

PART 224—TRIBAL ENERGY RESOURCE AGREEMENTS UNDER THE INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF DETERMINATION ACT

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AUTHORITY: 25 U.S.C. 2 and 9; 25 U.S.C. 3501-3504; Pub. L. 109-58

SOURCE: 73 FR 12821, Mar. 10, 2008, unless otherwise noted.

Subpart A—General Provisions

§224.10 What is the purpose of this part?

This part:

- (a) Establishes procedures by which a tribeTribe, at its discretion, may enter into and manage leases, business agreements, and rights-of-way for purposes of energy resource development on tribal land; and
- (b) Describes the process for obtaining, implementing, and enforcing a tribal energy resource agreement (TERA) that will allow a tribeTribe to enter into individual leases, business agreements, and rights-of-way without obtaining Secretarial approval.

§224.20 How will the Secretary interpret and implement this part and the Act?

- (a) The Secretary will interpret and implement this part and the Indian Tribal Energy Development and Self-Determination Act (the Act) in accordance with the self-determination and energy development provisions and policies in the Act.
- (b) The Secretary will liberally construe this part and the Act for the benefit of tribesTribes to implement the Federal policy of self-determination. The Secretary will construe any ambiguities in this part or the Act in favor of the tribeTribe to implement a TERA as authorized by this part and the Act.

§224.30 What definitions apply to this part?

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Act means the Indian Tribal Energy Development and Self-Determination Act of 2005, as promulgated in Title V of the Energy Policy Act of 2005, Public Law 109-58, 25 U.S.C. 3501-3504, and as amended by the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017, Public Law 115-325.

Application means the application submitted for a TERA under subpart B.

Business agreement means:

- (1) Any permit, contract, joint venture, option, or other agreement that furthers any activity related to locating, producing, transporting, or marketing energy resources on tribal land;
- (2) Any amendment, supplement, or other modification to such an agreement; or
- (3) Any other business agreement entered into or subject to administration under a TERA.

Days mean calendar days in computing any period prescribed or allowed by the Act and this part:

- (1) Do not include the day of the event from which the period begins to run;
- (2) Include the last day of the period, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Federal holiday; and
- (3) When the period prescribed or allowed is less than 11 days, exclude intermediate Saturdays, Sundays, and Federal holidays from the computation.

Decision Deadline means the 120-day period within which the ~~Director~~Secretary will make a decision about a petition submitted by an interested party under subpart E. The ~~Director~~Secretary may extend this period for up to 120 days.

Department means the Department of the Interior.

Designated Tribal Official means the official designated in a ~~tribe's~~Tribe's pre-application consultation request, application, or agreement to assist in scheduling consultations or to receive communications from the Secretary ~~or the Director~~ to the ~~tribe~~Tribe regarding the status of a TERA or activities under a TERA.

Director means the Director of the Office of Indian Energy and Economic Development or the Secretary's designee, authorized to act on behalf of the Secretary.

Energy Resources means both renewable and nonrenewable energy sources, including, but not limited to, natural gas, oil, uranium, coal, nuclear, wind, solar, geothermal, biomass, and hydrologic resources.

Imminent jeopardy to a physical trust asset means an immediate threat of devaluation, degradation, damage, or loss of a physical trust asset, as determined by the Secretary, caused by the noncompliance of a ~~tribe~~Tribe or third party with a TERA or applicable Federal laws.

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Interested party means a person or entity who has filed a petition with the Secretary under subpart E seeking review of a ~~tribe's~~Tribe's compliance with a TERA and who meets the criteria in §224.101.

Lease means a written agreement, or modification of a written agreement, between a ~~tribe~~Tribe and a tenant or lessee, whereby the tenant or lessee is granted a right to possession of tribal land or energy mineral resources for purposes of energy resource development.

Petitioner means a person or entity who has filed a petition under subpart E with a ~~tribe~~Tribe or the Secretary seeking review of a ~~tribe's~~Tribe's compliance under a TERA. A petitioner is not considered to be an interested party unless the petitioner meets the criteria in §224.101.

Physical trust asset means a physical asset held in trust by the United States for a ~~tribe~~Tribe or individual Indian or by a ~~tribe~~Tribe or individual Indian subject to a restriction against alienation under the laws of the United States. "Physical trust asset" does not include:

(1) Any improvements (for example, wells or structures) to the assets held in trust or restricted status; or

(2) Monetary assets.

Public means one or more natural or legal persons, and their associations, organizations, or groups; or Federal, State, tribal and local government agencies; or private industry and their associations, organizations, or groups.

Qualified Tribe means a Tribe with Tribal land that has—

(1) For a period of not less than 3 consecutive years ending on the date on which the Tribe submits the application, carried out a contract or compact relating to the management of tribal land or natural resources under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.) without material audit exception (or without any material audit exceptions that were not corrected within the 3-year period); or

(2) Substantial experience in the administration, review, or evaluation of energy resource leases or agreements or has otherwise substantially participated in the administration, management, or development of energy resources located on the tribal land of the Indian Tribe.

Right-of-way means an easement, right, or other authorization over tribal lands, granted or subject to administration under a TERA, for a pipeline or electric transmission or distribution line that serves a facility located on tribal land that is related to energy resource development.

Secretary means the Secretary of the Interior or the Secretary's designee.

TERA means tribal energy resource agreement.

Tribal energy development organization or *TEDO* means:

(1) Any enterprise, partnership, consortium, corporation, or other type of business organization that is engaged in the development of energy resources and is wholly owned by a

Commented [IA1]: Addition to reflect new 25 U.S.C. 3501(9)

Commented [IA2]: Addition to reflect new 25 U.S.C. 3501(12)

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Tribe, including but not limited to an organization incorporated under section 17 of the Indian Reorganization Act, 25 U.S.C. 5124 or section 3 of the Oklahoma Indian Welfare Act, 49 Stat. 1967, chapter 831; and

(2) Any organization of two or more entities, at least one of which is a Tribe, that has the written consent of the governing bodies of all Tribes participating in the organization, to apply for a grant, loan, or other assistance under 25 U.S.C. 2602 or to enter into a lease or business agreement with, or acquire a right-of-way from, a Tribe under 25 U.S.C. 2604(a)(2)(A)(ii) or (b)(2)(b).

Tribal governing body means a ~~tribe's~~Tribe's governing entity, such as tribal council or tribal business committee, as established under tribal or Federal law and recognized by the Secretary.

Tribal land means any land or interests in land owned by a ~~tribe~~Tribe or ~~tribes~~Tribes, title to which is held in trust by the United States, or is subject to a restriction against alienation under the laws of the United States. For the purposes of this part, tribal land includes land taken into trust or subject to restrictions on alienation under the laws of the United States after the effective date of the agreement.

Tribe means any Indian ~~tribe~~Tribe, band, nation, or other organized group or community that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, except a Native Corporation as defined in the Alaska Native Claims Settlement Act, 43 U.S.C. 1602, as evidenced by inclusion of the Tribe on the list of recognized Tribes published by the Secretary under 25 U.S.C. 5131.

Violation or breach means any breach or other violation by another party of any provision in a lease, business agreement, or right-of-way under a TERA or any activity or occurrence under a lease business agreement or right-of-way that constitutes a violation of Federal or tribal environmental law.

§224.40 How does the Act or a TERA affect the Secretary's trust responsibility?

(a) The Act (25 U.S.C. 3504(e)(6)) preserves the Secretary's trust responsibilities relating to mineral and other trust resources and requires the Secretary to act in good faith and in the best interest of Indian ~~tribes~~Tribes.

(b) Neither the Act nor this part absolves the Secretary of responsibilities to Indian ~~tribes~~Tribes under the trust relationship, treaties, statutes, regulations, Executive Orders, agreements or other Federal law.

(c) The Act and this part preserve the Secretary's trust responsibility to ensure that the rights and interests of an Indian ~~tribe~~Tribe are protected if:

(1) Another party to a lease, business agreement, or right-of-way executed under an approved TERA violates any term of the lease, business agreement, or right-of-way, or any applicable Federal law; or

(2) Any provision of a lease, business agreement, or right-of-way violates the TERA under which it was executed.

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(d) The United States is not liable for losses to any party (including any ~~tribe~~Tribe) for any negotiated term of, or any loss resulting from, the negotiated terms of a lease, business agreement, or right-of-way the ~~tribe~~Tribe executes under a TERA.

§224.41 When does the Secretary require agreement of more than one ~~tribe~~Tribe to approve a TERA?

When tribal land held for the benefit of more than one ~~tribe~~Tribe is contemplated for inclusion in a TERA, each appropriate tribal governing body must request a pre-application consultation meeting, and submit a resolution or formal act of the tribal governing body approving the submission of any application. Each appropriate tribal governing body must also sign the TERA, if it is approved.

§224.42 How does the Paperwork Reduction Act affect these regulations?

The information collected from the public is cleared and covered by OMB Control Number 1076-0167. The sections of this rule which have information collections are §§224.53, 224.57(d), 224.61, 224.63, 224.64, 224.65, 224.68(d), 224.76, 224.83, 224.87, 224.109, 224.112, 224.120(a), 224.139(b), 224.156, and 224.173. Please note that a Federal Agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Subpart B—Procedures for Obtaining Tribal Energy Resource Agreements

§224.50 What is the purpose of this subpart?

This subpart establishes procedures for:

- (a) Pre-application and application consultations and process;
- (b) Requirements for the content of applications;
- (c) Submittal of completed applications; and
- (d) Secretarial review and processing of applications.

PRE-APPLICATION CONSULTATION AND THE FORM OF APPLICATION

§224.51 What is a pre-application consultation between a ~~tribe~~Tribe and the ~~Director~~Secretary?

(a) A ~~tribe~~Tribe interested in entering into a TERA should request a pre-application consultation by writing to the ~~Director, Office of Indian Energy and Economic Development~~Secretary. The request should include the name and contact information for the Designated Tribal Official who will coordinate scheduling with the ~~Director~~Secretary.

(b) Upon receiving a pre-application consultation request, the ~~Director~~Secretary will contact the Designated Tribal Official to schedule a pre-application consultation meeting. The ~~Director~~Secretary may also initiate pre-application discussions with the tribal governing body.

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(c) At the pre-application consultation meeting, the tribeTribe and the DirectorSecretary may discuss any of the matters related to a future application including, but not limited to:

(1) The application process;

(2) The potential scope of the tribe'sTribe's future application, including any regulatory or administrative activities that the tribeTribe anticipates exercising;

(3) The required content of an application for a TERA;

(4) The energy resource the tribeTribe anticipates developing;

(5) The tribe'sTribe's capacity to manage and regulate the energy resource development the tribeTribe identifies;

(6) Potential opportunities for funding capacity-building and other activities related to the energy resource the tribeTribe anticipates developing under a TERA; and

(7) Any other matters applicable to this part, the Act, and the tribeTribe.

§224.52 What may a tribeTribe include in a TERA?

A TERA under this part:

(a) May include development of all or part of a tribe'sTribe's energy resources;

(b) Must specify the type of energy resource included;

(c) May include assumption by the tribeTribe of certain activities normally carried out by the Department, except for inherently Federal functions; and

(d) Must specify the services or resources related to the specific activity related to energy resource development that the tribeTribe proposes to assume from the Department.

§224.53 What must an application for a TERA contain?

