

Bureau of Indian Affairs, Interior

§ 224.53

224.63, 224.64, 224.65, 224.68(d), 224.76, 224.83, 224.87, 224.109, 224.112, 224.120(a), 224.139(b), 224.156, and 224.173. Please note that a Federal Agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Subpart B—Procedures for Obtaining Tribal Energy Resource Agreements

§ 224.50 What is the purpose of this subpart?

This subpart establishes procedures for:

- (a) Pre-application and application consultations and process;
- (b) Requirements for the content of applications;
- (c) Submittal of completed applications; and
- (d) Secretarial review and processing of applications.

PRE-APPLICATION CONSULTATION AND THE FORM OF APPLICATION

§ 224.51 What is a pre-application consultation between a tribe and the Director?

(a) A tribe interested in entering into a TERA should request a pre-application consultation by writing to the Director, Office of Indian Energy and Economic Development. The request should include the name and contact information for the Designated Tribal Official who will coordinate scheduling with the Director.

(b) Upon receiving a pre-application consultation request, the Director will contact the Designated Tribal Official to schedule a pre-application consultation meeting. The Director may also initiate pre-application discussions with the tribal governing body.

(c) At the pre-application consultation meeting, the tribe and the Director may discuss any of the matters related to a future application including, but not limited to:

- (1) The application process;
- (2) The potential scope of the tribe's future application, including any regulatory or administrative activities that the tribe anticipates exercising;

(3) The required content of an application for a TERA;

(4) The energy resource the tribe anticipates developing;

(5) The tribe's capacity to manage and regulate the energy resource development the tribe identifies;

(6) Potential opportunities for funding capacity-building and other activities related to the energy resource the tribe anticipates developing under a TERA; and

(7) Any other matters applicable to this part, the Act, and the tribe.

§ 224.52 What may a tribe include in a TERA?

A TERA under this part:

- (a) May include development of all or part of a tribe's energy resources;
- (b) Must specify the type of energy resource included;
- (c) May include assumption by the tribe of certain activities normally carried out by the Department, except for inherently Federal functions; and
- (d) Must specify the services or resources related to the specific activity related to energy resource development that the tribe proposes to assume from the Department.

§ 224.53 What must an application for a TERA contain?

(a) An application for a TERA must contain all of the following:

(1) A proposed TERA between the tribe and the Secretary, signed by the authorized representative of the tribe, that contains the provisions required by § 224.63;

(2) A statement that the Secretary recognizes the tribe as an Indian tribe and that the tribe has tribal land;

(3) A brief description of the tribe's form of government;

(4) Copies of relevant portions of tribal documents (see paragraph (b) of this section);

(5) A map, legal description, and general description of the tribal land that the tribe intends to include in the TERA;

(6) A statement that meets the requirements in paragraph (c) of this section;

(7) A statement describing the tribe's experience in negotiating and administering energy-related leases, business

agreements, and rights-of-way issued under other Federal laws that includes descriptions of significant leases, business agreements, and rights-of-way the tribe has entered into with third parties or to which it has consented;

(8) A description of the expertise that the tribe will use to administer the TERA and an explanation of how that expertise meets the requirements of paragraph (d) of this section;

(9) A statement of the scope of administrative activities that the tribe intends to conduct and an explanation of how that meets the requirements of paragraph (e) of this section;

(10) A statement that meets the requirements of paragraph (f) of this section describing the capability of the tribe to assume all of the activities the tribe has identified in the application;

(11) A copy of the resolution or formal action of the tribal governing body or bodies under § 224.41 that approves submission of an application for a TERA; and

(12) A designation of, and contact information for, the Designated Tribal Official who will receive notifications from the Secretary or the Director regarding the status of the TERA application.

(b) The documents required by paragraph (a)(4) of this section include documents such as a constitution, code, ordinance, or resolution, that designate the tribal governing body or tribal officials that have authority to enter into leases, business agreements, or rights-of-way on behalf of the tribe.

(c) The statement required by paragraph (a)(6) of this section must:

(1) If applicable, state that the tribe retains the option of entering into energy-related leases or agreements under laws other than the Act for any tribal land that the TERA includes; and

(2) State one of the following:

(i) The tribe intends the TERA to include all tribal land, energy resources, and categories of energy-related leases, business agreements, and rights-of-way; or

(ii) The tribe intends the TERA to include only certain tribal land, energy resources, or categories of energy-related leases, business agreements, or rights-of-way in the TERA. In this

case, the statement must specify and describe the tribal land, energy resources, or categories of energy-related leases, business agreements, or rights-of-way that the tribe intends to include in the TERA.

