

Bureau of Indian Affairs, Interior

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§ 224.118 How must the Tribe respond to the Secretary's notice of the opportunity for a hearing?

The Tribe must respond in writing to the Secretary's notice of the opportunity for a hearing within 20 days of receipt of the notice by requesting a hearing or declining to request a hearing. If the Tribe does not respond within the time period, the Secretary will proceed with making a decision without further input from the Tribe.

§ 224.119 What must the Secretary do when making a decision on a petition?

(a) The Secretary must issue a written decision to the Tribe and the petitioner stating the basis for the decision about the Tribe's compliance or non-compliance with the TERA within 30 days following:

(1) A hearing, if the Tribe requested a hearing;

(2) The Tribe's declining the opportunity for a hearing; or

(3) The Tribe's failure to respond to the opportunity for a hearing within 20 days of the Secretary's written notice of the opportunity for a hearing.

(b) If the Secretary decides that the Tribe is not in compliance with the TERA, the Secretary must:

(1) Include findings of fact and conclusions of law with respect to each claim made in the petition in the written decision to the Tribe; and

(2) Take action to ensure compliance with the TERA.

(c) The Secretary will dismiss any petition if the interested party who filed the petition has agreed with the Tribe to a resolution of the claims presented in the petition.

[73 FR 12821, Mar. 10, 2008, as amended at 84 FR 69613, Dec. 18, 2019]

§ 224.120 What action may the Secretary take to ensure compliance with a TERA?

If the Secretary decides that a Tribe is not in compliance with a TERA, the Secretary may take only such action as the Secretary determines to be necessary to address the claims of non-compliance made in the petition including:

(a) Temporarily suspending any activity under a lease, business agree-

ment, or right-of-way until the Tribe complies with the TERA; or

(b) Rescinding approval of part of the TERA, or

(c) Rescinding all of the TERA and recommending that the Secretary re-assume activities under subpart G of this part.

[73 FR 12821, Mar. 10, 2008, as amended at 84 FR 69614, Dec. 18, 2019]

§ 224.121 How may a Tribe or a petitioner appeal the Secretary's decision about the Tribe's compliance with the TERA?

A Tribe or a petitioner, or both, may appeal the Secretary's decision on the petition under § 224.119 to the Principal Deputy Assistant Secretary—Indian Affairs under subpart I of this part.

Subpart F—Periodic Reviews

§ 224.130 What is the purpose of this subpart?

This subpart describes how the Secretary and a Tribe will develop and perform the periodic review and evaluation required by the Act and by a TERA.

§ 224.131 What is a periodic review and evaluation?

A periodic review and evaluation is an examination the Secretary performs to monitor a Tribe's performance of activities associated with the development of energy resources and to review compliance with a TERA. During the TERA consultation, a Tribe and the Secretary will develop a periodic review and evaluation process that addresses the Tribe's specific circumstances and the terms and conditions of the Tribe's TERA. The Tribe will include the agreed-upon periodic review and evaluation process in its final proposed TERA.

§ 224.132 How does the Secretary conduct a periodic review and evaluation?

(a) The Secretary will conduct a periodic review and evaluation under the TERA, in consultation with the Tribe, and in cooperation with other Departmental bureaus and offices whose activities the Tribe assumed or that perform activities for the Tribe.

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(b) The Secretary will communicate with the Designated Tribal Official throughout the process established by this section.

(c) During the periodic review and evaluation, the Secretary will:

(1) Review relevant records and documents, including transactions and reports the Tribe prepares under the TERA;

(2) Conduct on-site inspections as appropriate; and

(3) Review compliance with statutes and regulations applicable to activities undertaken under the TERA.

(d) Review the effect on physical trust assets resulting from activities undertaken under a TERA.

(e) Upon written request, the Tribe should provide the Secretary with records and documents relevant to the provisions of the TERA. In addition, the Tribe should identify any information in these submitted records and documents that is confidential, commercial and financial. Specific exceptions to disclosure under the Freedom of Information Act, or other statutory protections against disclosure, may apply and preclude disclosure of this information to third parties as provided for in § 224.55.

§ 224.133 What must the Secretary do after a periodic review and evaluation?

After a periodic review and evaluation, the Secretary must prepare a written report of the results and send the report to the Designated Tribal Official.

§ 224.134 How often must the Secretary conduct a periodic review and evaluation?

The Secretary must conduct a periodic review and evaluation annually during the first 3 years of a TERA. After the third annual review and evaluation, the Secretary and the Tribe may mutually agree to amend the TERA to conduct periodic reviews and evaluations once every 2 years.

§ 224.135 Under what circumstances may the Secretary conduct additional reviews and evaluations?

The Secretary may conduct additional reviews and evaluations:

(a) At a Tribe's request;

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(b) As part of an investigation undertaken when the Tribe notifies the Secretary of a violation or breach;

(c) As part of an investigation undertaken because of a petition submitted under subpart E of this part;

(d) As follow-up to a determination that harm or the potential for harm to a physical trust asset, previously identified in a periodic review and evaluation, exists; or

(e) As the Secretary determines appropriate to carry out the Secretary's trust responsibilities.

NONCOMPLIANCE

§ 224.136 How will the Secretary's report address a Tribe's noncompliance?

This section applies if the Secretary conducts a review and evaluation or investigation of a notice of violation of Federal law or the terms of a TERA.

(a) If the Secretary determines that the Tribe has not complied with Federal law or the terms of a TERA, the Secretary's written report must include a determination of whether the Tribe's noncompliance has resulted in harm or the potential for harm to a physical trust asset.

(b) If the Secretary determines that the Tribe's noncompliance may cause harm or has caused harm to a physical trust asset, the Secretary must also determine whether the noncompliance cause imminent jeopardy to a physical trust asset.

§ 224.137 What must the Secretary do if a Tribe's noncompliance has resulted in harm or the potential for harm to a physical trust asset?

If, because of the Tribe's noncompliance with Federal law or the terms of a TERA, the Secretary determines that there is harm or the potential for harm to a physical trust asset that does not rise to the level of imminent jeopardy to a physical trust asset, the Secretary must:

(a) Document the issue in the written report of the review and evaluation;

(b) Report the issue in writing to the Tribal governing body;

(c) Report the issue in writing to the Assistant Secretary—Indian Affairs; and