

(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 response, that the Tribe has complied with the TERA and with Federal law, the Secretary will withdraw the Secretary's order.

(d) The Secretary must base a finding of imminent jeopardy to a physical trust asset on the 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 Tribe.

§ 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 Tribe assumed under a TERA.

(b) If the Tribe does not respond to or does not comply with the Secretary's order under § 224.138(a)(3), the Secretary must immediately reassume all activities the Tribe assumed under the TERA. The notice procedures in this subpart will not apply to such immediate re-assumption.

NOTICE OF INTENT TO REASSUME

§ 224.153 Must the Secretary notify the Tribe of an intent to reassume the authority granted?

If the Secretary determines under § 224.152 that re-assumption 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 re-assumption, 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 Tribe 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 Tribe 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 re-assumption, if the Tribe does not meet the requirements in paragraphs (b) and (c) of this section.

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

The Tribe must respond to the 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 must send the response by certified mail, with return receipt requested. The Secretary will consider the date of the written response as the date it is postmarked.

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

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

(a) The Tribe has complied with the Secretary's requirements in the notice of intent to reassume;

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(b) The Tribe is taking specified measures to comply with the Secretary's requirements, and when the Tribe will complete such measures, if the Tribe needs more than 5 days to do so; or

(c) The Tribe will not comply with the Secretary's requirements.

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

(a) If the Secretary determines that the 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 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 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 Tribe 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 as-

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sumed under a TERA. Upon reassumption, the Tribe 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'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 Tribe 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's request.

Subpart H—Rescission

§ 224.170 What is the purpose of this subpart?

This subpart explains the process and requirements under which a Tribe 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 Tribe may rescind a TERA.

§ 224.172 May a Tribe rescind only some of the activities subject to a TERA while retaining a portion of those activities?

No. A Tribe 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 Tribe rescind a TERA?

To rescind a TERA, a Tribe must submit to the Secretary a written Tribal resolution or other official action of the Tribe's governing body approving the voluntary rescission of the TERA. Upon rescission, the Tribe must also return all Departmental resources