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(c) Coordination between the Tribe and the Department for ongoing maintenance of accurate real property records;

(d) Access to technical support services within the Department to assist the Tribe in evaluating the physical, economic, financial, cultural, social, environmental, and legal consequences of approving proposals for leases, business agreements, or rights-of-way under a TERA; and

(e) Assistance to ensure that third-party violations or breaches of the terms of leases, business agreements, or rights-of-way or applicable provisions of Federal law by third parties are handled appropriately.

LEASES, BUSINESS AGREEMENTS, AND RIGHTS-OF-WAY UNDER A TERA

§ 224.83 What must a Tribe do after executing a lease or business agreement, or granting a right-of-way?

Following the execution of a lease, business agreement, or grant of right-of-way under a TERA, a Tribe must:

(a) Inform the public of approval of the lease, business agreement, or right-of-way under the authority granted in the TERA; and

(b) Send a copy of the executed lease, business agreement, or right-of-way, or amendments, to the Secretary within one business day of execution. The copy must be sent by certified mail return receipt requested or by overnight delivery.

§ 224.84 When may a Tribe grant a right-of-way?

A Tribe may grant a right-of-way under a TERA if the grant of right-of-way is over tribal land and the right-of-way serves:

(a) An electric production, generation, transmission, or distribution facility (including a facility that produces electricity from renewable energy resources) located on tribal land;

(b) A facility located on tribal land that processes or refines energy resources; or

(c) The purposes, or facilitates in carrying out the purposes, of any lease or agreement entered into for energy resources development on tribal land.

[84 FR 69613, Dec. 18, 2019]

25 CFR Ch. I (4–1–23 Edition)

§ 224.85 When may a Tribe enter into a lease or business agreement?

A Tribe may enter into a lease or business agreement for the purpose of energy resource development for:

(a) Exploration for, extraction of, or other development of the Tribe's energy mineral resources on tribal land including, but not limited to, marketing or distribution;

(b) Construction or operation of an electric production, generation, transmission, or distribution facility (including a facility that produces electricity from renewable energy resources) located on tribal land;

(c) Construction or operation of a facility to process or refine energy resources, at least a portion of which have been developed on tribal land; or

(d) Pooling, unitization, or communitization of the energy mineral resources of the Indian tribe located on tribal land with any other energy mineral resource (including energy mineral resources owned by the Indian tribe or an individual Indian in fee, trust, or restricted status or by any other persons or entities) if the owner, or, if appropriate, lessee, of the resources has consented or consents to the pooling, unitization, or communitization of the other resources under any lease or agreement.

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§ 224.86 Are there limits on the duration of leases, business agreements, and rights-of-way?

(a) The duration of leases, business agreements, and rights-of-way entered into under a TERA are limited as follows:

(1) For leases and business agreements, except as provided in paragraph (b) of this section, 30 years;

(2) For leases for production of oil resources and gas resources, or both, 10 years and as long after as oil or gas production continues in paying quantities; and

(3) For rights-of-way, 30 years.

(b) A lease or business agreement a Tribe enters into, or a right-of-way a Tribe grants may be renewed at the discretion of the Tribe as long as the

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TERA remains in effect and the approved activities have not been rescinded by the Tribe or suspended or reassumed by the Department.

VIOLATION OR BREACH

§ 224.87 What are the obligations of a Tribe if it discovers a violation or breach?

As soon as practicable after discovering or receiving notice of a violation or breach of a lease, business agreement, or right-of-way of a Federal or Tribal environmental law resulting from an activity undertaken by a third party under a lease, business agreement, or right-of-way, the Tribe must provide written notice to the Secretary describing:

- (a) The nature of the violation or breach in reasonable detail;
- (b) The corrective action taken or planned by the Tribe; and
- (c) The proposed period for the corrective action to be completed.

§ 224.88 What must the Secretary do after receiving notice of a violation or breach from the Tribe?

After receiving notice of a violation or breach from the Tribe, the Secretary will:

- (a) Review the notice and conduct an investigation under § 224.135(b) including, as necessary:
 - (1) An on-site inspection; and
 - (2) A review of relevant records, including transactions and reports.
- (b) If the Secretary determines, after the investigation, that a violation or breach is not causing or will not cause imminent jeopardy to a physical trust asset, the Secretary will review, for concurrence or disapproval, the corrective action to be taken or imposed by the Tribe and the proposed period for completion of the corrective action;
- (c) If the Secretary determines, after the investigation, that a violation or breach is causing or will cause imminent jeopardy to a physical trust asset, the Secretary will proceed under the imminent jeopardy provisions of subpart F of this part.

§ 224.89 What procedures will the Secretary use to enforce leases, business agreements, or rights-of-way?

(a) The Secretary and a Tribe will consult with each other regarding enforcement of and Secretarial assistance needed to enforce leases, business agreements, or rights-of-way entered into under a TERA. When appropriate, the Secretary will:

- (1) Use the notification and enforcement procedures established in 25 CFR parts 162, 211 and 225 to ensure compliance with leases and business agreements; and
 - (2) Use the notification and enforcement procedures of 25 CFR part 169 to ensure compliance with rights-of-way.
- (b) All enforcement remedies established in 25 CFR parts 162, 211, 225, and 169 are available to the Secretary.

Subpart E—Interested Party Petitions

§ 224.100 May a person or entity ask the Secretary to review a Tribe's compliance with a TERA?

In accordance with this subpart, a person or entity that may be an interested party may submit to the Secretary a petition to review a Tribe's compliance with a TERA. However, before filing a petition with the Secretary, a person or entity that may be an interested party must first exhaust Tribal remedies, if a Tribe has provided for such remedies. If a Tribe has not provided for Tribal remedies, a person or entity that may be an interested party may file a petition directly with the Secretary.

§ 224.101 Who is an interested party?

For the purposes of this part, an interested party is a person or entity that the Secretary determines has demonstrated with substantial evidence that an interest of the person or entity has sustained, or will sustain, an adverse environmental impact as a result of a Tribe's failure to comply with a TERA.

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