(a) An application for a TERA must contain all of the following:

(1) A proposed TERA between the tribeTribe and the Secretary, signed by the authorized representative of the tribeTribe, that contains the provisions required by §224.63;

(2) A statement that the Secretary recognizes the tribeTribe as an Indian tribeTribe and that the tribeTribe has tribal land;

(3) A brief description of the tribe'sTribe's form of government;

(4) Copies of relevant portions of tribal documents (see paragraph (b) of this section);

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(5) A map, legal description, and general description of the tribal land that the ~~tribe~~Tribe intends to include in the TERA;

(6) A statement that meets the requirements in paragraph (c) of this section;

~~(7) A statement describing the tribe's experience in negotiating and administering energy-related leases, business agreements, and rights-of-way issued under other Federal laws that includes descriptions of significant leases, business agreements, and rights-of-way the tribe has entered into with third parties or to which it has consented;~~

Commented [IA3]: Deleted to reflect deletion in 25 U.S.C. 3504(e)(8) regarding Tribal capacity.

~~(8) A description of the expertise that the tribe will use to administer the TERA and an explanation of how that expertise meets the requirements of paragraph (d) of this section;~~

Commented [IA4]: Deleted to reflect deletion in 25 U.S.C. 3504(e)(8) regarding Tribal capacity.

~~(9)~~

(7) Documentation that the Tribe meets the definition of "qualified Tribe" in §224.30;

(8) A statement of the scope of administrative activities that the ~~tribe~~Tribe intends to conduct and an explanation of how that meets the requirements of paragraph (e)~~d~~ of this section;

~~(10) A statement that meets the requirements of paragraph (f) of this section describing the capability of the tribe to assume all of the activities the tribe has identified in the application;~~

Commented [IA5]: Deleted to reflect deletion in 25 U.S.C. 3504(e)(8) regarding Tribal capacity.

~~(11)~~(9) A copy of the resolution or formal action of the tribal governing body or bodies under §224.41 that approves submission of an application for a TERA; and

~~(12)~~(10) A designation of, and contact information for, the Designated Tribal Official who will receive notifications from the Secretary ~~or the Director~~ regarding the status of the TERA application.

(b) The documents required by paragraph (a)(4) of this section include documents such as a constitution, code, ordinance, or resolution, that designate the tribal governing body or tribal officials that have authority to enter into leases, business agreements, or rights-of-way on behalf of the ~~tribe~~Tribe.

(c) The statement required by paragraph (a)(6) of this section must:

(1) If applicable, state that the ~~tribe~~Tribe retains the option of entering into energy-related leases or agreements under laws other than the Act for any tribal land that the TERA includes; and

(2) State one of the following:

(i) The ~~tribe~~Tribe intends the TERA to include all tribal land, energy resources, and categories of energy-related leases, business agreements, and rights-of-way; or

(ii) The ~~tribe~~Tribe intends the TERA to include only certain tribal land, energy resources, or categories of energy-related leases, business agreements, or rights-of-way in the TERA. In this case, the statement must specify and describe the tribal land, energy resources, or categories of energy-related leases, business agreements, or rights-of-way that the ~~tribe~~Tribe intends to include in the TERA.

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(3) State the ~~tribe's~~Tribe's intent to amend or modify leases, business agreements, or rights-of-way that exist when a TERA is approved if those activities are directly related to the activities authorized by the TERA. The ~~tribe's~~Tribe's ability to amend or modify such leases, business agreements or rights-of-way requires the agreement of the other parties to the lease, business agreement or rights-of-way, which must be stated in the TERA.

(d) The statement required by paragraph (a)(8) ~~of this section must describe the expertise that the tribe will use in the four areas specified in paragraph (d)(1) of this section. It must also address, at a minimum, the administrative and personnel resources specified in paragraph (d)(2) of this section.~~

~~(1) The statement must describe the expertise that the tribe will use to:~~

~~(i) Negotiate or review leases, business agreements, or rights-of-way under the TERA;~~

~~(ii) Evaluate the environmental effects, including those related to cultural resources, of leases, business agreements, or rights-of-way entered into under a TERA;~~

~~(iii) Review proposals for leases, business agreements and rights-of-way under the TERA; and~~

~~(iv) Monitor the compliance of a third party with the terms and conditions of any leases, business agreements and rights-of-way covered by the TERA.~~

~~(2) The statement must describe the following:~~

~~(i) Existing energy resource development related departments or administrative divisions within the tribe;~~

~~(ii) Proposed energy resource development related departments or administrative divisions within the tribe;~~

~~(iii) Existing energy resource development related expertise possessed by the tribe, including a description of the relevant expertise of designated tribal employees, consultants and/or advisors; and~~

~~(iv) Proposed energy resource development related expertise that the tribe may acquire, including a description of the relevant expertise of designated tribal employees, consultants and/or advisors that the tribe intends to hire or retain.~~

~~(e) The statement required by paragraph (a)(9) of this section must describe the amount of administrative activities related to the permitting, approval, and monitoring of activities, as applicable, that the Tribe proposes to undertake under any lease, business agreement, or right-of-way the Tribe executes under an approved TERA.~~

(1) If the Tribe proposes to regulate activities, the Tribe must state its intent and describe the scope of the Tribe's plan for such administration and management in sufficient detail for the Secretary to determine the tribe's capacity to administer and manage the regulatory activity(ies).~~management.~~

Commented [IA6]: Deleted to reflect deletion in 25 U.S.C. 3504(e)(8) regarding Tribal capacity.

Commented [IA7]: Deleted to reflect deletion in 25 U.S.C. 3504(e)(8) regarding Tribal capacity.

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(2) The ~~tribe's~~**Tribe's** intended scope of administrative responsibilities may not include the responsibilities of the Federal Government under the Endangered Species Act or other inherently Federal functions.

(3) If the ~~tribe~~**Tribe** intends to regulate activities, it should also describe the regulatory activities it desires to assume in the geographical area identified in §224.53(c)(2) with respect to leases, business agreements, and rights-of-way that exist when a TERA is approved.

~~(f) The statement required by paragraph (a)(10) of this section must:~~

~~(1) Describe the tribe's ability to negotiate and enter into leases, business agreements, and rights-of-way;~~

~~(2) Include a discussion of the estimated annual costs to the tribe to assume those activities the tribe has identified in the application and the proposed source of tribal funds to carry out those activities; and~~

~~(3) Describe the estimated annual amounts needed to conduct those activities the tribe has identified in the application and identify the Federal program that may provide those funds, if one of the sources of tribal funds includes grants or contract awards from the Department, the Department of Energy, or other Federal agencies.~~

~~(4) Include a description of any:~~

~~(i) Compacts and contracts between the tribe and the Secretary under the Indian Self-Determination and Education Assistance Act, as amended;~~

~~(ii) Environmental programs a tribe has assumed under the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C.A. 7401); or~~

~~(iii) Cooperative agreements under the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1701 et seq.).~~

Commented [IA8]: Deleted to reflect deletion in 25 U.S.C. 3504(e)(8) regarding Tribal capacity.

PROCESSING APPLICATIONS

§224.54 How must a ~~tribe~~**Tribe** submit an application?

A ~~tribe~~**Tribe** must submit an application and all supporting documents in written and electronic form to the ~~Director~~**Secretary** at 1849 C Street, NW, Washington, DC 20240, and TERA@bia.gov.

§224.55 Is information a ~~tribe~~**Tribe** submits throughout the TERA process under this part subject to disclosure to third parties?

The requirements of this section implement the requirements of the Freedom of Information Act (5 U.S.C. 552) (FOIA) and 43 CFR part 2:

(a) Information a ~~tribe~~**Tribe** submits to the Department throughout the TERA process under this part may be subject to disclosure to third parties under FOIA unless a FOIA exemption or exception applies or other provisions of law protect the information.

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(b) A tribeTribe may, but is not required to, designate information it submits as confidential commercially or financially sensitive information, as applicable, in any submissions it makes throughout the TERA process, including, but not limited to:

- (1) Pre-application information;
- (2) Application information
- (3) A final proposed TERA;
- (4) Any amendments to a TERA; and

(5) Leases, business agreements, and grants of right-of-way executed under an approved TERA.

(c) Upon receipt of a FOIA request for records that contain commercial or financial information a tribeTribe has submitted under the TERA process, as required by 43 CFR part 2 the Department will provide the tribeTribe, as submitter, with written notice of the FOIA request if:

(1) The tribeTribe has designated the information as confidential commercial or financial information; or

(2) The Department has reason to believe that the information requested may be protected under FOIA Exemption 4 (trade secrets and commercial or financial information which is obtained from a person and is privileged or confidential).

(d) The notice to the tribeTribe will:

- (1) Include a copy of the FOIA request;
- (2) Describe the information requested or include copies of the pertinent records;

(3) Advise the tribeTribe of procedures for objecting to the release of the requested information and specify the time limit for the tribe'sTribe's response;

(4) Give the tribeTribe no less than ten (10) working days from the Department's notice to object to the release and explain the basis for objection, if any;

(5) Advise the tribeTribe that:

(i) Information contained in the tribe'sTribe's objections may be subject to disclosure under FOIA if the Department receives a FOIA request for it; and

(ii) If the tribe'sTribe's objections contain commercial or financial information and a requestor asks for the objections under FOIA, the same notification procedures as above will apply;

(6) Advise the tribeTribe that it is the Department, rather than the tribeTribe, that is responsible for deciding whether the information will be released or withheld;

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(7) If the tribeTribe designated the information as commercial or financial information 10 or more years before the FOIA request, the Department will request the tribe'sTribe's views on whether the tribeTribe still considers the information to be confidential;

(e) If the tribeTribe has any objection to disclosure of the information, the tribeTribe must submit a detailed written statement to the Department including the following:

(1) The justification for withholding any portion of the information under any exemption of FOIA, and if the applicable exemption is Exemption 4, the tribeTribe must submit a specific and detailed discussion of:

(i) Whether the Federal government required the information to be submitted, and, if so, how substantial competitive harm or other business harm would likely result from release of the information; or

(ii) Whether the tribeTribe provided the information voluntarily and, if so, how the information fits into a category of information that the tribeTribe customarily does not release to the public;

(2) A certification that the information is confidential, has not been disclosed to the public by the tribeTribe, and is essentially non-public because it is not routinely available to the public from other sources;

(3) If not already provided, a tribal contact telephone and fax number so that the Department can communicate with the tribeTribe about the FOIA request;

(f) The Department will review and consider all objections to release that are received within the time limits specified in the notice to the tribeTribe, and if the tribeTribe does not respond within the time limits specified in the notice, the Department will presume that the tribeTribe has no objection to release of the information;

(g) If the Department decides to release the information over the objection of the tribeTribe, it will notify the tribeTribe in writing by certified mail, return receipt requested, and will include copies of the records the Department intends to release and the reasons for deciding to release them. The notice will also inform the tribeTribe that it intends to release the records within 10 working days after the tribe'sTribe's receipt of the notice.

§224.56 What is the effect of the Director'sSecretary's receipt of a tribe'squalified Tribe's complete application?

The Director'sSecretary's receipt of a tribe'squalified Tribe's complete application begins a 270-day statutorily mandated period during which the Secretary must approve or disapprove a proposed TERA. With the consent of the tribeTribe, the Secretary may extend the 270-day period for making a decision. Upon the 271st day after the Secretary's receipt of a complete application from a qualified Tribe, the TERA takes effect, unless the Secretary approves the TERA to take effect on an earlier date, the Tribe consents to extending the 270-day period, or the Secretary disapproves the application before that date.

Commented [IA9]: Revised per 25 U.S.C. 3504(e)(2)(A)(i)

§224.57 What must the DirectorSecretary do upon receipt of an application?

(a) Upon receiving an application for a TERA, the DirectorSecretary must:

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- (1) Promptly notify the Designated Tribal Official in writing that the DirectorSecretary has received the application and the date it was received;
- (2) Within 30 days from the date of receiving the application, determine whether the application is complete; and
- (3) Take the following actions:

If the <u>DirectorSecretary</u> determines that . . .	Then the <u>DirectorSecretary</u> must . . .
(i) The application is complete	(A) Issue a written notice and a request for an application consultation meeting to the Designated Tribal Official; and (B) <u>Identify in the written notice any financial assistance available from the Secretary to assist in implementing the TERA, including environmental review of individual projects; and</u> (C) If appropriate, notify other Departmental bureaus and offices of receiving the application and provide copies.
(ii) The application is not complete	(A) Issue a written notice to the Designated Tribal Official that the application is not complete; (B) Specify the additional information the <u>tribeTribe</u> is required to submit to make the application complete; and (C) Start the 270-day review period only when the <u>DirectorSecretary</u> receives a complete application.

Commented [IA10]: Revised per 25 U.S.C. 3504(e)(1)(B)(iii).

(b) Unless the DirectorSecretary notifies the Designated Tribal Official during the 30-day review period that the application is not complete, the application is presumed to be complete and the 270-day review period under 25 U.S.C. 3504(e)(2)(A) of the Act will begin as of the date that the application was received.

APPLICATION CONSULTATION MEETING

§224.58 What is an application consultation meeting?

An application consultation meeting is a meeting held at the tribe'sTribe's headquarters between the DirectorSecretary and the tribal governing body and any other representatives that the tribeTribe may designate to discuss the TERA application. The Secretary will designate representatives of appropriate Departmental offices or bureaus to attend the application consultation meeting, as necessary. The tribeTribe may record the meeting. The meeting will:

- (a) Be held at the earliest practicable time after the DirectorSecretary receives a tribe'sTribe's complete application;
- (b) Include a thorough discussion of the tribe'sTribe's application;
- (c) Identify the specific services consistent with the Secretary's ongoing trust responsibility and available resources that the Department would provide to the tribeTribe upon the approval of a TERA;

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(d) Include a discussion of the relationship of the tribeTribe to other Federal agencies with responsibilities for implementing or ensuring compliance with the terms and conditions of leases, business agreements, or rights-of-way and applicable Federal laws;

(e) Include a discussion of the relationship of the tribeTribe to its members, to State and local governments, and to non-Indians who may be affected by approval of a TERA or by leases, business agreements, or rights-of-way that the tribeTribe may enter into or grant under an approved TERA;

(f) Include a discussion of the tribal administrative, financial, technical, and managerial capacities needed to carry out the tribe'sTribe's obligations under a TERA; and

(g) Include a discussion of the form of the TERA and the timing and relative responsibilities of the parties for its preparation.

§224.59 How will the DirectorSecretary use the results of the application consultation meeting?

The DirectorSecretary will use the information gathered during the application consultation meeting in conjunction with information provided through §§224.53 and 224.63 to determine the energy resource development capacity of the tribeTribe as detailed in §224.72.

§224.60 What will the DirectorSecretary provide to the tribeTribe after the application consultation meeting?

Within 30 days following the meeting with the tribeTribe, the DirectorSecretary will provide to the Designated Tribal Official a written report on the application consultation meeting. The report must include the Director'sSecretary's recommendations, if any, for revising the proposed TERA that was submitted as part of the tribe'sTribe's application.

§224.61 What will the tribeTribe provide to the DirectorSecretary after receipt of the Director'sSecretary's report on the application consultation meeting?

If the tribeTribe wishes to proceed with the application, the tribeTribe must submit a final proposed TERA to the DirectorSecretary within 45 days following the date of the Tribe's receipt of the Director'sSecretary's report on the application consultation meeting.

§224.62 May a final proposed TERA differ from the original proposed TERA?

The final proposed TERA may or may not contain provisions that differ from the original proposed TERA submitted with the application.

(a) If a final proposed TERA does not differ significantly or materially from the original TERA contained in the complete application, the 270-day review period will begin to run on the date the original complete application was received (under §224.57(c)) or on the date established by operation of §224.57(d).

(b) If a final proposed TERA differs significantly or materially from the original TERA contained in the complete application, the Secretary, with the tribe'sTribe's consent, may extend the 270-day

period for a reasonable time. The Secretary will notify the ~~tribe~~Tribe in writing if an extension of time is necessary.

TERA REQUIREMENTS

§224.63 What provisions must a TERA contain?

A TERA must contain all the elements required by this section.

(a) A provision for the Secretary's periodic review and evaluation of the ~~tribe's~~Tribe's performance under a TERA.

(b) A provision that recognizes the authority of the Secretary, upon a finding of imminent jeopardy to a physical trust asset, to take actions the Secretary determines to be necessary to protect the asset, including reassumption under subparts F and G of this part.

(c) A provision under which the ~~tribe~~Tribe establishes and ensures compliance with an environmental review process for leases, business agreements, and rights-of-way which, at a minimum:

~~(1) Identifies and evaluates all significant environmental effects (as compared to a no-action alternative), including effects on cultural resources, arising from a lease, business agreement, or right-of-way;~~

~~(2) Identifies proposed mitigation measures, if any, and incorporates appropriate mitigation measures into the lease, business agreement, or right-of-way;~~

~~(3)~~(1) Informs the public and provides opportunity for public comment on the environmental impacts of the approval of the lease, business agreement or right-of-way;

(4) Provides for tribal responses to relevant and substantive public comments before tribal approval of the lease, business agreement or right-of-way;

~~(5)~~(3) Provides for sufficient tribal administrative support and technical capability to carry out the environmental review process; and

(6) Develops adequate tribal oversight of energy resource development activities under any lease, business agreement or right-of-way under a TERA that any other party conducts to determine whether the activities comply with the TERA and applicable Federal and tribal environmental laws.

(d) Provisions that require, with respect to any lease, business agreement, or right-of-way approved under a TERA, all of the following:

~~(1) Mechanisms for obtaining corporate, technical, and financial qualifications of a third party that has applied to enter into a lease, business agreement, or right-of-way;~~

~~(2)~~(1) Express limitations on duration that meet the restrictions of the Act and this Part under §224.86;

Commented [IA11]: Deleted per change to 25 U.S.C. 3504(e)(2)(C)

Commented [IA12]: Deleted to reflect deletion in 25 U.S.C. 3504(e)(8) regarding Tribal capacity.

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~~(32)~~ Mechanisms for amendment, transfer, and renewal;

~~(43)~~ Mechanisms for obtaining, reporting and evaluating the economic return to the ~~tribe~~;Tribe;

~~(5) Mechanisms for securing technical information about activities and ensuring that technical activities are performed in compliance with terms and conditions;~~

~~(6~~ (4) Assurances of the ~~tribe's~~Tribe's compliance with all applicable environmental laws;

~~(75)~~ Requirements that the lessee, operator, or right-of-way grantee will comply with all applicable environmental laws;

~~(86)~~ Identification of tribal representatives with the authority to approve a lease, business agreement, or right-of-way and the related energy development activities that would occur under a lease, business agreement, or right-of-way;

~~(97)~~ Public notification that a lease, business agreement, or right-of-way has received final tribal approval;

~~(108)~~ A process for consultation with affected States regarding off-reservation impacts, if any, identified under paragraph (c) of this section;

~~(149)~~ A description of remedies for breach;

~~(1210)~~ A statement that any provision that violates an express term or requirement of the TERA is null and void;

~~(1311)~~ A statement that if the Secretary determines that any provision that violates an express term or requirement of the TERA is material, the Secretary may suspend or rescind the lease, business agreement, or right-of-way, or take any action the Secretary determines to be in the best interest of the ~~tribe~~Tribe, including, with the consent of the parties, revising the nonconforming provisions so that they conform to the intent of the applicable portion of the TERA; and

~~(1412)~~ A statement that the lease, business agreement, or right-of-way subject to a TERA, unless otherwise provided, goes into effect when the ~~tribe~~Tribe delivers executed copies of the lease, business agreement, or right-of-way to the ~~Director~~Secretary by first class mail return receipt requested or express delivery. The parties to a lease, business agreement, or right-of-way may agree in writing that any provision of their contract may have retroactive application.

(e) Citations to any applicable tribal laws, regulations, or procedures that:

(1) Provide opportunity for the public to comment on and to participate in public hearings, if any, under paragraph (c)(2) of this section; and

(2) Provide remedies that petitioning parties must exhaust before filing a petition with the Secretary under subpart E of this part.

(f) Provisions that require a ~~tribe~~Tribe to provide the Secretary with citations to any tribal laws, regulations, or procedures the ~~tribe~~Tribe adopts after the effective date of a TERA that establish,

Commented [IA13]: Deleted to reflect deletion in 25 U.S.C. 3504(e)(8) regarding Tribal capacity.

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amend, or supplement tribal remedies that petitioning parties must exhaust before filing a petition with the Secretary under subpart E of this part.

(g) Provisions that designate a person or entity, together with contact information, authorized by the ~~tribeTribe~~ to maintain and disseminate to requesting members of the public current copies of tribal laws, regulations, or procedures that establish or describe tribal remedies that petitioning parties must exhaust before instituting appeals under subpart E of this part.

(h) Identification of financial assistance, if any, that the Secretary has agreed to provide to the ~~tribeTribe~~ to assist in implementation of the TERA, including the ~~tribe'sTribe's~~ environmental review of individual energy development activities.

(i) Provisions that require a ~~tribeTribe~~ to notify the Secretary and the ~~DirectorSecretary~~ in writing, as soon as practicable after the ~~tribeTribe~~ receives notice, of a violation or breach as defined in this Part.

(j) Provisions that require the ~~tribeTribe~~ and the ~~tribe'sTribe's~~ financial experts to adhere to Government auditing standards and to applicable continuing professional education requirements.

(k) Provisions that require the ~~tribeTribe~~ to submit to the ~~DirectorSecretary~~ information and documentation of payments made directly to the ~~tribeTribe~~, if any. These provisions enable the Secretary to discharge the trust responsibility of the United States to enforce the terms of, and protect the rights of the ~~tribeTribe~~ under, a lease, business agreement, or right-of-way. Required documentation must include documents evidencing proof of payment such as cancelled checks; cash receipt vouchers; copies of money orders or cashiers checks; or verification of electronic payments.

(l) Provisions that ensure the creation, maintenance and preservation of records related to leases, business agreements, or rights-of-way and performance of activities a ~~tribeTribe~~ assumed under a TERA sufficient to facilitate the Secretary's periodic review of the TERA. The Secretary will use these records as part of the periodic review and evaluation process under §224.132. Approved Departmental records retention procedures under the Federal Records Act (44 U.S.C. Chapters 29, 31, and 33) provide a framework the ~~tribeTribe~~ may use to ensure that its records under a TERA adequately document essential transactions, furnish information necessary to protect its legal and financial rights, and enable the Secretary to discharge the trust responsibility if:

- (1) Any other party violates the terms of any lease, business agreement, or right-of-way; or
- (2) Any provision of a lease, business agreement or right-of-way violates the TERA.

