

## 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: