

## § 224.140

with a Federal law or the terms of the TERA;

(2) Responds to the Director's finding of imminent jeopardy to a physical trust asset;

(3) Describes the status of the tribe's cessation of specific conduct or specific action the tribe has taken to correct any condition causing imminent jeopardy to a physical trust asset; and

(4) Describes what further actions, if any, the tribe proposes to take to correct any condition, cited in the notice, causing imminent jeopardy to a physical trust asset.

### **§ 224.140 What must the Secretary do if the tribe fails to respond to or does not comply with the Director's order?**

If the tribe does not respond to or does not comply with the Director's order under § 224.138(a)(3), the Secretary may take any actions the Secretary deems appropriate to protect the physical trust asset, which may include the immediate reassumption of all activities the tribe assumed under the TERA. The procedures in subpart G of this part do not apply to reassumption under this section.

### **§ 224.141 What must the Secretary do if the tribe responds to the Director's order?**

(a) If the tribe responds in a timely manner to the Director's order under § 224.138, the Secretary must:

(1) Evaluate the tribe's response;

(2) Determine whether or not the tribe has complied with the TERA and the Federal law cited in the notice; and

(3) If the Secretary determines, after reviewing the tribe's response, that the tribe has not complied with the TERA or with a Federal law, the Secretary will determine whether the noncompliance caused imminent jeopardy to a physical trust asset.

(b) If the Secretary determines that the tribe's noncompliance has caused imminent jeopardy to a physical trust asset, the Secretary may:

(1) Order the tribe to take any action the Secretary deems necessary to comply with the TERA or Federal law and to protect the physical trust asset; or

(2) Take any action the Secretary deems necessary to protect the phys-

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ical trust asset, including reassumption under subpart G of this part.

(c) If the Secretary determines, after reviewing the tribe's response, that the tribe has complied with the TERA and with Federal law, the Secretary will withdraw the Director's order.

(d) The Secretary must base a finding of imminent jeopardy to a physical trust asset on the tribe's non-compliance with a TERA or violation of a Federal law.

### **Subpart G—Reassumption**

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

This subpart explains when and how the Secretary may reassume all activities included within a TERA without the consent of the tribe.

#### **§ 224.151 When may the Secretary reassume activities?**

Upon issuing a written finding of imminent jeopardy to a physical trust asset, the Secretary may reassume activities under a TERA in accordance with this subpart. The Secretary may also reassume activities approved under a TERA in response to a petition from an interested party under subpart E of this part. Only the Secretary or the Assistant Secretary—Indian Affairs may reassume activities under a TERA.

#### **§ 224.152 Must the Secretary always reassume the activities upon a finding of imminent jeopardy to a physical trust asset?**

(a) The Secretary may take whatever actions the Secretary deems necessary to protect the physical trust asset. At the discretion of the Secretary, these actions may include reassumption of the activities a tribe assumed under a TERA.

(b) If the tribe does not respond to or does not comply with the Director's order under § 224.138(a)(3), the Secretary must immediately reassume all activities the tribe assumed under the TERA. The notice procedures in this subpart will not apply to such immediate re-assumption.

## Bureau of Indian Affairs, Interior

## § 224.159

### NOTICE OF INTENT TO REASSUME

#### **§ 224.153 Must the Secretary notify the tribe of an intent to reassume the authority granted?**

If the Secretary determines under § 224.152 that reassumption is necessary to protect the physical trust asset, the Secretary will issue a written notice to the tribal governing body of the Secretary's intent to reassume.

#### **§ 224.154 What must a notice of intent to reassume include?**

A notice of intent to reassume must include:

(a) A statement of the reasons for the intended reassumption, including, as applicable, a copy of the Secretary's written finding of imminent jeopardy to a physical trust asset;

(b) A description of specific measures that the tribe must take to correct the violation and any condition that caused the imminent jeopardy to a physical trust asset;

(c) The time period within which the tribe must take the measures to correct the violation of the TERA and any condition that caused the imminent jeopardy to a physical trust asset; and

(d) The effective date of the reassumption, if the tribe does not meet the requirements in paragraphs (b) and (c) of this section.

#### **§ 224.155 When must a tribe respond to a notice of intent to reassume?**

The tribe must respond to the Director in writing by mail, facsimile, or overnight express within 5 days of receiving the Secretary's notice of intent to reassume. If sent by mail, the tribe must send the response by certified mail, with return receipt requested. The Director will consider the date of the written response as the date it is postmarked.

#### **§ 224.156 What information must the tribe's response to the notice of intent to reassume include?**

The tribe's response to the notice of intent to reassume must state that:

(a) The tribe has complied with the Secretary's requirements in the notice of intent to reassume;

(b) The tribe is taking specified measures to comply with the Secretary's requirements, and when the tribe will complete such measures, if the tribe needs more than 5 days to do so; or

(c) The tribe will not comply with the Secretary's requirements.

#### **§ 224.157 How must the Secretary proceed after receiving the tribe's response?**

(a) If the Secretary determines that the tribe's proposed or completed actions to comply with the Secretary's requirements are adequate to correct the violation of the TERA or Federal law and any condition that caused the imminent jeopardy, the Secretary will:

(1) Notify the tribe of the adequacy of its response in writing; and

(2) Terminate the reassumption proceedings in writing.

(b) If the Secretary determines that the tribe's proposed or completed actions to comply with the Secretary's requirements are not adequate, then the Secretary will issue a written notice of reassumption.

#### **§ 224.158 What must the Secretary include in a written notice of reassumption?**

The written notice of reassumption must include:

(a) A description of the authorities the Secretary is reassuming;

(b) The reasons for the determination under § 224.157(b);

(c) The effective date of the reassumption; and

(d) A statement that the decision is a final agency action and is subject to judicial review.

#### **§ 224.159 How will reassumption affect valid existing rights or lawful actions taken before the effective date of the reassumption?**

Reassumption will not affect valid existing rights that vested before the effective date of the reassumption or lawful actions the tribe and the Secretary took before the effective date of the reassumption.