

§ 224.56

25 CFR Ch. I (4-1-10 Edition)

(1) The tribe has designated the information as confidential commercial or financial information; or

(2) The Department has reason to believe that the information requested may be protected under FOIA Exemption 4 (trade secrets and commercial or financial information which is obtained from a person and is privileged or confidential).

(d) The notice to the tribe will:

(1) Include a copy of the FOIA request;

(2) Describe the information requested or include copies of the pertinent records;

(3) Advise the tribe of procedures for objecting to the release of the requested information and specify the time limit for the tribe's response;

(4) Give the tribe no less than ten (10) working days from the Department's notice to object to the release and explain the basis for objection, if any;

(5) Advise the tribe that:

(i) Information contained in the tribe's objections may be subject to disclosure under FOIA if the Department receives a FOIA request for it; and

(ii) If the tribe's objections contain commercial or financial information and a requestor asks for the objections under FOIA, the same notification procedures as above will apply;

(6) Advise the tribe that it is the Department, rather than the tribe, that is responsible for deciding whether the information will be released or withheld;

(7) If the tribe designated the information as commercial or financial information 10 or more years before the FOIA request, the Department will request the tribe's views on whether the tribe still considers the information to be confidential;

(e) If the tribe has any objection to disclosure of the information, the tribe must submit a detailed written statement to the Department including the following:

(1) The justification for withholding any portion of the information under any exemption of FOIA, and if the applicable exemption is Exemption 4, the tribe must submit a specific and detailed discussion of:

(i) Whether the Federal government required the information to be sub-

mitted, and, if so, how substantial competitive harm or other business harm would likely result from release of the information; or

(ii) Whether the tribe provided the information voluntarily and, if so, how the information fits into a category of information that the tribe customarily does not release to the public;

(2) A certification that the information is confidential, has not been disclosed to the public by the tribe, and is essentially non-public because it is not routinely available to the public from other sources;

(3) If not already provided, a tribal contact telephone and fax number so that the Department can communicate with the tribe about the FOIA request;

(f) The Department will review and consider all objections to release that are received within the time limits specified in the notice to the tribe, and if the tribe does not respond within the time limits specified in the notice, the Department will presume that the tribe has no objection to release of the information;

(g) If the Department decides to release the information over the objection of the tribe, it will notify the tribe in writing by certified mail, return receipt requested, and will include copies of the records the Department intends to release and the reasons for deciding to release them. The notice will also inform the tribe that it intends to release the records within 10 working days after the tribe's receipt of the notice.

§ 224.56 What is the effect of the Director's receipt of a tribe's complete application?

The Director's receipt of a tribe's complete application begins a 270-day statutorily mandated period during which the Secretary must approve or disapprove a proposed TERA. With the consent of the tribe, the Secretary may extend the 270-day period for making a decision.

§ 224.57 What must the Director do upon receipt of an application?

(a) Upon receiving an application for a TERA, the Director must: