

### 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 will consider the best interests of the tribe and the Federal policy of promoting tribal self-determination in deciding whether to approve a final proposed TERA. The Secretary must approve a final proposed TERA if it contains the provisions required by the Act and this part and the Secretary determines that the tribe has demonstrated sufficient capacity to manage the development of energy resources it proposes to develop.

#### § 224.72 How will the Secretary determine whether a tribe has demonstrated sufficient capacity?

The Secretary will determine whether a tribe has demonstrated sufficient capacity under § 224.71 based on the information obtained through the application process. The Secretary will consider:

- (a) The specific energy resource development the tribe proposes to regulate;
- (b) The scope of the administrative or regulatory activities the tribe seeks to assume;
- (c) Materials and information submitted with the application for a TERA, the result of meetings between the tribe and a representative of the Department and the Director's written report;
- (d) The history of the tribe's role in energy resource development, includ-

ing negotiating and approval or disapproval of pre-existing energy-related leases, business agreements, and rights-of-way;

(e) The administrative expertise of the tribe available to regulate energy resource development within the scope of the final proposed TERA or the tribe's plans for establishing that expertise;

(f) The financial capacity of the tribe to maintain or procure the technical expertise needed to evaluate proposals and to monitor anticipated activities in a prudent manner;

(g) The tribe's past performance administering contracts and grants associated with self-determination programs, cooperative agreements with Federal and State agencies, and environmental programs administered by the Environmental Protection Agency;

(h) The tribe's past performance monitoring activities undertaken by third parties under approved leases, business agreements, or rights-of-way; and

(i) Any other factors the Secretary finds to be relevant in light of the scope of the proposed TERA.

#### § 224.73 How will the scope of energy resource development affect the Secretary's determination of the tribe's capacity?

The Secretary's review under § 224.72 of the tribe's capacity to manage and regulate energy resource development under the TERA will include a determination as to each type of energy resource development subject to the TERA for which the tribe seeks to regulate, and each type of regulatory activity the tribe proposes to assume. The Secretary's review of a TERA must be limited to activities specified by its provisions.

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

The Secretary must approve or disapprove a final proposed TERA or a revised final proposed TERA within 270 days of the Director's receipt of a complete application for a TERA. With the consent of the tribe, or as provided in § 224.62(b), the Secretary may extend the period for a decision.