

## Bureau of Indian Affairs, Interior

## § 224.120

(d) Propose to cure or otherwise resolve the claims within the time frame in § 224.113(b).

### **§ 224.115 When in the petition process must the Director investigate a tribe's compliance with a TERA?**

The Director must investigate the petitioner's claims of the tribe's non-compliance with a TERA only after making a threshold determination that:

(a) The tribe has denied or failed to respond to each claim made in the petition within the period under § 224.113(a); or

(b) The tribe has failed, refused, or was unable to cure or otherwise resolve each claim made in the petition within a reasonable period, as determined by the Director, after the expiration of the period in § 224.113(b).

### **§ 224.116 What is the time period in which the Director must investigate a tribe's compliance with a TERA?**

(a) If the Director determines under § 224.115 that one of the threshold determinations in § 224.114 has been met, then within 120 days of the Director's receipt of a petition, the Director must determine whether or not a tribe is in compliance with the TERA;

(b) The Director may extend the time for determining a tribe's compliance with a TERA up to 120 days in any case in which the Director determines that additional time is necessary to evaluate the claims in the petition and the tribe's written response, if any. If the Director decides to extend the time, the Director must notify the petitioner and the tribe in writing of the extension.

### **§ 224.117 Must the Director make a determination of the tribe's compliance with a TERA?**

(a) Yes. Upon a finding that one of the threshold determinations in § 224.115 has been met, the Director must make a determination of the tribe's compliance with a TERA within the time period in § 224.116.

(b) If the Director determines that the tribe is in compliance with the TERA, the Director will notify the tribe and the petitioner in writing;

(c) If the Director determines that the tribe is not in compliance with the

TERA, the Director will notify the tribe and the petitioner in writing and, in addition, must provide the tribe:

(1) A written determination that describes the manner in which the TERA has been violated together with a written notice of the violations;

(2) Notice of a reasonable opportunity to comply with the TERA; and

(3) Notice of the tribe's opportunity for a hearing.

### **§ 224.118 How must the tribe respond to the Director's notice of the opportunity for a hearing?**

The tribe must respond in writing to the Director's notice of the opportunity for a hearing within 20 days of receipt of the notice by requesting a hearing or declining to request a hearing. If the tribe does not respond within the time period, the Director will proceed with making a decision without further input from the tribe.

### **§ 224.119 What must the Director do when making a decision on a petition?**

(a) The Director must issue a written decision to the tribe and the petitioner stating the basis for the decision about the tribe's compliance or noncompliance with the TERA within 30 days following:

(1) A hearing, if the tribe requested a hearing;

(2) The tribe's declining the opportunity for a hearing; or

(3) The tribe's failure to respond to the opportunity for a hearing within 20 days of the Director's written notice of the opportunity for a hearing.

(b) If the Director decides that the tribe is not in compliance with the TERA, the Director must:

(1) Include findings of fact and conclusions of law with the written decision to the tribe; and

(2) Take action to ensure compliance with the TERA.

### **§ 224.120 What action may the Director take to ensure compliance with a TERA?**

If the Director decides that a tribe is not in compliance with a TERA, the Director may take action to ensure compliance with the TERA including:

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(a) Temporarily suspending any activity under a lease, business agreement, or right-of-way until the tribe complies with the TERA; or

(b) Rescinding approval of part of the TERA, or

(c) Rescinding all of the TERA and recommending that the Secretary re-assume activities under subpart G of this part.

### **§ 224.121 How may a tribe or a petitioner appeal the Director's decision about the tribe's compliance with the TERA?**

A tribe or a petitioner, or both, may appeal the Director's decision on the petition under § 224.119 to the Principal Deputy Assistant Secretary—Indian Affairs under subpart I of this part.

## **Subpart F—Periodic Reviews**

### **§ 224.130 What is the purpose of this subpart?**

This subpart describes how the Secretary and a tribe will develop and perform the periodic review and evaluation required by the Act and by a TERA.

### **§ 224.131 What is a periodic review and evaluation?**

A periodic review and evaluation is an examination the Director performs to monitor a tribe's performance of activities associated with the development of energy resources and to review compliance with a TERA. During the TERA consultation, a tribe and the Director will develop a periodic review and evaluation process that addresses the tribe's specific circumstances and the terms and conditions of the tribe's TERA. The tribe will include the agreed-upon periodic review and evaluation process in its final proposed TERA.

### **§ 224.132 How does the Director conduct a periodic review and evaluation?**

(a) The Director will conduct a periodic review and evaluation under the TERA, in consultation with the tribe, and in cooperation with other Departmental bureaus and offices whose activities the tribe assumed or that perform activities for the tribe.

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(b) The Director will communicate with the Designated Tribal Official throughout the process established by this section.

(c) During the periodic review and evaluation, the Director will:

(1) Review relevant records and documents, including transactions and reports the tribe prepares under the TERA;

(2) Conduct on-site inspections as appropriate; and

(3) Review compliance with statutes and regulations applicable to activities undertaken under the TERA.

(d) Review the effect on physical trust assets resulting from activities undertaken under a TERA.

(e) Upon written request, the tribe should provide the Director with records and documents relevant to the provisions of the TERA. In addition, the tribe should identify any information in these submitted records and documents that is confidential, commercial and financial. Specific exceptions to disclosure under the Freedom of Information Act, or other statutory protections against disclosure, may apply and preclude disclosure of this information to third parties as provided for in § 224.55.

### **§ 224.133 What must the Director do after a periodic review and evaluation?**

After a periodic review and evaluation, the Director must prepare a written report of the results and send the report to the Designated Tribal Official.

### **§ 224.134 How often must the Director conduct a periodic review and evaluation?**

The Director must conduct a periodic review and evaluation annually during the first 3 years of a TERA. After the third annual review and evaluation, the Secretary and the tribe may mutually agree to amend the TERA to conduct periodic reviews and evaluations once every 2 years.

### **§ 224.135 Under what circumstances may the Director conduct additional reviews and evaluations?**

The Director may conduct additional reviews and evaluations:

(a) At a tribe's request;