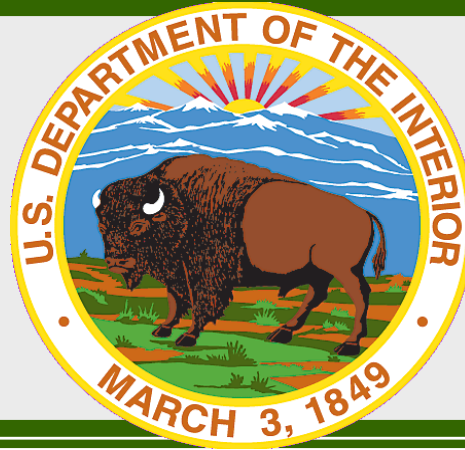


Department of the Interior
Office of the Assistant Secretary – Indian Affairs



Tribal Energy Resource Agreement (TERA)
Proposed Rule - 25 CFR 224

What is a TERA?

- Tribal Energy Resource Agreement (TERA)
 - Agreement between a Tribe and Interior (DOI);
 - Once TERA is approved: Tribe may enter into energy-related leases, business agreements, and rights-of-way on Tribal lands **without the Secretary's review and approval** of each individual lease, business agreement, or right-of-way.
- TERAs
 - Promote Tribal oversight and management of energy resource development on Tribal lands.
 - Provide another avenue under which Tribes may develop their mineral resources.
 - Support the national energy policy of increasing utilization of domestic energy resources.

Authority for TERAs & Need for Rule Updates

- 2005 – Congress authorized TERAs in the Energy Policy Act
 - Statute is at 25 U.S.C. 3504(e)
- 2006 – BIA proposed regulations (71 FR 48625)
- 2008 – BIA finalized regulations (73 FR 12807)
 - TERA regulations are at 25 CFR 224
- 2018 – Congress updated TERA statute
- Now – proposing changes to regulations (at 25 CFR 224) to address updates to the statute

TERA Statute Changes

- Congress amended the TERA statute to:
 - Update the procedures and conditions for the Secretary's approval of TERAs;
 - Specifically include leases and business agreements that pool a tribe's energy resources with other energy resources;
 - Establish alternative to TERAs in certified Tribal Energy Development Organizations (TEDOs):
 - Energy-related leases, business agreements, and rights-of-way between a Tribe and certified TEDO do not require the Secretary's approval.

Proposed Rule

- Goals of proposed regulatory updates to 25 CFR 224
 - Address the requirements of the updates to the TERA statute (i.e., the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017).
 - Wherever possible, interpret the statutory changes in a manner that will impose the least burden on Tribes.
 - Remove regulatory obstacles to Tribes entering into TERAs and obtaining TEDO certification.

Proposed Rule - Overview

- Edits current 25 CFR 224 – Same subparts:
 - Subpart A – General Provisions
 - Subpart B – Procedures for Obtaining TERAs
 - Subpart C – Approval of TERAs
 - Subpart D – Implementation of TERAs
 - Subpart E – Interested Party Petitions
 - Subpart F – Periodic Reviews
 - Subpart G – Reassumption
 - Subpart H – Rescission
 - Subpart I – General Appeal Procedures
- NEW Subpart J – Alternative to TERAs: Certification of Tribal Energy Development Organizations

Proposed Rule – Main Changes

1. Delete “Tribal capacity” information requirements
2. Require DOI to notify Tribal applicant of financial assistance
3. Establish more timelines for DOI action
4. Limit grounds for disapproval
5. Allow amendments to expand the scope of TERAs
6. Establish that TERAs remain in effect
7. Limit who is an “interested party” and when they can petition
8. Set out how DOI will provide Tribes with unexpended amounts
9. Establish process for TEDO certification

1. Delete Tribal Capacity Information Requirements

- Delete “Tribal capacity” information required in applications for TERAs
 - Proposed rule would:

§ 224.53

- Delete several TERA application items for new TERAs - e.g., descriptions of Tribe’s expertise, capabilities, experience;

§ 224.71 -
§ 224.73

- Delete DOI determinations of Tribal capacity for new TERAs;

§ 224.64 –
§ 224.65

- Delete DOI determinations for capacity to expand TERAs;

§ 224.53

- Delete several mandatory TERA provisions requiring mechanisms for obtaining qualifications and securing technical information.

2. Notify Tribal Applicant of Financial Assistance

- Within 30 days of receiving a TERA application, DOI must:
 - In addition to notifying the Tribe whether application is complete:
- Identify and notify the Tribe of any financial assistance to be provided by the Secretary to assist in the implementation of TERA, including environmental review of individual projects.

§ 224.57

3. Establish Timelines for DOI Action

- Deemed approved

§ 224.56 &
§ 224.74

- TERA takes effect **271 days** after the Secretary receives the complete TERA application,

- Unless the Secretary disapproves it in that time.

§ 224.76

- If the Secretary disapproves a TERA application and the Tribe resubmits a revised final proposed TERA, the revised final proposed TERA takes effect **91 days** after the Secretary receives the revised final proposed TERA,

- Unless the Secretary disapproves it in that time.

4. Limit Grounds for Disapproval

- Limited grounds for disapproval of a TERA

§ 224.71

- DOI may disapprove a TERA **only** if:

- Tribe is not a “qualified Tribe”*;
- A provision of the TERA violates applicable Federal law, regulations, or treaty; or
- TERA does not include certain mandatory provisions in § 224.63.

§ 224.75

- If DOI disapproves, must specify what revisions would address the grounds for disapproval and accept re-submission.

4. Limit Grounds for Disapproval (cont'd)

- *Qualified Tribe definition

§ 224.30

- 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 (ISDEAA)
 - » 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.

5. Allow Amendments to Expand the Scope of TERAs

- Amendments to a TERA
 - Current rule: Must obtain a new TERA
 - Proposed rule: May amend an approved TERA to assume authority for approving leases, business agreements, or rights-of-way of **another energy resource** that is not already covered by the TERA.
 - Tribe must submit a copy of amendment and Tribal resolution/action;
 - Provide public notice & opportunity to comment;
 - DOI processes under §§ 224.67-224.78.

§ 224.64

6. Establish that TERAs Remain In Effect

§ 224.78

- Once approved, a TERA remains in effect unless/until:
 - The Secretary needs to reassume the authority to protect the physical trust asset; or
 - The Tribe voluntarily rescinds the TERA.

7. Limit “Interested Party” Petitions

- Limit who is an “interested party” and when they can petition

§ 224.107

- Require exhaustion of any remedies under Tribal law before DOI will accept a petition;

§ 224.101

- Limit who is considered an “interested party” to those able to demonstrate their interest with substantial evidence;

§ 224.116

- Require DOI to determine whether the petitioner is an interested party and whether the Tribe is not in compliance with the TERA as alleged in the petition;

§ 224.117

- Limit DOI to taking only such action as DOI determines is necessary to address the noncompliance claims; and

§ 224.119

- Require DOI to dismiss a petition if the Tribe and interested party who filed the petition reach a resolution of the petition’s claims.

8. Unexpended Amounts

- Set out how DOI will provide Tribes with unexpended amounts

§ 224.79

- Establish that:

- Tribe with a TERA may request the funding amounts that DOI would have spent carrying out activities the Tribe carries out in the TERA (unexpended amounts).
- DOI will provide the Tribe with:
 - » The unexpended amounts; and
 - » An accounting of those unexpended amounts.

9. TEDO Certification: Alternative to TERAs

- Tribal Energy Development Organizations (TEDOs)

Subpart J

- Establish a process for TEDO to obtain certification from DOI.
 - Once certified, TEDO may enter into leases, business agreements, and rights-of-way with Tribes on Tribal land without DOI approval or a TERA.

9. TEDO Certification: Alternative to TERAs (continued)

- Tribal Energy Development Organizations (TEDOs)

§ 224.201

- Application must include documentation that:

- Tribe has carried out an ISDEAA contract or compact for at least 3 consecutive years ending on the date of application for certification and the contract/compact was carried out:
 - » Without material audit exceptions or without any that were not corrected within the 3-year period; and
 - » Included programs or activities relating to the management of Tribal land.
- TEDO is organized under the Tribe's laws.
- The majority of the interest in the TEDO is owned and controlled by the Tribe or Tribes who own the Tribal land being developed.
- The TEDO's organizing document requires the Tribe to maintain controlling and majority interest in the TEDO and states that the TEDO is subject to Tribal law.

9. TEDO Certification: Alternative to TERAs (continued)

- Tribal Energy Development Organizations (TEDOs)

§ 224.202

• Approval Process for Certification

- DOI must approve or disapprove within 90 days of receiving application;
- If DOI approves, within 10 days of making the determination, DOI must issue the certification, deliver to the Tribe, and publish in the Federal Register.

Additional Information

Go to:

<https://www.bia.gov/as-ia/raca/regulations-and-other-documents-in-development>

And click on:

[Tribal Energy Resource Agreements \(TERAs\)](#)

Comments Due

- Comments on the proposed rule are due: **September 3, 2019**
- Email or regulations.gov is preferred method to submit comments:
 - E-mail: consultation@bia.gov
 - Regulations.gov: Go to www.regulations.gov and search for TERA and submit comments
- Next steps
 - Review comments, make changes as appropriate
 - Publish a final rule in the Federal Register
 - Final rule will not become effective for at least 30 days after publication
 - **Final rule due December 18, 2019**