(3) State the tribe's intent to amend or modify leases, business agreements, or rights-of-way that exist when a TERA is approved if those activities are directly related to the activities authorized by the TERA. The tribe's ability to amend or modify such leases, business agreements or rights-of-way requires the agreement of the other parties to the lease, business agreement or rights-of-way, which must be stated in the TERA.

(d) The statement required by paragraph (a)(8) of this section must describe the expertise that the tribe will use in the four areas specified in paragraph (d)(1) of this section. It must also address, at a minimum, the administrative and personnel resources specified in paragraph (d)(2) of this section.

(1) The statement must describe the expertise that the tribe will use to:

(i) Negotiate or review leases, business agreements, or rights-of-way under the TERA;

(ii) Evaluate the environmental effects, including those related to cultural resources, of leases, business agreements, or rights-of-way entered into under a TERA;

(iii) Review proposals for leases, business agreements and rights-of-way under the TERA; and

(iv) Monitor the compliance of a third party with the terms and conditions of any leases, business agreements and rights-of-way covered by the TERA.

(2) The statement must describe the following:

(i) Existing energy resource development related departments or administrative divisions within the tribe;

(ii) Proposed energy resource development related departments or administrative divisions within the tribe;

(iii) Existing energy resource development related expertise possessed by the tribe, including a description of the relevant expertise of designated tribal employees, consultants and/or advisors; and

Bureau of Indian Affairs, Interior

§ 224.55

(iv) Proposed energy resource development related expertise that the tribe may acquire, including a description of the relevant expertise of designated tribal employees, consultants and/or advisors that the tribe intends to hire or retain.

(e) The statement required by paragraph (a)(9) of this section must describe the amount of administrative activities related to the permitting, approval, and monitoring of activities, as applicable, that the tribe proposes to undertake under any lease, business agreement, or right-of-way the tribe executes under an approved TERA.

(1) If the tribe proposes to regulate activities, the tribe must state its intent and describe the scope of the tribe's plan for such administration and management in sufficient detail for the Secretary to determine the tribe's capacity to administer and manage the regulatory activity(ies).

(2) The tribe's intended scope of administrative responsibilities may not include the responsibilities of the Federal Government under the Endangered Species Act or other inherently Federal functions.

(3) If the tribe intends to regulate activities, it should also describe the regulatory activities it desires to assume in the geographical area identified in § 224.53(c)(2) with respect to leases, business agreements, and rights-of-way that exist when a TERA is approved.

(f) The statement required by paragraph (a)(10) of this section must:

(1) Describe the tribe's ability to negotiate and enter into leases, business agreements, and rights-of-way;

(2) Include a discussion of the estimated annual costs to the tribe to assume those activities the tribe has identified in the application and the proposed source of tribal funds to carry out those activities; and

(3) Describe the estimated annual amounts needed to conduct those activities the tribe has identified in the application and identify the Federal program that may provide those funds, if one of the sources of tribal funds includes grants or contract awards from the Department, the Department of Energy, or other Federal agencies.

(4) Include a description of any:

(i) Compacts and contracts between the tribe and the Secretary under the Indian Self-Determination and Education Assistance Act, as amended;

(ii) Environmental programs a tribe has assumed under the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C.A. 7401); or

(iii) Cooperative agreements under the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1701 *et seq.*).

PROCESSING APPLICATIONS

§ 224.54 How must a tribe submit an application?

A tribe must submit an application and all supporting documents in written and electronic form to the Director.

§ 224.55 Is information a tribe submits throughout the TERA process under this part subject to disclosure to third parties?

The requirements of this section implement the requirements of the Freedom of Information Act (5 U.S.C. 552) (FOIA) and 43 CFR part 2:

(a) Information a tribe submits to the Department throughout the TERA process under this part may be subject to disclosure to third parties under FOIA unless a FOIA exemption or exception applies or other provisions of law protect the information.

(b) A tribe may, but is not required to, designate information it submits as confidential commercially or financially sensitive information, as applicable, in any submissions it makes throughout the TERA process, including, but not limited to:

(1) Pre-application information;

(2) Application information

(3) A final proposed TERA;

(4) Any amendments to a TERA; and

(5) Leases, business agreements, and grants of right-of-way executed under an approved TERA.

(c) Upon receipt of a FOIA request for records that contain commercial or financial information a tribe has submitted under the TERA process, as required by 43 CFR part 2 the Department will provide the tribe, as submitter, with written notice of the FOIA request if: