

## § 224.174

transferred under the TERA and any relevant records and documents.

### § 224.174 When does a voluntary rescission become effective?

A voluntary rescission becomes effective on the date specified by the Secretary, provided that the date is no more than 90 days after the Secretary receives the Tribal resolution or other official action the Tribe submits under § 224.173.

### § 224.175 How will rescission affect valid existing rights or lawful actions taken before the rescission?

Rescission does not affect valid existing rights that vested before the effective date of the rescission or lawful actions the Tribe and the Secretary took before the effective date of the rescission.

## Subpart I—General Appeal Procedures

### § 224.180 What is the purpose of this subpart?

The purpose of this subpart is to explain who may appeal Departmental decisions or inaction under this part and the initial administrative appeal processes, and general administrative appeal processes, including how 25 CFR part 2 and 43 CFR part 4 apply, and the effective dates for appeal decisions.

### § 224.181 Who may appeal Departmental decisions or inaction under this part?

The following persons or entities may appeal Department decisions or inaction under this part:

(a) A Tribe or TEDO that is adversely affected by a decision of or inaction by an official of the Department of the Interior under this part;

(b) A third party who has entered into a lease, right-of-way, or business agreement with a Tribe under an approved TERA and is adversely affected by a decision of, or inaction by a Department official under this part; or

(c) An interested party who is adversely affected by a decision or inaction by the Secretary under subpart E of this part, provided that the interested party may appeal only those issues raised in its prior participation

## 25 CFR Ch. I (4–1–23 Edition)

under subpart E of this part and may not appeal any other decision rendered or inaction under this part.

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

### § 224.182 What is the Initial Appeal Process?

The initial appeal process is as follows:

(a) Within 30 days of receiving an adverse decision by the Director or similar level official within 30 days after the time period within which the Secretary is required to act under subpart E, a party that may appeal under this subpart may file an appeal to the Principal Deputy Assistant Secretary—Indian Affairs;

(b) Within 60 days of receiving an appeal, the Principal Deputy Assistant Secretary—Indian Affairs will review the record and issue a written decision on the appeal; and

(c) Within 7 days of a decision by the Principal Deputy Assistant Secretary—Indian Affairs, the Secretary will provide a written copy of the decision to the Tribe and other participating parties.

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

### § 224.183 What other administrative appeals processes also apply?

The administrative appeal processes in 25 CFR part 2 and 43 CFR part 4, subject to the limitations in § 224.184, apply to:

(a) An interested party's appeal from an adverse decision or inaction by the Principal Deputy Assistant Secretary—Indian Affairs under § 224.182; and

(b) An appeal by a Tribe or a person or entity that has entered into a lease, business agreement, or right-of-way from an adverse decision by or the inaction of a Departmental official taken under this part.

### § 224.184 How do other administrative appeals processes apply?

The administrative appeals process in 25 CFR part 2 and 43 CFR part 4 are modified, only as they apply to appeals under this part, as set forth in this section.

(a) The definition of interested party in 25 CFR part 2 and as incorporated in

43 CFR part 4 does not apply to this part.

(b) The right of persons or entities other than an appealing party to participate in appeals under 25 CFR part 2 and 43 CFR part 4 does not apply to this part, except as permitted under paragraph (c) of this section.

(c) The only persons or entities, other than appealing parties, under § 224.181(a) to (c), who may participate in an appeal under this part are:

(1) The Secretary, if an appeal is taken from a decision of the Secretary or Principal Deputy Assistant Secretary—Indian Affairs;

(2) A Tribe, which may intervene, appear as an *amicus curiae*, or otherwise appear in any appeal taken under this part by a person or entity who has entered into a lease, business agreement, or right-of-way with the Tribe or by an interested party under this part; or

(3) A person or entity that has entered into a lease, business agreement, or right-of-way with a Tribe, may intervene, appear as an *amicus curiae*, or otherwise appear in any appeal taken under this part by the Tribe or by an interested party under this part.

(d) The Secretary does not have an obligation to provide notice and service upon non-appealing persons as provided in 25 CFR part 2 and 43 CFR part 4. The only exception to this principle is that notice and service of all documents must be served consistent with the requirements of 25 CFR part 2 and 43 CFR part 4 on those persons or entities identified in paragraph (c) of this section.

**§ 224.185 When are decisions under this part effective?**

Decisions under subpart I are effective as follows:

(a) Decisions of the Secretary disapproving a final proposed TERA or a revised final proposed TERA under subpart C of this part, a finding of imminent jeopardy to a physical trust asset under subpart F of this part, and decisions by the Secretary or the Assistant Secretary—Indian Affairs to reassume activities under subpart G of this part are final for the Department. These decisions and findings are effective upon issuance.

(b) Decisions under this part, other than those in paragraph (a) of this section, that adversely affect a Tribe and for which an appeal is pending are not final for the Department and are not effective while the appeal is pending, unless:

(1) The Tribe had an opportunity for a hearing before the decision was issued;

(2) The Tribe had a reasonable amount of time to comply with the TERA after the decision was issued; and

(3) The Interior Board of Indian Appeals (Board), the Secretary, or Assistant Secretary—Indian Affairs issued a written decision that, notwithstanding a reasonable period given the Tribe to comply with the TERA, the Tribe has failed to take the actions necessary to comply with the TERA.

(c) All other decisions rendered by the Board or the Assistant Secretary—Indian Affairs in an appeal from a Secretary's decision under subparts E, F, or G of this part are effective when issued.

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

SOURCE: 84 FR 69614, Dec. 18, 2019, unless otherwise noted.

**§ 224.200 What is the purpose of this subpart?**

The purpose of this part is to establish a process by which an entity may be certified as an Tribal energy development organization (TEDO) that may enter into a lease or business agreement with an Indian Tribe without Secretarial review under 25 U.S.C. 3504(a)(2) or right-of-way with an Indian Tribe without Secretarial review under 25 U.S.C. 3504(b)(2)(B) and without a TERA.

**§ 224.201 What must an application for certification as a Tribal energy development organization (TEDO) include?**

An application for certification as a TEDO must include documentation of the items listed in paragraphs (a) through (d) of this section.