(m) At the option of the Tribe, identify which functions if any, the Tribe intends to conduct to authorize any operational or development activities pursuant to a lease, business agreement, or right-of-way approved by the Tribe.

§224.64 How may a ~~tribeTribe~~ assume management of development of different types of energy resources?

(a) In order for a ~~tribeTribe~~ to assume authority for approving leases, business agreements, and rights-of-way for development of another energy resource that is not included in the TERA, a ~~tribe must apply for a new TERA covering the authority for the development of another energy~~

Commented [IA14]: REQUIRED FOR APPROVAL PER: 25 U.S.C. 3504(e)(2) (B)(iii)(XIII)

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~~resource it wishes to assume. The Secretary's consideration of a new TERA will include a determination of the tribe's capacity to develop that type of energy resource and will trigger the public notice and opportunity for comment consistent with §224.67. Tribe must submit to the Secretary:~~

~~(1) An amendment to the TERA that specifies and describes the additional Tribal land, energy resources, or categories of energy-related leases, business agreements, or rights-of-way that the Tribe intends to include in the TERA; and~~

~~(2) A copy of the resolution or formal action of the Tribal governing body or Tribal governing bodies if the land is held for the benefit of more than one Tribe, that approves submission of the TERA amendment.~~

~~(b) Submission of the documents in paragraph (a) will trigger the public notice and opportunity for comment consistent with §224.67.~~

~~(c) The Secretary will process the amendment in accordance with §§ 224.67 through 224.78.~~

~~(d) Each Tribal governing body that is party to the TERA must sign the TERA amendment upon approval.~~

§224.65 How may a ~~tribe~~Tribe assume additional activities under a TERA?

A ~~tribe~~Tribe may assume additional activities related to the development of the same type of energy resource included in a TERA by negotiating with the Secretary an amendment to the existing TERA to include the additional activities. ~~The Secretary will determine in each case whether the tribe has sufficient capacity to carry out additional activities the tribe may wish to assume under an approved TERA.~~

§224.66 How may a ~~tribe~~Tribe reduce the scope of the TERA?

A ~~tribe~~Tribe may reduce the scope of the TERA by negotiating with the Secretary an amendment to the existing TERA to eliminate an activity assumed under the TERA or a type of energy resource development managed under the TERA. Any such reduction in scope must include the return of all relevant Departmental resources transferred under the TERA and any relevant records and documents.

PUBLIC NOTIFICATION AND COMMENT

§224.67 What must the Secretary do upon the ~~Director's~~Secretary's receipt of a final proposed TERA?

(a) Within 10 days of the ~~Director's~~Secretary's receipt of a final proposed TERA, the Secretary must submit a notice for publication in the FEDERAL REGISTER advising the public:

- (1) That the Secretary is considering a final proposed TERA for approval or disapproval; and
- (2) Of any National Environmental Policy Act (NEPA) review the Secretary is conducting.

Commented [IA15]: Revised per 25 U.S.C. 3504(e)(8)(A)(iii)

Commented [IA16]: Deleted to reflect deletion in 25 U.S.C. 3504(e)(8).

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(b) The FEDERAL REGISTER notice will:

(1) Contain information advising the public how to request and receive copies of or participate in any NEPA reviews, as prescribed in subpart C of this part, related to approval of the final proposed TERA; and

(2) Contain information advising the public how to comment on a final proposed TERA.

§224.68 How will the Secretary use public comments?

(a) The Secretary will review and consider public comments in deciding to approve or disapprove the final proposed TERA; and

(b) The Secretary will provide copies of the comments to the Designated Tribal Official;

(c) Upon mutual agreement between the ~~tribe~~Tribe and the Secretary, the ~~tribe~~Tribe may make changes in the final proposed TERA based on the comments received; and

(d) If the ~~tribe~~Tribe revises the final proposed TERA based on public comments, the tribal governing body must approve the changes, the authorized representative of the ~~tribe~~Tribe must sign the final proposed TERA as revised, and the ~~tribe~~Tribe must send the revised final proposed TERA to the ~~Director~~Secretary. The Secretary and the ~~tribe~~Tribe will consult on whether an extension of the review period is necessary under §224.62(b).

Subpart C—Approval of Tribal Energy Resource Agreements

§224.70 Will the Secretary review a proposed TERA under the National Environmental Policy Act?

Yes, the Secretary will conduct a review under the National Environmental Policy Act (NEPA) of the potential impacts on the quality of the human environment that might arise from approving a final proposed TERA. The scope of the Secretary's evaluation will be limited to the scope of the TERA. The public comment period, when required, under the NEPA review will occur concurrently with the public comment period for a TERA under §224.67.

§224.71 What standards will the Secretary use to decide to approve a final proposed TERA?

~~The Secretary will consider the best interests of the tribe and the Federal policy of promoting tribal self-determination in deciding whether to approve a final proposed TERA. The~~The Secretary must approve a final proposed TERA ~~if it contains~~ unless:

~~(a) The Tribe does not meet the definition of a "qualified Tribe" in § 224.30;~~

Commented [IA17]: See 25 U.S.C. 3504(e)(2)(B)(iii)(XII)

~~(b) A provision of the TERA violates applicable Federal law (including regulations) or a treaty applicable to the Tribe; or~~

Commented [IA18]: See 25 U.S.C. 3504(e)(2)(B)(i)

~~(c) The TERA fails to include the provisions required by the Act and this part and the Secretary determines that the tribe has demonstrated sufficient capacity to manage the development of energy resources it proposes to develop~~§224.63.

§224.72—How will the Secretary determine whether a tribe has demonstrated sufficient capacity?

The Secretary will determine whether a tribe has demonstrated sufficient capacity under §224.71 based on the information obtained through the application process. The Secretary will consider:

- (a) The specific energy resource development the tribe proposes to regulate;
- (b) The scope of the administrative or regulatory activities the tribe seeks to assume;
- (c) Materials and information submitted with the application for a TERA, the result of meetings between the tribe and a representative of the Department and the Director's written report;
- (d) The history of the tribe's role in energy resource development, including negotiating and approval or disapproval of pre-existing energy-related leases, business agreements, and rights-of-way;
- (e) The administrative expertise of the tribe available to regulate energy resource development within the scope of the final proposed TERA or the tribe's plans for establishing that expertise;
- (f) The financial capacity of the tribe to maintain or procure the technical expertise needed to evaluate proposals and to monitor anticipated activities in a prudent manner;
- (g) The tribe's past performance administering contracts and grants associated with self-determination programs, cooperative agreements with Federal and State agencies, and environmental programs administered by the Environmental Protection Agency;
- (h) The tribe's past performance monitoring activities undertaken by third parties under approved leases, business agreements, or rights-of-way; and
- (i) Any other factors the Secretary finds to be relevant in light of the scope of the proposed TERA.

Commented [IA19]: Deleted to reflect deletion in 25 U.S.C. 3504(e)(8).

§224.73—How will the scope of energy resource development affect the Secretary's determination of the tribe's capacity?

The Secretary's review under §224.72 of the tribe's capacity to manage and regulate energy resource development under the TERA will include a determination as to each type of energy resource development subject to the TERA for which the tribe seeks to regulate, and each type of regulatory activity the tribe proposes to assume. The Secretary's review of a TERA must be limited to activities specified by its provisions.

Commented [IA20]: Deleted to reflect deletion in 25 U.S.C. 3504(e)(8).

§224.72 Reserved.

Commented [IA21]: Reserved to accommodate existing numbering.

§224.73 Reserved.

Commented [IA22]: Reserved to accommodate existing numbering.

§224.74 When must the Secretary approve or disapprove a final proposed TERA?

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The Secretary must approve or disapprove a final proposed TERA ~~or a revised final proposed TERA~~ within 270 days of the ~~Director's~~Secretary's receipt of a complete application for a TERA. With the consent of the ~~tribe~~Tribe, or as provided in §224.62(b), the Secretary may extend the period for a decision. ~~If the Secretary fails to approve or disapprove a final proposed TERA within 270 days and the Tribe does not consent to extending the 270-day period, the TERA takes effect on the 271st day after the Secretary's receipt of a complete application from a qualified Tribe.~~

Commented [IA23]: See 25 U.S.C. 3504(e)(2)(A)(i)

§224.75 What must the Secretary do upon approval or disapproval of a final proposed TERA?

Within 10 days of the Secretary's approval or disapproval of a final proposed TERA, the Secretary must notify the tribal governing body in writing and take the following actions:

If the Secretary's decision is . . .	Then the Secretary will . . .
(a) To approve the final proposed TERA	(1) Sign the TERA making it effective on the date of signature, and return the signed TERA to the tribal governing body; and (2) Maintain a copy of the TERA and any subsequent amendments or supplements to the TERA.
(b) To disapprove the final proposed TERA	Send the tribe Tribe a notice of disapproval that must include: (1) The basis of A detailed, written explanation of each reason for the disapproval; (2) The changes or other actions required to address each reason for the Secretary's basis for disapproval; (3) An opportunity to revise and resubmit the TERA; and (4) A statement that the decision is a final agency action and is subject to judicial review.

Commented [IA24]: See 25 U.S.C. 3504(e)(4)

§224.76 Upon notification of disapproval, may a ~~tribe~~Tribe re-submit a revised final proposed TERA?

Yes, within 45 days of receiving the notice of disapproval, or a later date as the Secretary and the ~~tribe~~Tribe agree to in writing, the ~~tribe~~Tribe may re-submit a revised final proposed TERA, approved by the tribal governing body and signed by the ~~tribe's~~Tribe's authorized representative, to the ~~Director's~~Secretary that addresses the Secretary's concerns. Unless the Secretary and the ~~tribe~~Tribe otherwise agree, the Secretary must approve or disapprove the revised final proposed TERA within ~~60~~90 days of the ~~Director's~~Secretary's receipt of the revised final proposed TERA. ~~If the Secretary does not approve or disapprove the revised proposed TERA within that time, it will take effect on the 91st day.~~ Within 10 days of the Secretary's approval or disapproval of a revised final proposed TERA, the Secretary must notify the tribal governing body in writing and take the following actions:

Commented [IA25]: See 25 U.S.C. 3504(e)(2)(A)(ii)

If the Secretary's decision is . . .	Then the Secretary will . . .
(a) To approve the revised final proposed TERA	(1) Sign the TERA making it effective on the date of signature, and return the signed TERA to the tribal governing body; and (2) Maintain a copy of the TERA and any subsequent amendments or supplements to the TERA.

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(b) To disapprove the revised final proposed TERA	Send the tribeTribe a notice of disapproval that must include: (1) The reasons for the disapproval; and (2) A statement that the decision is a final agency action and is subject to judicial review.
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§224.77 Who may appeal the Secretary's decision on a final proposed TERA or a revised final proposed TERA?

Only a [tribeTribe](#) applying for a TERA may appeal the Secretary's decision to disapprove a final proposed TERA or a revised final proposed TERA in accordance with the appeal procedures contained in subpart I of this part. No other person or entity may appeal the Secretary's decision. The Secretary's decision to approve a final proposed TERA or a revised final proposed TERA is a final agency action.

§224.78 How long will a TERA remain in effect?

A TERA that takes effect under this part remains in effect to the extent any provision of the TERA is consistent with applicable Federal law (including regulations), unless and until either:

(a) The Secretary reassumes all activities included within a TERA without the consent of the Tribe under Subpart G; or

(b) The Tribe rescinds a TERA under Subpart H.

