

## Bureau of Indian Affairs, Interior

## § 224.68

(1) Any other party violates the terms of any lease, business agreement, or right-of-way; or

(2) Any provision of a lease, business agreement or right-of-way violates the TERA.

(m) At the option of the Tribe, identify which functions, if any, the Tribe intends to conduct to authorize any operational or development activities pursuant to a lease, business agreement, or right-of-way approved by the Tribe.

[73 FR 12821, Mar. 10, 2008, as amended at 84 FR 69612, Dec. 18, 2019]

### **§ 224.64 How may a Tribe assume management of development of different types of energy resources?**

(a) In order for a Tribe to assume authority for approving leases, business agreements, and rights-of-way for the development of another energy resource that is not included in the TERA, a Tribe must submit to the Secretary:

(1) An amendment to the TERA that specifies and describes the additional 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; and

(2) A copy of the resolution or formal action of the Tribal governing body, or Tribal governing bodies if the land is held for the benefit of more than one Tribe, that approves submission of the TERA amendment.

(b) Submission of the documents in paragraph (a) of this section will trigger the public notice and opportunity for comment consistent with § 224.67.

(c) The Secretary will process the amendment in accordance with §§ 224.67 through 224.78.

(d) Each Tribal governing body that is party to the TERA must sign the TERA amendment upon approval.

[84 FR 69612, Dec. 18, 2019]

### **§ 224.65 How may a Tribe assume additional activities under a TERA?**

A Tribe may assume additional activities related to the development of the same type of energy resource included in a TERA by negotiating with the Secretary an amendment to the ex-

isting TERA to include the additional activities.

[73 FR 12821, Mar. 10, 2008, as amended at 84 FR 69612, Dec. 18, 2019]

### **§ 224.66 How may a Tribe reduce the scope of the TERA?**

A Tribe may reduce the scope of the TERA by negotiating with the Secretary an amendment to the existing TERA to eliminate an activity assumed under the TERA or a type of energy resource development managed under the TERA. Any such reduction in scope must include the return of all relevant Departmental resources transferred under the TERA and any relevant records and documents.

#### **PUBLIC NOTIFICATION AND COMMENT**

### **§ 224.67 What must the Secretary do upon the Secretary's receipt of a final proposed TERA?**

(a) Within 10 days of the Secretary's receipt of a final proposed TERA, the Secretary must submit a notice for publication in the FEDERAL REGISTER advising the public:

(1) That the Secretary is considering a final proposed TERA for approval or disapproval; and

(2) Of any National Environmental Policy Act (NEPA) review the Secretary is conducting.

(b) The FEDERAL REGISTER notice will:

(1) Contain information advising the public how to request and receive copies of or participate in any NEPA reviews, as prescribed in subpart C of this part, related to approval of the final proposed TERA; and

(2) Contain information advising the public how to comment on a final proposed TERA.

### **§ 224.68 How will the Secretary use public comments?**

(a) The Secretary will review and consider public comments in deciding to approve or disapprove the final proposed TERA; and

(b) The Secretary will provide copies of the comments to the Designated Tribal Official;

(c) Upon mutual agreement between the Tribe and the Secretary, the Tribe

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may make changes in the final proposed TERA based on the comments received; and

(d) If the Tribe revises the final proposed TERA based on public comments, the Tribal governing body must approve the changes, the authorized representative of the Tribe must sign the final proposed TERA as revised, and the Tribe must send the revised final proposed TERA to the Secretary.

[73 FR 12821, Mar. 10, 2008, as amended at 84 FR 69612, Dec. 18, 2019]

### Subpart C—Approval of Tribal Energy Resource Agreements

#### § 224.70 Will the Secretary review a proposed TERA under the National Environmental Policy Act?

Yes, the Secretary will conduct a review under the National Environmental Policy Act (NEPA) of the potential impacts on the quality of the human environment that might arise from approving a final proposed TERA. The scope of the Secretary's evaluation will be limited to the scope of the TERA. The public comment period, when required, under the NEPA review will occur concurrently with the public comment period for a TERA under § 224.67.

#### § 224.71 What standards will the Secretary use to decide to approve a final proposed TERA?

The Secretary must approve a final proposed TERA unless:

- (a) The Tribe does not meet the definition of a "qualified Tribe" in § 224.30;
- (b) A provision of the TERA violates applicable Federal law (including regulations) or a treaty applicable to the Tribe; or
- (c) The TERA fails to include the provisions required by § 224.63.

[84 FR 69612, Dec. 18, 2019]

#### §§ 224.72–224.73 [Reserved]

#### § 224.74 When must the Secretary approve or disapprove a final proposed TERA?

The Secretary must approve or disapprove a final proposed TERA within 270 days of the Secretary's receipt of a complete application for a TERA. If the Secretary fails to approve or dis-

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approve a final proposed TERA within 270 days, the TERA takes effect on the 271st day after the Secretary's receipt of a complete application from a qualified Tribe.

[84 FR 69612, Dec. 18, 2019]

#### § 224.75 What must the Secretary do upon approval or disapproval of a final proposed TERA?

Within 10 days of the Secretary's approval or disapproval of a final proposed TERA, the Secretary must notify the Tribal governing body in writing and take the following actions:

If the Secretary's decision is . . .	Then the Secretary will . . .
(a) To approve the final proposed TERA.	(1) Sign the TERA making it effective on the date of signature, and return the signed TERA to the Tribal governing body; and (2) Maintain a copy of the TERA and any subsequent amendments or supplements to the TERA.
(b) To disapprove the final proposed TERA.	Send the Tribe a notice of disapproval that must include: (1) A detailed written explanation of each reason for the disapproval; (2) The changes or other actions required to address each reason for the Secretary's disapproval; (3) An opportunity to revise and resubmit the TERA; and (4) A statement that the decision is a final agency action and is subject to judicial review.

[73 FR 12821, Mar. 10, 2008, as amended at 84 FR 69612, Dec. 18, 2019]

#### § 224.76 Upon notification of disapproval, may a Tribe re-submit a revised final proposed TERA?

Yes, within 45 days of receiving the notice of disapproval, or a later date as the Secretary and the Tribe agree to in writing, the Tribe may re-submit a revised final proposed TERA, approved by the Tribal governing body and signed by the Tribe's authorized representative, to the Secretary that addresses the Secretary's concerns. The Secretary must approve or disapprove the revised final proposed TERA within 90 days of the Secretary's receipt of the revised final proposed TERA. If the Secretary does not approve or disapprove the revised proposed TERA within that time, it will take effect on the 91st day. Within 10 days of the Secretary's approval or disapproval of a