

Bureau of Indian Affairs, Interior

§ 224.201

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.

§ 224.202

(a) The Tribe has carried out a contract or compact under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 *et seq.*) for a period of not less than 3 consecutive years ending on the date on which the Tribe submits the application, and the contract or compact:

(1) Has been carried out by the Tribe without material audit exceptions (or without any material audit exceptions that were not corrected within the 3-year period); and

(2) Has included programs or activities relating to the management of Tribal land;

(b) The TEDO is organized under the Tribe's laws;

(c) The majority of the interest in the TEDO is owned and controlled by the Tribe (or the Tribe and one or more other Tribes) the Tribal land of which is being developed; and

(d) The TEDO's organizing document:

(1) Requires the Tribe with jurisdiction over the land to maintain, at all times, the controlling interest in the TEDO;

(2) Requires the Tribe (or the Tribe and one or more other Tribes) the Tribal land of which is being developed) to own and control, at all times, a majority of the interest in the TEDO; and

(3) Includes a statement that the TEDO is subject to the jurisdiction, laws, and authority of the Tribe.

§ 224.202 How must a Tribe submit an application for certification of a TEDO?

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

[86 FR 27808, May 24, 2021]

§ 224.203 What must the Secretary do upon receipt of an application for certification as a TEDO?

Within 90 days of receiving an application for certification as a TEDO, the Secretary must approve or disapprove the application.

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§ 224.204 What criteria will the Secretary use to determine whether to approve an application for certification of a TEDO?

The Secretary will approve the application for certification upon determining that the application contains the documentation required in § 224.201.

§ 224.205 What must the Secretary do upon approval of an application for certification?

If the Secretary approves an application for certification, the Secretary must do the following within 10 days of making the determination under § 224.203:

(a) Issue a certification stating that:

(1) The TEDO is organized under the laws of the Tribe and subject to the Tribe's jurisdiction, laws, and authority;

(2) The majority of the interest in the TEDO is owned and controlled by the Tribe (or the Tribe and one or more other Tribes) and the Tribal land of which is being developed;

(3) The TEDO's organizing document requires the Tribe with jurisdiction over the land to maintain, at all times, the controlling interest in the TEDO;

(4) The TEDO's organizing document requires the Tribe (or the Tribe and one or more other Tribes) the Tribal land of which is being developed) to own and control, at all times, a majority of the interest in the TEDO;

(5) The certification is issued under 25 U.S.C. 3504(h); and

(6) Nothing in the certification waives the sovereign immunity of the Tribe.

(b) Deliver a copy of the Certification to the applicant Tribe (or Tribes, as applicable); and

(c) Publish the certification in the FEDERAL REGISTER.

§ 224.206 What is the effect of a TEDO receiving certification?

Upon receiving certification under this subpart, a TEDO may enter into a lease, business agreement, or right-of-way with an Indian Tribe without Secretarial approval as long as:

(a) The scope of the lease or business agreement does not exceed that of a TERA as established in § 224.85 of this part.