Commented [IA26]: See 25 U.S.C. 3504(e)(2)(F)

§224.79 Will the Secretary make non-expended amounts available to the Tribe?

Upon written request of a Tribe for whom an approved TERA is in effect, the Secretary will provide to the Tribe those amounts that the Secretary would otherwise have expended to carry out any program, function, service, or activity (or portion thereof) that the Secretary does not expend as a result of the Tribe carrying out the activities under a TERA. The Secretary will provide the Tribe with a full accounting of the amounts as calculated based on the specific terms of the TERA, the scope of the contracted functions, and applicable circumstances.

Commented [IA27]: See 25 U.S.C. 3504(g).

Subpart D—Implementation of Tribal Energy Resource Agreements

APPLICABLE AUTHORITIES AND RESPONSIBILITIES

§224.80 Under what authority will a [tribeTribe](#) perform activities for energy resource development?

A [tribeTribe](#) will perform activities for energy resource development activities undertaken under a TERA under the [Federal](#) authorities provided in the approved TERA. Notwithstanding anything in this part or an approved TERA to the contrary, a [tribeTribe](#) will retain all sovereign and other powers it otherwise possesses.

Commented [IA28]: Clarification.

§224.81 What laws are applicable to activities?

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Federal and tribal laws apply to activities under a TERA, unless otherwise specified in the TERA.

§224.82 What activities will the Department continue to perform after approval of a TERA?

After approval of a TERA, the Department will provide a ~~tribe~~Tribe:

(a) All activities that the Department performs unless the ~~tribe~~Tribe has assumed such activities under the TERA;

(b) Access to title status information and support services needed by a ~~tribe~~Tribe in the course of evaluating proposals for leases, business agreements, or rights-of-way;

(c) Coordination between the ~~tribe~~Tribe and the Department for ongoing maintenance of accurate real property records;

(d) Access to technical support services within the Department to assist the ~~tribe~~Tribe in evaluating the physical, economic, financial, cultural, social, environmental, and legal consequences of approving proposals for leases, business agreements, or rights-of-way under a TERA; and

(e) Assistance to ensure that third-party violations or breaches of the terms of leases, business agreements, or rights-of-way or applicable provisions of Federal law by third parties are handled appropriately.

LEASES, BUSINESS AGREEMENTS, AND RIGHTS-OF-WAY UNDER A TERA

§224.83 What must a ~~tribe~~Tribe do after executing a lease or business agreement, or granting a right-of-way?

Following the execution of a lease, business agreement, or grant of right-of-way under a TERA, a ~~tribe~~Tribe must:

(a) Inform the public of approval of the lease, business agreement, or right-of-way under the authority granted in the TERA; and

(b) Send a copy of the executed lease, business agreement, or right-of-way, or amendments, to the ~~Director~~Secretary within one business day of execution. The copy must be sent by certified mail return receipt requested or by overnight delivery.

§224.84 When may a ~~tribe~~Tribe grant a right-of-way?

A ~~tribe~~Tribe may grant a right-of-way under a TERA if the grant of right-of-way is over tribal land ~~for a pipeline or an electric transmission or distribution line if and~~ the pipeline or electric transmission or distribution line ~~right-of-way~~ serves:

(a) An electric ~~production~~ generation, transmission, or distribution facility ~~(including a facility that produces electricity from renewable energy resources)~~ located on tribal land; ~~or~~

(b) A facility located on tribal land that processes or refines energy resources ~~developed; or~~

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(c) The purposes, or facilitates in carrying out the purposes, of any lease or agreement entered into for energy resources development on tribal land.

Commented [IA29]: See 25 U.S.C. 3504(g).

§224.85 When may a tribeTribe enter into a lease or business agreement?

A tribeTribe may enter into a lease or business agreement for the purpose of energy resource development for:

(a) Exploration for, extraction of, or other development of the tribe'sTribe's energy mineral resources on tribal land including, but not limited to, marketing or distribution;

(b) Construction or operation of an electric production, generation, transmission, or distribution facility (including a facility that produces electricity from renewable energy resources) located on tribal land; or

(c) AConstruction or operation of a facility to process or refine energy resources, at least a portion of which have been developed on tribal land.; or

(d) Pooling, unitization, or communitization of the energy mineral resources of the Indian Tribe located on tribal land with any other energy mineral resource (including energy mineral resources owned by the Indian Tribe or an individual Indian in fee, trust, or restricted status or by any other persons or entities) if the owner, or, if appropriate, lessee, of the resources has consented or consents to the pooling, unitization, or communitization of the other resources under any lease or agreement.

Commented [IA30]: See 25 U.S.C. 3504(a)

§224.86 Are there limits on the duration of leases, business agreements, and rights-of-way?

(a) The duration of leases, business agreements, and rights-of-way entered into under a TERA are limited as follows:

(1) For leases and business agreements, except as provided in paragraph (b) of this section, 30 years;

(2) For leases for production of oil resources and gas resources, or both, 10 years and as long after as oil or gas production continues in paying quantities; and

(3) For rights-of-way, 30 years.

(b) A lease or business agreement a tribeTribe enters into, or a right-of-way a tribeTribe grants may be renewed at the discretion of the tribeTribe as long as the TERA remains in effect and the approved activities have not been rescinded by the tribeTribe or suspended or reassumed by the Department.

VIOLATION OR BREACH

§224.87 What are the obligations of a tribeTribe if it discovers a violation or breach?

As soon as practicable after discovering or receiving notice of a violation or breach of a lease, business agreement, or right-of-way of a Federal or tribal environmental law resulting from an

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activity undertaken by a third party under a lease, business agreement, or right-of-way, the tribeTribe must provide written notice to the DirectorSecretary describing:

- (a) The nature of the violation or breach in reasonable detail;
- (b) The corrective action taken or planned by the tribeTribe; and
- (c) The proposed period for the corrective action to be completed.

§224.88 What must the DirectorSecretary do after receiving notice of a violation or breach from the tribeTribe?

After receiving notice of a violation or breach from the tribeTribe, the DirectorSecretary will:

- (a) Review the notice and conduct an investigation under §224.135(b) including, as necessary:
 - (1) An on-site inspection; and
 - (2) A review of relevant records, including transactions and reports.

(b) If the DirectorSecretary determines, after the investigation, that a violation or breach is not causing or will not cause imminent jeopardy to a physical trust asset, the DirectorSecretary will review, for concurrence or disapproval, the corrective action to be taken or imposed by the tribeTribe and the proposed period for completion of the corrective action;

(c) If the DirectorSecretary determines, after the investigation, that a violation or breach is causing or will cause imminent jeopardy to a physical trust asset, the DirectorSecretary will proceed under the imminent jeopardy provisions of subpart F of this part.

§224.89 What procedures will the Secretary use to enforce leases, business agreements, or rights-of-way?

(a) The Secretary and a tribeTribe will consult with each other regarding enforcement of and Secretarial assistance needed to enforce leases, business agreements, or rights-of-way entered into under a TERA. When appropriate, the Secretary will:

- (1) Use the notification and enforcement procedures established in 25 CFR parts 162, 211 and 225 to ensure compliance with leases and business agreements; and
- (2) Use the notification and enforcement procedures of 25 CFR part 169 to ensure compliance with rights-of-way.

(b) All enforcement remedies established in 25 CFR parts 162, 211, 225, and 169 are available to the Secretary.

Subpart E—Interested Party Petitions

§224.100 May a person or entity ask the Secretary to review a tribe'sTribe's compliance with a TERA?

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In accordance with this subpart, a person or entity that may be an interested party may submit to the Secretary a petition to review a **tribeTribe's** compliance with a TERA. However, before filing a petition with the Secretary, a person or entity that may be an interested party must first exhaust tribal remedies, if a **tribeTribe** has provided for such remedies. If a **tribeTribe** has not provided for tribal remedies, a person or entity that may be an interested party may file a petition directly with the Secretary.

§224.101 Who is an interested party?

For the purposes of this part, an interested party is a person or entity that **the Secretary determines** has demonstrated **with substantial evidence** that an interest of the person or entity has sustained, or will sustain, an adverse environmental impact as a result of a **tribeTribe's** failure to comply with a TERA.

Commented [IA31]: See 25 U.S.C. 3504(e)(7)(A)

§224.102 Must a **tribeTribe establish a comment or hearing process for addressing environmental concerns?**

Yes. The Act (25 U.S.C. 3504(e)(2)(C)(iii)(I), (II) and 25 U.S.C. 3504(e)(2)(B)(iii)(X)) and subpart B of this part require a **tribeTribe** to establish an environmental review process under a TERA that:

(a) Ensures that the public is notified about and has an opportunity to comment on the environmental impacts of proposed tribal action to be taken under a TERA;

(b) Requires that the **tribeTribe** respond to relevant and substantive comments about the environmental impacts of a proposed tribal action before the **tribeTribe** approves a lease, business agreement, or right-of-way; and

(c) Provides for a process for consultation with any affected States regarding off-reservation environmental impacts, if any, resulting from approval of a lease, business agreement, or right-of-way.

§224.103 Must a **tribeTribe establish other public participation processes?**

No. Except for the environmental review process required by the Act and §224.63(b)(1), a **tribeTribe** is not required to establish a process for public participation concerning non-environmental issues in a TERA or leases, business agreements or rights-of-way undertaken under a TERA. However, a **tribeTribe** may elect to establish procedures that permit the public to participate in public hearings or that expand the scope of matters about which the public may comment.

§224.104 Must a **tribeTribe enact tribal laws, regulations, or procedures permitting a person or entity to allege that a **tribeTribe** is not complying with a TERA?**

No. A **tribeTribe** is not required, but may elect, to enact tribal laws, regulations, or procedures permitting a person or entity that may be an interested party to allege that a **tribeTribe** is not complying with its TERA.

§224.105 How may a person or entity obtain copies of tribal laws, regulations, or procedures that would permit an allegation of noncompliance with a TERA?

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(a) A person or entity that may be an interested party may obtain copies of tribal laws, regulations, or procedures that establish tribal remedies that permit a person or entity to allege that the tribeTribe is not complying with its TERA by making a request to the tribeTribe in accordance with the TERA and §224.63(g).

(b) Upon obtaining copies of tribal laws, regulations, or procedures under subsection (a), a person or entity that may be an interested party may file a petition with the tribeTribe under those tribal laws, regulations, or procedures.

(c) If the person or entity that may be an interested party files a petition alleging noncompliance with a TERA, the person or entity becomes a petitioner, and the tribeTribe must respond according to §224.106.

§224.106 If a tribeTribe has enacted tribal laws, regulations, or procedures for challenging tribal action, how must the tribeTribe respond to a petition?

If a tribeTribe has enacted tribal laws, regulations, or procedures under which a petitioner may file a petition alleging noncompliance with a TERA, the tribeTribe must:

(a) Within a reasonable time issue a final written decision under the tribal laws, regulations, or procedures that addresses the claim. The decision may include a determination of whether the petitioner is an interested party;

(b) Provide a copy of its final written decision to the petitioner; and

(c) If the tribeTribe fails, within a reasonable period, to issue a written decision to a petition that a petitioner brings under applicable tribal laws, regulations, or procedures the petitioner may file a petition with the Secretary.

§224.107 What must a petitioner do before filing a petition with the Secretary?

Before a petitioner may file a petition with the Secretary under this subpart, the petitioner must have exhausted all tribal remedies by participating in any tribal process under §224.106, and available under the laws, regulations, or procedures of the Tribe, including any tribal appeal process.

Commented [IA32]: See 25 U.S.C. 3504(e)(7)(B)

§224.108 May tribesTribes offer a resolution of a petitioner's claim?

Yes. In responding to a petition filed under tribal laws, regulations or procedures, a tribeTribe may, with the petitioner's written consent, resolve the petitioner's claims.

§224.109 What must a petitioner claim or request in a petition filed with the Secretary?

In a petition filed with the Secretary, a petitioner must:

(a) Claim that the tribeTribe, through its action or inaction has failed to comply with terms or provisions of a TERA, and, as a result, the petitioner's interest has sustained or will sustain an adverse environmental impact.

(b) Request that the Secretary review the claims raised in the petition; and

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(c) Request that the Secretary take whatever action is necessary to bring a tribeTribe into compliance with the TERA.

§224.110 What must a petition to the Secretary contain?

A petition must contain:

(a) The petitioner's name and contact information;

(b) Specific facts demonstrating that the petitioner is an interested party under §224.101, including identification of the affected interest;

(c) Specific facts demonstrating that the petitioner exhausted tribal remedies, if tribal laws, regulations, or procedures permitted the petitioner to allege tribal noncompliance with a TERA;

(d) A description of facts supporting the petitioner's allegation of the tribe'sTribe's noncompliance with a TERA;

(e) A description of the adverse environmental impact that the petitioner's interest has sustained or will sustain because of the tribe'sTribe's alleged noncompliance with the TERA;

(f) A copy of any written decision the tribeTribe issued responding to the petitioner's claims;

(g) If applicable, a statement that the tribeTribe has issued no written decision within a reasonable time related to a claim a petitioner has filed with the tribeTribe under applicable tribal laws, regulations, or procedures;

(h) If applicable, a statement and supporting documentation that the tribeTribe did not respond to the petitioner's request under §224.105(a) for copies of any tribal laws, regulations, or procedures allowing the petitioner to allege that the tribeTribe is not complying with a TERA; and

(i) Any other information relevant to the petition.

§224.111 When may a petitioner file a petition with the Secretary?

(a) A petitioner may file a petition with the Secretary:

(1) By delivering the petition to the DirectorSecretary within 30 days of receiving the tribe'sTribe's final written decision addressing the allegation of noncompliance under applicable tribal laws, regulations, or procedures;

(2) Within a reasonable period following the tribe'sTribe's constructive denial of the petition under §224.106(c), and the Secretary will determine if the petition is timely in light of the applicable facts and circumstances; or

(3) The tribeTribe did not respond to the petitioner's request for copies of any tribal laws, regulations, or procedures under §224.105(a).

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(b) A petitioner may file a petition directly with the Secretary if the ~~tribe~~Tribe has no tribal laws, regulations or procedures that provide the petitioner an opportunity to allege tribal noncompliance with a TERA.

§224.112 What must the ~~Director~~Secretary do upon receipt of a petition?

Within 20 days after receiving a petition, the ~~Director~~Secretary must:

- (a) Notify the ~~tribe~~Tribe in writing that the ~~Director~~Secretary has received a petition;
- (b) Provide a copy of the complete petition to the ~~tribe~~Tribe;
- (c) Initiate a petition consultation with the ~~tribe~~Tribe that will address the petitioner's allegation of a ~~tribe's~~Tribe's noncompliance with a TERA and alternatives to resolve any noncompliance; and
- (d) Notify the ~~tribe~~Tribe in writing by certified mail, return receipt requested, when the petition consultation is complete.

§224.113 What must the ~~tribe~~Tribe do after it completes petition consultation with the ~~Director~~Secretary?

- (a) Within 45 days of receiving the ~~Director's~~Secretary's notice that the petition consultation is complete, the ~~tribe~~Tribe must respond to any claim made in the petition by submitting a written response to the ~~Director~~Secretary; and
- (b) Within a reasonable time after 45 days following the completion of the petition consultation process, the ~~tribe~~Tribe must cure or otherwise resolve each claim of noncompliance made in the petition.

§224.114 How may the ~~tribe~~Tribe address a petition in its written response?

In addition to responding to the petitioner's claims, the ~~tribe~~Tribe may also:

- (a) Include its interpretation of relevant provisions of the TERA and other legal requirements;
- (b) Discuss whether the petitioner is an interested party;
- (c) State whether the petitioner has exhausted tribal remedies, and if so, how; and
- (d) Propose to cure or otherwise resolve the claims within the time frame in §224.113(b).

§224.115 When in the petition process must the ~~Director~~Secretary investigate a ~~tribe's~~Tribe's compliance with a TERA?

The ~~Director~~Secretary must investigate the petitioner's claims of the ~~tribe's~~Tribe's noncompliance with a TERA only after making a threshold determination that ~~the petitioner is an interested party and~~:

Commented [IA33]: See 25 U.S.C. 3504(e)(7)(D)(i)

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(a) The tribeTribe has denied or failed to respond to each claim made in the petition within the period under §224.113(a); or

(b) The tribeTribe has failed, refused, or was unable to cure or otherwise resolve each claim made in the petition within a reasonable period, as determined by the DirectorSecretary, after the expiration of the period in §224.113(b).

§224.116 What is the time period in which the DirectorSecretary must investigate a tribe'sTribe's compliance with a TERA?

(a) If the DirectorSecretary determines under §224.115 that one of the threshold determinations in §224.114 has been met, then within 120 days of the Director'sSecretary's receipt of a petition, the DirectorSecretary must determine ~~whether or not a tribe is in compliance with the TERA;~~

(1) Whether the petitioner is an interested party; and

(2) If the petitioner is an interested party, whether a Tribe is not in compliance with the TERA for the reason alleged in the petition;

(b) The DirectorSecretary may extend the time for determining a tribe's compliance with making the determinations in paragraph (a) TERA) of this section for up to 120 days in any case in which the DirectorSecretary determines that additional time is necessary to evaluate the claims in the petition and the tribe'sTribe's written response, if any. If the DirectorSecretary decides to extend the time, the DirectorSecretary must notify the petitioner and the tribeTribe in writing of the extension.

Commented [IA34]: See 25 U.S.C. 2504(e)(7)(D)(ii)

§224.117 Must the DirectorSecretary make a determination of the tribe'sTribe's compliance with a TERA?

(a) Yes. Upon a finding that one of the threshold determinations in §224.115 has been met, the DirectorSecretary must make a determination of the tribe'sTribe's compliance with a TERA within the time period in §224.116.

(b) If the DirectorSecretary determines that the tribeTribe is in compliance with the TERA, the DirectorSecretary will notify the tribeTribe and the petitioner in writing;

(c) If the DirectorSecretary determines that the tribeTribe is not in compliance with the TERA, the DirectorSecretary will notify the tribeTribe and the petitioner in writing and, in addition, must provide the tribeTribe:

(1) A written determination that describes the manner in which the TERA has been violated together with a written notice of the violations;

(2) Notice of a reasonable opportunity to comply with the TERA; and

(3) Notice of the tribe'sTribe's opportunity for a hearing.

§224.118 How must the tribeTribe respond to the Director'sSecretary's notice of the opportunity for a hearing?

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The ~~tribe~~Tribe must respond in writing to the ~~Director's~~Secretary's notice of the opportunity for a hearing within 20 days of receipt of the notice by requesting a hearing or declining to request a hearing. If the ~~tribe~~Tribe does not respond within the time period, the ~~Director~~Secretary will proceed with making a decision without further input from the ~~tribe~~Tribe.

§224.119 What must the ~~Director~~Secretary do when making a decision on a petition?

(a) The ~~Director~~Secretary must issue a written decision to the ~~tribe~~Tribe and the petitioner stating the basis for the decision about the ~~tribe's~~Tribe's compliance or noncompliance with the TERA within 30 days following:

- (1) A hearing, if the ~~tribe~~Tribe requested a hearing;
- (2) The ~~tribe's~~Tribe's declining the opportunity for a hearing; or
- (3) The ~~tribe's~~Tribe's failure to respond to the opportunity for a hearing within 20 days of the ~~Director's~~Secretary's written notice of the opportunity for a hearing.

(b) If the ~~Director~~Secretary decides that the ~~tribe~~Tribe is not in compliance with the TERA, the ~~Director~~Secretary must:

- (1) Include findings of fact and conclusions of law ~~with respect to each claim made in the petition in~~ the written decision to the ~~tribe~~Tribe; and
- (2) Take action to ensure compliance with the TERA.

Commented [IA35]: See 25 U.S.C. 3504(e)(7)(E)

~~(c) The Secretary will dismiss any petition if the interested party who filed the petition has agreed with the Tribe to a resolution of the claims presented in that petition~~

Commented [IA36]: See 25 U.S.C. 3504(e)(7)(G)

§224.120 What action may the ~~Director~~Secretary take to ensure compliance with a TERA?

If the ~~Director~~Secretary decides that a ~~tribe~~Tribe is not in compliance with a TERA, the ~~Director~~Secretary may take ~~only such action to ensure compliance with the TERA as the Secretary determines to be necessary to address the claims of noncompliance made in the petition~~ including:

Commented [IA37]: See 25 U.S.C. 3504(e)(7)(G)

- (a) Temporarily suspending any activity under a lease, business agreement, or right-of-way until the ~~tribe~~Tribe complies with the TERA; or
- (b) Rescinding approval of part of the TERA, or
- (c) Rescinding all of the TERA and recommending that the Secretary reassume activities under subpart G of this part.

§224.121 How may a ~~tribe~~Tribe or a petitioner appeal the ~~Director's~~Secretary's decision about the ~~tribe's~~Tribe's compliance with the TERA?

A ~~tribe~~Tribe or a petitioner, or both, may appeal the ~~Director's~~Secretary's decision on the petition under §224.119 to the Principal Deputy Assistant Secretary—Indian Affairs under subpart I of this part.

Subpart F—Periodic Reviews

§224.130 What is the purpose of this subpart?

This subpart describes how the Secretary and a tribeTribe will develop and perform the periodic review and evaluation required by the Act and by a TERA.

§224.131 What is a periodic review and evaluation?

A periodic review and evaluation is an examination the DirectorSecretary performs to monitor a tribe'sTribe's performance of activities associated with the development of energy resources and to review compliance with a TERA. During the TERA consultation, a tribeTribe and the DirectorSecretary will develop a periodic review and evaluation process that addresses the tribe'sTribe's specific circumstances and the terms and conditions of the tribe'sTribe's TERA. The tribeTribe will include the agreed-upon periodic review and evaluation process in its final proposed TERA.

§224.132 How does the DirectorSecretary conduct a periodic review and evaluation?

(a) The DirectorSecretary will conduct a periodic review and evaluation under the TERA, in consultation with the tribeTribe, and in cooperation with other Departmental bureaus and offices whose activities the tribeTribe assumed or that perform activities for the tribeTribe.

(b) The DirectorSecretary will communicate with the Designated Tribal Official throughout the process established by this section.

(c) During the periodic review and evaluation, the DirectorSecretary will:

(1) Review relevant records and documents, including transactions and reports the tribeTribe prepares under the TERA;

(2) Conduct on-site inspections as appropriate; and

(3) Review compliance with statutes and regulations applicable to activities undertaken under the TERA.

(d) Review the effect on physical trust assets resulting from activities undertaken under a TERA.

(e) Upon written request, the tribeTribe should provide the DirectorSecretary with records and documents relevant to the provisions of the TERA. In addition, the tribeTribe should identify any information in these submitted records and documents that is confidential, commercial and financial. Specific exceptions to disclosure under the Freedom of Information Act, or other statutory protections against disclosure, may apply and preclude disclosure of this information to third parties as provided for in §224.55.

§224.133 What must the DirectorSecretary do after a periodic review and evaluation?

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After a periodic review and evaluation, the ~~Director~~Secretary must prepare a written report of the results and send the report to the Designated Tribal Official.

§224.134 How often must the ~~Director~~Secretary conduct a periodic review and evaluation?

The ~~Director~~Secretary must conduct a periodic review and evaluation annually during the first 3 years of a TERA. After the third annual review and evaluation, the Secretary and the ~~tribe~~Tribe may mutually agree to amend the TERA to conduct periodic reviews and evaluations once every 2 years.

§224.135 Under what circumstances may the ~~Director~~Secretary conduct additional reviews and evaluations?

The ~~Director~~Secretary may conduct additional reviews and evaluations:

- (a) At a ~~tribe's~~Tribe's request;
- (b) As part of an investigation undertaken when the ~~tribe~~Tribe notifies the ~~Director~~Secretary of a violation or breach;
- (c) As part of an investigation undertaken because of a petition submitted under subpart E of this part;
- (d) As follow-up to a determination that harm or the potential for harm to a physical trust asset, previously identified in a periodic review and evaluation, exists; or
- (e) As the Secretary determines appropriate to carry out the Secretary's trust responsibilities.

NONCOMPLIANCE

§224.136 How will the ~~Director's~~Secretary's report address a ~~tribe's~~Tribe's noncompliance?

This section applies if the ~~Director~~Secretary conducts a review and evaluation or investigation of a notice of violation of Federal law or the terms of a TERA.

(a) If the ~~Director~~Secretary determines that the ~~tribe~~Tribe has not complied with Federal law or the terms of a TERA, the ~~Director's~~Secretary's written report must include a determination of whether the ~~tribe's~~Tribe's noncompliance has resulted in harm or the potential for harm to a physical trust asset.

(b) If the ~~Director~~Secretary determines that the ~~tribe's~~Tribe's noncompliance may cause harm or has caused harm to a physical trust asset, the ~~Director~~Secretary must also determine whether the noncompliance cause imminent jeopardy to a physical trust asset.

§224.137 What must the ~~Director~~Secretary do if a ~~tribe's~~Tribe's noncompliance has resulted in harm or the potential for harm to a physical trust asset?

If, because of the ~~tribe's~~Tribe's noncompliance with Federal law or the terms of a TERA, the ~~Director~~Secretary determines that there is harm or the potential for harm to a physical trust asset

that does not rise to the level of imminent jeopardy to a physical trust asset, the DirectorSecretary must:

- (a) Document the issue in the written report of the review and evaluation;
- (b) Report the issue in writing to the tribal governing body;
- (c) Report the issue in writing to the Assistant Secretary—Indian Affairs; and

(d) Determine what action, if any, the Secretary must take to protect the physical trust asset, which could include temporary suspension of the activity that resulted in non-compliance with the TERA or other applicable Federal laws or rescinding approval of all or part of the TERA.

§224.138 What must the DirectorSecretary do if a tribe'sTribe's noncompliance has caused imminent jeopardy to a physical trust asset?

If the DirectorSecretary finds that a tribe'sTribe's noncompliance with a Federal law or the terms of a TERA has caused imminent jeopardy to a physical trust asset, the DirectorSecretary must:

(a) Immediately notify the tribeTribe by a telephone call to the Designated Tribal Official followed by a written notice by facsimile to the Designated Tribal Official and the tribal governing body of the imminent jeopardy to a physical trust asset. The notice must contain:

- (1) A description of the tribe'sTribe's noncompliance with Federal law or the terms of the TERA;
- (2) A description of the physical trust asset and the nature of the imminent jeopardy to a physical trust asset resulting from the tribe'sTribe's noncompliance; and
- (3) An order to the tribeTribe to cease specific conduct or take specific action deemed necessary by the DirectorSecretary to correct any condition that caused the imminent jeopardy to a physical trust asset.

(b) Issue a finding that the tribe'sTribe's noncompliance with the TERA or a Federal law has caused imminent jeopardy to a physical trust asset.

§224.139 What must a tribeTribe do after receiving a notice of imminent jeopardy to a physical trust asset?

(a) Upon receipt of a notice of imminent jeopardy to a physical trust asset, the tribeTribe must cease specific conduct outlined in the notice or take specific action the DirectorSecretary orders that is necessary to correct any condition causing the imminent jeopardy; and

(b) Within 5 days of receiving a notice of imminent jeopardy to a physical trust asset, the tribeTribe must submit a written response to the DirectorSecretary that:

- (1) Responds to the Director'sSecretary's finding that the tribeTribe has failed to comply with a Federal law or the terms of the TERA;

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(2) Responds to the ~~Director's~~Secretary's finding of imminent jeopardy to a physical trust asset;

(3) Describes the status of the ~~tribe's~~Tribe's cessation of specific conduct or specific action the ~~tribe~~Tribe has taken to correct any condition causing imminent jeopardy to a physical trust asset; and

(4) Describes what further actions, if any, the ~~tribe~~Tribe proposes to take to correct any condition, cited in the notice, causing imminent jeopardy to a physical trust asset.

§224.140 What must the Secretary do if the ~~tribe~~Tribe fails to respond to or does not comply with the ~~Director's~~Secretary's order?

If the ~~tribe~~Tribe does not respond to or does not comply with the ~~Director's~~Secretary's order under §224.138(a)(3), the Secretary may take any actions the Secretary deems appropriate to protect the physical trust asset, which may include the immediate reassumption of all activities the ~~tribe~~Tribe assumed under the TERA. The procedures in subpart G of this part do not apply to reassumption under this section.

§224.141 What must the Secretary do if the ~~tribe~~Tribe responds to the ~~Director's~~Secretary's order?

(a) If the ~~tribe~~Tribe responds in a timely manner to the ~~Director's~~Secretary's order under §224.138, the Secretary must:

(1) Evaluate the ~~tribe's~~Tribe's response;

(2) Determine whether or not the ~~tribe~~Tribe has complied with the TERA and the Federal law cited in the notice; and

(3) If the Secretary determines, after reviewing the ~~tribe's~~Tribe's response, that the ~~tribe~~Tribe has not complied with the TERA or with a Federal law, the Secretary will determine whether the noncompliance caused imminent jeopardy to a physical trust asset.

(b) If the Secretary determines that the ~~tribe's~~Tribe's noncompliance has caused imminent jeopardy to a physical trust asset, the Secretary may:

(1) Order the ~~tribe~~Tribe to take any action the Secretary deems necessary to comply with the TERA or Federal law and to protect the physical trust asset; or

(2) Take any action the Secretary deems necessary to protect the physical trust asset, including reassumption under subpart G of this part.

(c) If the Secretary determines, after reviewing the ~~tribe's~~Tribe's response, that the ~~tribe~~Tribe has complied with the TERA and with Federal law, the Secretary will withdraw the ~~Director's~~Secretary's order.

(d) The Secretary must base a finding of imminent jeopardy to a physical trust asset on the ~~tribe's~~Tribe's non-compliance with a TERA or violation of a Federal law.

Subpart G—Reassumption

§224.150 What is the purpose of this subpart?

This subpart explains when and how the Secretary may reassume all activities included within a TERA without the consent of the [tribeTribe](#).

§224.151 When may the Secretary reassume activities?

Upon issuing a written finding of imminent jeopardy to a physical trust asset, the Secretary may reassume activities under a TERA in accordance with this subpart. The Secretary may also reassume activities approved under a TERA in response to a petition from an interested party under subpart E of this part. Only the Secretary or the Assistant Secretary—Indian Affairs may reassume activities under a TERA.

§224.152 Must the Secretary always reassume the activities upon a finding of imminent jeopardy to a physical trust asset?

(a) The Secretary may take whatever actions the Secretary deems necessary to protect the physical trust asset. At the discretion of the Secretary, these actions may include reassumption of the activities a [tribeTribe](#) assumed under a TERA.

(b) If the [tribeTribe](#) does not respond to or does not comply with the [Director'sSecretary's](#) order under §224.138(a)(3), the Secretary must immediately reassume all activities the [tribeTribe](#) assumed under the TERA. The notice procedures in this subpart will not apply to such immediate reassumption.

NOTICE OF INTENT TO REASSUME

§224.153 Must the Secretary notify the [tribeTribe](#) of an intent to reassume the authority granted?

If the Secretary determines under §224.152 that reassumption is necessary to protect the physical trust asset, the Secretary will issue a written notice to the tribal governing body of the Secretary's intent to reassume.

§224.154 What must a notice of intent to reassume include?

A notice of intent to reassume must include:

(a) A statement of the reasons for the intended reassumption, including, as applicable, a copy of the Secretary's written finding of imminent jeopardy to a physical trust asset;

(b) A description of specific measures that the [tribeTribe](#) must take to correct the violation and any condition that caused the imminent jeopardy to a physical trust asset;

(c) The time period within which the [tribeTribe](#) must take the measures to correct the violation of the TERA and any condition that caused the imminent jeopardy to a physical trust asset; and

(d) The effective date of the reassumption, if the ~~tribe~~Tribe does not meet the requirements in paragraphs (b) and (c) of this section.

§224.155 When must a ~~tribe~~Tribe respond to a notice of intent to reassume?

The ~~tribe~~Tribe must respond to the ~~Director~~Secretary in writing by mail, facsimile, or overnight express within 5 days of receiving the Secretary's notice of intent to reassume. If sent by mail, the ~~tribe~~Tribe must send the response by certified mail, with return receipt requested. The ~~Director~~Secretary will consider the date of the written response as the date it is postmarked.

§224.156 What information must the ~~tribe's~~Tribe's response to the notice of intent to reassume include?

The ~~tribe's~~Tribe's response to the notice of intent to reassume must state that:

- (a) The ~~tribe~~Tribe has complied with the Secretary's requirements in the notice of intent to reassume;
- (b) The ~~tribe~~Tribe is taking specified measures to comply with the Secretary's requirements, and when the ~~tribe~~Tribe will complete such measures, if the ~~tribe~~Tribe needs more than 5 days to do so; or
- (c) The ~~tribe~~Tribe will not comply with the Secretary's requirements.

§224.157 How must the Secretary proceed after receiving the ~~tribe's~~Tribe's response?

(a) If the Secretary determines that the ~~tribe's~~Tribe's proposed or completed actions to comply with the Secretary's requirements are adequate to correct the violation of the TERA or Federal law and any condition that caused the imminent jeopardy, the Secretary will:

- (1) Notify the ~~tribe~~Tribe of the adequacy of its response in writing; and
- (2) Terminate the reassumption proceedings in writing.

(b) If the Secretary determines that the ~~tribe's~~Tribe's proposed or completed actions to comply with the Secretary's requirements are not adequate, then the Secretary will issue a written notice of reassumption.

§224.158 What must the Secretary include in a written notice of reassumption?

The written notice of reassumption must include:

- (a) A description of the authorities the Secretary is reassuming;
- (b) The reasons for the determination under §224.157(b);
- (c) The effective date of the reassumption; and
- (d) A statement that the decision is a final agency action and is subject to judicial review.

§224.159 How will reassumption affect valid existing rights or lawful actions taken before the effective date of the reassumption?

Reassumption will not affect valid existing rights that vested before the effective date of the reassumption or lawful actions the [tribeTribe](#) and the Secretary took before the effective date of the reassumption.

§224.160 How will reassumption affect a TERA?

Reassumption of a TERA applies to all of the authority and activities assumed under a TERA. Upon reassumption, the [tribeTribe](#) must also return all Departmental resources transferred under the TERA and any relevant records and documents to the Secretary.

§224.161 How may reassumption affect the [tribe'sTribe's](#) ability to enter into a new TERA or to modify another TERA to administer additional activities or to assume administration of activities that the Secretary previously reassumed?

Following reassumption, a [tribeTribe](#) may submit a request to enter into a new TERA or modify another TERA to administer additional activities, or assume administration of activities that the Secretary previously reassumed. In reviewing a subsequent tribal request, however, the Secretary may consider the fact that activities were reassumed and any change in circumstances supporting the [tribe'sTribe's](#) request.

Subpart H—Rescission

§224.170 What is the purpose of this subpart?

This subpart explains the process and requirements under which a [tribeTribe](#) may rescind a TERA and therefore return to the Secretary all authority and activities assumed under that TERA.

§224.171 Who may rescind a TERA?

Only a [tribeTribe](#) may rescind a TERA.

§224.172 May a [tribeTribe](#) rescind only some of the activities subject to a TERA while retaining a portion of those activities?

No. A [tribeTribe](#) may only rescind a TERA in its entirety, including the authority to approve leases, business agreements and grant rights-of-way for specific energy resource development, not some of the authority or activities subject to the TERA.

§224.173 How does a [tribeTribe](#) rescind a TERA?

To rescind a TERA, a [tribeTribe](#) must submit to the Secretary a written tribal resolution or other official action of the [tribe'sTribe's](#) governing body approving the voluntary rescission of the TERA. Upon rescission, the [tribeTribe](#) must also return all Departmental resources transferred under the TERA and any relevant records and documents.

§224.174 When does a voluntary rescission become effective?

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A voluntary rescission becomes effective on the date specified by the Secretary, provided that the date is no more than 90 days after the Secretary receives the tribal resolution or other official action the ~~tribe~~Tribe submits under §224.173.

§224.175 How will rescission affect valid existing rights or lawful actions taken before the rescission?

Rescission does not affect valid existing rights that vested before the effective date of the rescission or lawful actions the ~~tribe~~Tribe and the Secretary took before the effective date of the rescission.

Subpart I—General Appeal Procedures

§224.180 What is the purpose of this subpart?

The purpose of this subpart is to explain who may appeal Departmental decisions or inaction under this part and the initial administrative appeal processes, and general administrative appeal processes, including how 25 CFR part 2 and 43 CFR part 4 apply, and the effective dates for appeal decisions.

§224.181 Who may appeal Departmental decisions or inaction under this part?

The following persons or entities may appeal Department decisions or inaction under this part:

(a) A ~~tribe~~Tribe that is adversely affected by a decision of or inaction by an official of the Department of the Interior under this part;

(b) A third party who has entered into a lease, right-of-way, or business agreement with a ~~tribe~~Tribe under an approved TERA and is adversely affected by a decision of, or inaction by a Department official under this part; or

(c) An interested party who is adversely affected by a decision of or inaction by the ~~Director~~Secretary under subpart E of this part, provided that the interested party may appeal only those issues raised in its prior participation under subpart E of this part and may not appeal any other decision rendered or inaction under this part.

§224.182 What is the Initial Appeal Process?

The initial appeal process is as follows:

(a) Within 30 days of receiving an adverse decision by the Director or similar level official within 30 days after the time period within which the ~~Director~~Secretary is required to act under subpart E, a party that may appeal under this subpart may file an appeal to the Principal Deputy Assistant Secretary-Indian Affairs;

(b) Within 60 days of receiving an appeal, the Principal Deputy Assistant Secretary—Indian Affairs will review the record and issue a written decision on the appeal; and

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(c) Within 7 days of a decision by the Principal Deputy Assistant Secretary—Indian Affairs, the Secretary will provide a written copy of the decision to the [tribeTribe](#) and other participating parties.

§224.183 What other administrative appeals processes also apply?

The administrative appeal processes in 25 CFR part 2 and 43 CFR part 4, subject to the limitations in §224.184, apply to:

(a) An interested party's appeal from an adverse decision or inaction by the Principal Deputy Assistant Secretary—Indian Affairs under §224.182; and

(b) An appeal by a [tribeTribe](#) or a person or entity that has entered into a lease, business agreement, or right-of-way from an adverse decision by or the inaction of a Departmental official taken under this part.

§224.184 How do other administrative appeals processes apply?

The administrative appeals process in 25 CFR part 2 and 43 CFR part 4 are modified, only as they apply to appeals under this part, as set forth in this section.

(a) The definition of interested party in 25 CFR part 2 and as incorporated in 43 CFR part 4 does not apply to this part.

(b) The right of persons or entities other than an appealing party to participate in appeals under 25 CFR part 2 and 43 CFR part 4 does not apply to this part, except as permitted under paragraph (c) of this section.

(c) The only persons or entities, other than appealing parties, under §224.181(a) to (c), who may participate in an appeal under this part are:

(1) The Secretary, if an appeal is taken from a decision of the Director or Principal Deputy Assistant Secretary—Indian Affairs;

(2) A [tribeTribe](#), which may intervene, appear as an amicus curiae, or otherwise appear in any appeal taken under this part by a person or entity who has entered into a lease, business agreement, or right-of-way with the [tribeTribe](#) or by an interested party under this part; or

(3) A person or entity that has entered into a lease, business agreement, or right-of-way with a [tribeTribe](#), may intervene, appear as an amicus curiae, or otherwise appear in any appeal taken under this part by the [tribeTribe](#) or by an interested party under this part.

(d) The Secretary does not have an obligation to provide notice and service upon non-appealing persons as provided in 25 CFR part 2 and 43 CFR part 4. The only exception to this principle is that notice and service of all documents must be served consistent with the requirements of 25 CFR part 2 and 43 CFR part 4 on those persons or entities identified in paragraph (c) of this section.

§224.185 When are decisions under this part effective?

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Decisions under subpart I are effective as follows:

(a) Decisions of the Secretary disapproving a final proposed TERA or a revised final proposed TERA under subpart C of this part, a finding of imminent jeopardy to a physical trust asset under subpart F of this part, and decisions by the Secretary or the Assistant Secretary—Indian Affairs to reassume activities under subpart G of this part are final for the Department. These decisions and findings are effective upon issuance.

(b) Decisions under this part, other than those in paragraph (a) of this section, that adversely affect a tribeTribe and for which an appeal is pending are not final for the Department and are not effective while the appeal is pending, unless:

(1) The tribeTribe had an opportunity for a hearing before the decision was issued;

(2) The tribeTribe had a reasonable amount of time to comply with the TERA after the decision was issued; and

(3) The Interior Board of Indian Appeals (Board), the Secretary, or Assistant Secretary—Indian Affairs issued a written decision that, notwithstanding a reasonable period given the tribeTribe to comply with the TERA, the tribeTribe has failed to take the actions necessary to comply with the TERA.

(c) All other decisions rendered by the Board or the Assistant Secretary—Indian Affairs in an appeal from a Director's decision under subparts E, F, or G of this part are effective when issued.

Subpart J—Alternative to TERAs: Tribal Energy Development Organization (TEDO) Certification

Commented [IA38]: See 25 U.S.C. 3504(h)

§ 224.200 What is the purpose of this subpart?

The purpose of this part is to establish a process by which an entity may be certified as an Tribal energy development organization (TEDO) that may enter into a lease or business agreement with an Indian Tribe without Secretarial review under 25 U.S.C. 3504(a)(2) or right-of-way with an Indian Tribe without Secretarial review under 25 U.S.C. 3504(b)(2)(B) and without a TERA.

§224.201 What must an application for certification as a Tribal energy development organization (TEDO) include?

An application for certification as a TEDO must include documentation of the items listed in paragraphs (a) through (d) of this section.

(a) The Tribe has carried out a contract or compact under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.) for a period of not less than 3 consecutive years ending on the date on which the Tribe submits the application, and the contract or compact:

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(1) Has been carried out by the Tribe without material audit exceptions (or without any material audit exceptions that were not corrected within the 3-year period); and

(2) Has included programs or activities relating to the management of Tribal land; and

(b) The TEDO is organized under the Tribe's laws;

(c) The majority of the interest in the TEDO is owned and controlled by the Tribe (or the Tribe and one or more other Tribes) the Tribal land of which is being developed; and

(d) The TEDO's organizing document:

(1) Requires the Tribe with jurisdiction over the land to maintain, at all times, the controlling interest in the TEDO;

(2) Requires the Tribe (or the Tribe and one or more other Tribes the Tribal land of which is being developed) to own and control, at all times, a majority of the interest in the TEDO; and

(3) Includes a statement that the TEDO is subject to the jurisdiction, laws, and authority of the Tribe.

§ 224.202 How must a TEDO submit an application for certification?

A TEDO must submit an application and all supporting documents in written and electronic form to the Secretary at 1849 C Street, NW, Washington, DC 20240, and TERA@bia.gov.

§ 224.203 What must the Secretary do upon receipt of an application for certification as a Tribal energy development organization?

Within 90 days of receiving an application for certification as a TEDO, the Secretary must approve or disapprove the application.

§ 224.204 What criteria will the Secretary use to determine whether to approve an application for certification of a TEDO?

The Secretary will approve the application for certification upon determining that the application contains the documentation required in § 224.201.

§ 224.205 What must the Secretary do upon approval of an application for certification?

If the Secretary approves an application for certification, the Secretary must do the following within 10 days of making the determination under § 224.203:

(a) Issue a certification stating that:

(1) The TEDO is organized under the laws of the Tribe and subject to the Tribe's jurisdiction, laws, and authority;

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(2) The majority of the interest in the TEDO is owned and controlled by the Tribe (or the Tribe and one or more other Tribes) and the Tribal land of which is being developed;

(3) The TEDO's organizing document requires the Tribe with jurisdiction over the land to maintain, at all times, the controlling interest in the TEDO;

(4) The TEDO's organizing document requires the Tribe (or the Tribe and one or more other Tribes the Tribal land of which is being developed) to own and control, at all times, a majority of the interest in the TEDO;

(5) The certification is issued under 25 U.S.C. 3504(h); and

(6) Nothing in the certification waives the sovereign immunity of the Tribe.

(b) Deliver a copy of the Certification to the applicant Tribe (or Tribes, as applicable); and

(c) Publish the certification in the Federal Register.

§224.206 What is the effect of a TEDO receiving certification?

Upon receiving certification under this subpart, a TEDO may enter into a lease, business agreement, or right-of-way with an Indian Tribe without Secretarial approval as long as:

(a) The scope of the lease or business agreement does not exceed that of a TERA as established in §224.85 of this part.

(b) The scope of a right-of-way does not exceed that of a TERA as established in §224.84 of this part.

(c) The term of a lease, business agreement, or right-of-way does not exceed that of a TERA as established in §224.86 of this part.