entire sum of the rental, unless it is paid in advance for the full term.*† [Sec. 14]

171.17 Assignments; subleases; transfers. No leases shall be assigned, sublet, or transferred without the written consent of all parties thereto, including the sureties, and the approval of the Superintendent or other officer who finally approved the original lease.*† [Sec. 15]

171.18 Violation of lease contract. The Superintendent should make every effort to see that lessees and permittees comply with the regulations and the terms of their contracts. Should violations thereof occur, the Superintendent should serve written notice on the lessee to show cause why the lease should not be canceled. Upon receipt of the answer it should be transmitted to the Commissioner of Indian Affairs with a full report of the facts and the Superintendent's recommendations.*† [Sec. 16]

171.19 Rentals; extensions. Where good reasons justify additional time for the payment of rentals, the Superintendent may grant extensions of time for payments of not to exceed 6 months on all leases or permits originally approved by him provided that he

secure the consent of all persons interested, including the sureties, and that the usual rate of interest is charged.* [Sec. 17, Regs., May 9, 1929, as amended Nov. 6, 1930]

171.20 Requests for court action. Requests for court action on leases to collect delinquent rentals, damages, etc., shall be made by the Superintendent directly to the United States attorney, accompanied by a copy of the lease. If thereafter, and prior to the actual filing of the case in court, the rental is paid, the United States attorney should be promptly advised. When a compromise is offered after suit has been filed, whether before or after judgment, the Superintendent should submit the matter to the United States attorney. If the amount due is \$500 or less and the United States attorney approves the superintendent may accept the compromise. However, if it is over \$500 the United States attorney will submit all the facts, with the Superintendent's recommendation, to the Attorney General who, in turn, will present the case to this Department. All compromise offers must be exclusive of costs.* [Sec. 18, Regs., as amended Dec. 30, 1930]

171.21 Lien clause. All farming, all grazing, and all farming and grazing leases shall contain a lien clause upon all crops, implements, livestock, or other property of the lessee on the premises as security for the payment of the rental and the performance of the contract. A copy of each lease should be promptly filed in the office of the proper county official, the fee therefor to be paid by the lessee. In States where the courts do not recognize a crop lien given before the seed is planted, all leases which require the Superintendent's approval must contain a provision substantially as follows:

The lessee further agrees that each year, as soon as the crops have been planted, or on demand thereafter, he will execute and deliver to the superintendent his promissory note in the sum of _____ for the annual rental herein stipulated, secured by a chattel mortgage on said crops; that each such chattel mortgage shall be a prior lien on the crops; that he will not otherwise assign, convey, encumber, mortgage, or pledge the crops before compliance with this provision; that if he shall fail or refuse to execute and deliver said notes and mortgages as agreed, or shall, prior thereto, assign, convey, encumber, mortgage, or pledge the crops, then, and in that event, this contract shall forthwith terminate, and the superintendent, may at his option, on 3 days' notice, declare this lease forfeited and dispossess the lessee of the premises.

The description of the land, the kind of crops, and the acreage involved must be recited in the mortgage. If, in any case, it becomes necessary to seize the mortgaged property, after doing so the superintendent should report the facts to the Commissioner of Indian Affairs for instructions as to the procedure. The mortgage should be promptly recorded in the office of the proper official at the expense of the lessee.*† [Sec. 19]

171.22 Liquor and morality clause. All leases and permits shall contain liquor and morality provisions substantially as follows:

The lessee or permittee agrees that he will not use or permit the use of any part of the premises for the sale, gift, storage, or drinking of intoxicants; and that he will not allow gambling, immorality, or any illegal practices whatever in or upon said premises. Violation of this clause will be deemed sufficient ground for cancellation of the lease or permit.

*† [Sec. 20]

*†For statutory and source citations, see note to § 171.1.

171.23 Fees. Where Indian land is rented (either by formal lease or revocable permit), sublet, or assigned for farming, grazing, or business purposes, fees shall be charged the lessee, permittee, sublessee, or assignee as follows:

Total rental:	Fee
\$100.00-----	\$1. 00
\$101.00-\$250.00 -----	2. 50
\$251.00-----	5. 00

In crop-share leases the fee may be computed either on the basis of the cash rental the acreage would bring or the estimated average value of the crops. Where, under the terms of the lease, the tenant is to pay the taxes, the amount thereof should be included in the total rental in computing the fee. In transfers of leases the fee should be based on the total rental due from the date of the approval of the transaction.† (Sec. 1, 41 Stat. 415, 47 Stat. 1417; 25 U.S.C. 413) [Sec. 21]

171.24 Improvements. One of the main objects in making leases should be to provide the land with such permanent improvements as will best fit it for the eventual use and occupancy of the allottee as a home, such, for example, as buildings, fences, wells, fruit trees, alfalfa, proper rotation of crops, conservation of soil fertility, prevention of erosion, etc., unless the land is already provided therewith. Each lease should therefore provide for such of the specific improvements mentioned or others as will accomplish the desired result, for the repair and upkeep thereof at the expense of the tenant, and that the structures, etc., shall remain on the land and become the property of the allottee. If the lessee is to erect additional improvements which he wishes to retain, the contract should include a specific provision to this effect, giving the tenant the right to remove them upon expiration of the lease. Leases for allottees who cannot personally utilize the land, such as those mentally or physically incapacitated, shall provide for such improvements as will maintain or enhance the rental and market value of the land.*† [Sec. 22]

171.25 Execution of bond. When a married man is surety on a bond in States which require that the wife sign with him in order to bind their community property, both husband and wife should sign the bond.*† [Sec. 23]

171.26 Leases; irrigable lands. In all cases where a lease is made on irrigable Indian trust patent lands with the approval of the Superintendent, the Superintendent must, in giving his approval, notify the Indian that all operation and maintenance irrigation charges must be paid out of the lease rentals, and provide in the lease that the first payment of rental, the amount of which shall be at least equal to the total irrigation charges for the calendar year involved, shall be paid to the lessor through the Superintendent, to be paid, in the amount representing the annual operation and maintenance charges, by the Superintendent to the irrigation project disbursing agent on behalf of said Indian for the benefit of his land. Irrigation water for the second or any succeeding year during the life of the lease will not be delivered to the lessee until rental for the preceding year has been duly paid or satisfactorily adjusted, and such adjust-

*†For statutory and source citations, see note to § 171.1.

ment made of record in the form of a proper modification of the lease duly executed by all parties concerned and at least enough of the rental for the current year has been paid to cover the operation and maintenance charges for that year.* [Sec. 24, Regs., as amended Feb. 24, 1934]

CROSS REFERENCES: For operation and maintenance charges, see Part 130. For further regulations governing liens in leases of irrigable lands, see Part. 151.

171.27 Sale of land before expiration of lease. If allotted Indian land is sold during the term of the lease, the purchaser takes it subject thereto unless there is a specific provision to the contrary in the lease. Ordinarily, of course, it is inadvisable to insert such a provision, as it makes the tenure of the lessee uncertain and is likely to discourage leasing; however, this matter will be left to the discretion of the Superintendents, who may in proper cases, and if agreeable to all parties, insert a clause in the lease to the effect that it will terminate on the sale of the land. When, as will generally be the case, the lease is not to terminate, the sale will be effective as of the date of approval by the Secretary of the Interior, and rentals accruing thereafter should be paid to the purchaser.*† [Sec. 25]

CROSS REFERENCE: For regulations pertaining to liens and water charges in connection with the sale of irrigable lands, see Parts 151, 154 and § 241.23.

