

Bureau of Indian Affairs, Interior

§ 224.30

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

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AUTHORITY: 25 U.S.C. 2 and 9; 25 U.S.C. 3501–3504; Pub. L. 109–58; Pub. L. 115–325.

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

EDITORIAL NOTE: Nomenclature changes to part 224 appear at 84 FR 69611, Dec. 18, 2019.

Subpart A—General Provisions

§ 224.10 What is the purpose of this part?

This part:

(a) Establishes procedures by which a Tribe, 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 Tribe 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 Tribes to implement the Federal policy of self-determination. The Secretary will construe any ambiguities in this part or the Act in favor of the Tribe to implement a TERA as authorized by this part and the Act.

§ 224.30 What definitions apply to this part?

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 end of the 120-day period within which the Secretary will make a decision about a petition submitted by an interested party under subpart E. The Secretary may extend this deadline for up to 120 days.

Department means the Department of the Interior.

Designated Tribal Official means the official designated in a Tribe's pre-application consultation request, application, or agreement to assist in scheduling consultations or to receive communications from the Secretary to the 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 non-compliance of a Tribe or third party with a TERA or applicable Federal laws.

Interested party means a person or entity who has filed a petition with the Secretary under subpart E seeking review of a 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 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 or the Secretary seeking review of a 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 or individual Indian or by a 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 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. 3502 or to enter into a lease or business agreement with, or acquire a right-of-way from, a Tribe under 25 U.S.C. 3504(a)(2)(A)(ii) or (b)(2)(b).

Tribal governing body means a 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 or 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, 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.

[73 FR 12821, Mar. 10, 2008, as amended at 84 FR 69611, Dec. 18, 2019]

§ 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 Sec-

retary to act in good faith and in the best interest of Indian Tribes.

(b) Neither the Act nor this part absolves the Secretary of responsibilities to Indian 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 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.

(d) The United States is not liable for losses to any party (including any 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 executes under a TERA.

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

When Tribal land held for the benefit of more than one 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