

ELEVATED HEARTH ACT REVIEW FOR TRIBAL WIND & SOLAR LEASING REGULATIONS

In alignment with applicable Executive Orders, Secretary's Orders, and the July 15, 2025 Departmental Memorandum, Tribal leasing regulations authorizing Wind Energy Evaluation Leases (WEEL) and Wind and Solar Resource Leases (WSR) will be subject to an elevated review process under the HEARTH Act.

Review Process

1. Initial Review

- Bureau of Indian Affairs
- Office of the Solicitor

2. Elevated Review

- Office of the Executive Secretariat & Regulatory Affairs
- Office of the Deputy Secretary
- Office of the Secretary

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Evaluation Criteria

Based on Tribe-provided information:

- Reasons for pursuing WEEL or WSR authority
- Existence of Power Purchase Agreement
- If applicable, the applicant's technical capability to construct, operate, maintain, terminate project
- If applicable, the applicant's ability to design, construct, and secure funding for similar projects
- Availability and feasibility of alternate energy resources

Non-WEEL and Non-WSR leasing regulations are not subject to elevated review. Therefore, Tribes that intend to seek approval for other types of leasing authority, such as business or agricultural leases, may consider whether it would be advantageous to submit those regulations for review and approval separately from their WEEL and WSR regulations.

INTENDED BENEFITS TO TRIBES IMPLEMENTING LEASING REGULATIONS

- **Economic Development**

- A more streamlined leasing process.
- May significantly reduce the time to execute and approve leases compared to existing BIA processes.
- Timely execution of leases may encourage potential lessees to invest and develop in tribal communities.

- **Tribal Land Management**

- Tribes may enact regulations that are tailored to the unique needs of the tribe's community.

- **Access to 25 CFR Part 162**

- If a tribe with leasing regulations under the HEARTH Act believes a particular lease would be better supported under 25 CFR Part 162, the lease may be submitted for BIA review and Secretarial approval under the CFR.
- Leases approved under Part 162, and any amendments, assignments, etc., will remain subject to Part 162 until lease termination or expiration.

ADOPTION & IMPLEMENTATION OF TRIBAL LEASING REGULATIONS

- **Funding**

- Added costs, or the diminishment of existing funds, associated with undertaking full administration and management of leasing.

- **The Environmental Review Process**

- A Tribe's HA regulations must include an environmental review process developed by the Tribe, because that process becomes the governing mechanism for all leases issued under the Tribe's approved regulations.
- The Tribal environmental review process is not required to be as stringent as NEPA.
- BIA does not perform environmental reviews for leases a Tribe enters under its approved leasing regulations.

- **Lease Enforcement (Violations/Cancellation)**

- Tribes will manage all aspects of HEARTH Act leases executed pursuant to their approved tribal regulations.
- Upon reasonable notice from the Tribe, the Secretary *may*, upon his discretion, enforce the provisions of or cancel a lease.

- **Existing and Future Leases**

- Leases already in place (executed and approved under 25 CFR 162) are still subject to BIA's leasing regulations.
- Approval of Hearth Act Regulations does not preclude Tribes from electing Secretarial Approval process under 25 CFR 162.

THE BIA'S ROLE AFTER TRIBAL LEASING REGULATIONS ARE APPROVED

- Lease Review: There is no BIA review of HEARTH Act leases.
 - The HEARTH Act lease must be executed pursuant to the Tribe's authority under its approved HEARTH Act code.
 - A HEARTH Act Lease **must not** have any reference to Secretarial authority under 25 CFR 162 regulations.
 - A HEARTH Act Lease must be signed by all parties to the lease and include standard contract provisions such as duration and payment compensation.
 - There must be a legal description sufficient for LTRO to record.
- Approval:
 - The Secretary **does not** approve lease documents executed under a tribe's HEARTH Act leasing regulations.
 - HEARTH Act lease documents are approved by the Tribe pursuant to its approved HEARTH Act regulations
 - HEARTH Act Tribal authority and 162 Secretarial authority **are not interchangeable** .

THE BIA'S ROLE AFTER TRIBAL LEASING REGULATIONS ARE APPROVED

- TAAMS Encoding:

- Tribes are required to provide BIA with a **copy** of all HEARTH Act lease documents (lease, amendment, assignment, leasehold mortgage, renewals and subleases).
- Encoding HEARTH Act lease documents must be done by either the Tribe that has contracted or compacted realty functions, or BIA.
- BIA will perform the encoding functions if the Tribe does not have TAAMS access.
- In preparation for encoding, a cursory review should be done before entry into the TAAMS system.

- Recording & TSR's:

- The Tribe that has contracted or compacted realty functions is responsible for submitting HEARTH Act leases to LTRO for recordation purposes after they've been encoded into the TAAMS system.
- LTRO is responsible for recording all HEARTH Act lease documents.
- For HEARTH Act leasehold mortgage documents, the Lender and Tribe **MUST** work together to correct any recording or Title issues that arise from HEARTH Act leasehold mortgage documents .