

Bureau of Indian Affairs, Interior

§ 224.55

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

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

(1) If applicable, state that the 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 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 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 intends to include in the TERA.

(3) State the 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 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.

(c) The statement required by paragraph (a)(5) 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.

(2) The 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 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.

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

PROCESSING APPLICATIONS

§ 224.54 How must a Tribe submit an application?

A Tribe must submit an application and all supporting documents in a searchable portable document format (PDF) to *TERA@bia.gov*.

[84 FR 69611, Dec. 18, 2019]

§ 224.55 Is information a 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 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.

(b) A Tribe 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.

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

(1) The Tribe 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 Tribe will:

(1) Include a copy of the FOIA request;

(2) Describe the information requested or include copies of the pertinent records;

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

(4) Give the Tribe 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 Tribe that:

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

(ii) If the Tribe'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 Tribe that it is the Department, rather than the Tribe, that is responsible for deciding whether the information will be released or withheld;

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

(e) If the Tribe has any objection to disclosure of the information, the Tribe must submit a detailed written state-

ment 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 Tribe 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 Tribe provided the information voluntarily and, if so, how the information fits into a category of information that the Tribe customarily does not release to the public;

(2) A certification that the information is confidential, has not been disclosed to the public by the Tribe, 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 Tribe 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 Tribe, and if the Tribe does not respond within the time limits specified in the notice, the Department will presume that the Tribe has no objection to release of the information;

(g) If the Department decides to release the information over the objection of the Tribe, it will notify the Tribe 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 Tribe that it intends to release the records within 10 working days after the Tribe's receipt of the notice.

§ 224.56 What is the effect of the Secretary's receipt of a qualified Tribe's complete application?

The Secretary's receipt of a qualified Tribe's complete application begins a 270-day statutorily mandated period during which the Secretary must approve or disapprove a proposed TERA.