171.28 Crow Reservation. The Act of May 26, 1926 (44 Stat. 658) limits the term of allotted leases on the Crow Reservation to 5 years. This applies to irrigable as well as to nonirrigable land. The Act also provides that competent Crow allottees may lease their own allotments and those of their minor children for farming and grazing purposes and collect the rentals therefor. While not specifically stated, this is construed to mean that such leases can be made without the Superintendent's approval. Under the Act of March 3, 1927 (44 Stat. 1365), a new lease or renewal can not be made of land already under lease on the Crow Reservation more than 18 months prior to the expiration of farming leases and 1 year in the case of grazing leases. This applies to independent leases made by competent Crow allottees as well as to those of incompetents executed through the agency with the Superintendent's approval.† (44 Stat. 658, 1365) [Sec. 26]

171.29 Fort Belknap Reservation. The Act of March 1, 1907 (34 Stat. 1034), authorizes the leasing of allotted and tribal land on the Fort Belknap Reservation, not to exceed a total of 20,000 acres, for not over 10 years, for sugar beets and other crops in rotation.† (34 Stat. 1034) [Sec. 27]

171.30 Wind River Reservation. The Act of April 30, 1908 (35 Stat. 97), permits leases to be made of allotted and tribal land on the Wind River Reservation susceptible of irrigation for not to exceed 20 years under such regulations as the Secretary of the Interior may prescribe.† (35 Stat. 97) [Sec. 29]

171.31 Uintah and Ouray Reservation. The Act of April 30, 1908 (35 Stat. 95), permits leases to be made of allotted land on the Uintah and Ouray Reservation susceptible of irrigation for not to

*†For statutory and source citations, see note to § 171.1.

exceed 10 years under such regulations as the Secretary of the Interior may prescribe.† (35 Stat. 95) [Sec. 30]

171.32 Yakima Reservation. The Act of May 31, 1900 (31 Stat. 246), authorizes allottees on the Yakima Reservation to lease their unimproved lands for farming purposes for not to exceed 10 years under such regulations as the Secretary of the Interior may prescribe.† (Sec. 2, 31 Stat. 246) [Sec. 31]

171.33 Extent of regulations. Where applicable, and not inconsistent with the above-mentioned special laws, the regulations prescribed in this part shall govern leases thereunder.*† [Sec. 32]

171.34 Five Civilized Tribes and Osage Reservations. The regulations prescribed in this part will not apply to the Five Civilized Tribes or the Osage Reservation.† (Secs. 7, 12, 34 Stat. 545, 49 Stat. 1135; 25 U.S.C., Sup., 393a) [Sec. 34]

CROSS REFERENCES: For regulations applying to Five Civilized Tribes, see Part 174. For regulations applying to Osage Reservation, see Part 177.

171.35 Distribution of copies. All copies of leases and permits must be completely executed. The original should be given a contract serial number and sent immediately to the General Accounting Office, reference thereto being made in each account where rental thereunder is taken up. All such leases and permits and modifications, assignments and subleases require the approval of the Superintendent unless otherwise provided by the regulations in this part and copies of all such instruments must be kept on file at the agency. One copy should be given to the lessor and one to the lessee. The agency copy of leases, permits, modifications, assignments and subleases may be used for public purposes at the agency office, but such records shall be at all times within the control of the agency office. Nothing herein contained, however, shall be construed as restricting lessees, sublessees, and assignees from filing or recording their instruments at their own expense on the county records, if they so desire; or if the exigencies of a particular case require it, the Superintendent may call upon the lessee to so file or record a copy of the lease. (R.S. 3743, as amended; 41 U.S.C. 20) [Sec. 35, Regs., May 9, 1929, as amended Nov. 10, 1936]

171.36 Revocation of former regulations. All prior regulations relative to farming, grazing and business leases of allotted and tribal Indian land are hereby revoked, except as otherwise provided in this part.*† [Sec. 36]

PART 174—LEASING OF RESTRICTED LANDS OF FIVE CIVILIZED TRIBES FOR AGRICULTURE AND GRAZING

Sec.		Sec.	
174.1	Conditions.	174.7	Use of minor's land by parent or guardian.
174.2	Form of contract.	174.8	Appraisement and advertisement.
174.3	Fees.	174.9	Advance execution of leases.
174.4	Execution of leases.	174.10	Bond; rent, how paid; recording.
174.5	Execution and approval of leases by Superintendent.		
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