

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****25 CFR Part 224****RIN 1076-AE80****Tribal Energy Resource Agreements Under the Indian Tribal Energy Development and Self-Determination Act****AGENCY:** Bureau of Indian Affairs, Interior.**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Interior, Bureau of Indian Affairs, proposes to amend its regulations by adding a new part to provide for Tribal Energy Resource Agreements (TERAs) between the Secretary of the Interior (Secretary) and Indian tribes under Section 2604 of the Indian Energy Resource Development and Self-Determination Act. The proposed regulations provide the process under which the Secretary will grant authority to an Indian tribe to review and approve leases business agreements and rights-of-way for specific energy development activities on tribal lands through an approved TERA. The Department invites your comments on the proposed rule.

**DATES:** Submit comments by September 20, 2006. We may not fully consider comments received after this date.

**ADDRESSES:** You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1076-AE80 as an identifier in your message. See also Public Comment Procedures under Procedural Matters.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail IEED at IEED@bia.edu and use the RIN 1076-AE80 in the subject line.
- Fax: 202-208-4564. Identify with the RIN 1076-AE80.
- Mail or hand-carry comments to the Department of the Interior, Office of Indian Energy and Economic Development, Room 20—South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245. Please reference RIN 1076-AE80 in your comments and also include your name and return address.
- Comments on information collection are separate from comments on the rule and must be addressed separately. Send comments on the information collection in this rule (1076-AE80) to: Desk Officer for the

Department of the Interior, Office of Management and Budget, by facsimile at (202) 395-6566 or e-mail:

[oira\\_docket@omb.eop.gov](mailto:oira_docket@omb.eop.gov). Please also send a copy of your comments on the information collection to Office of Indian Energy and Economic Development, Room 20—South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245. Please reference RIN 1076-AE80.

**FOR FURTHER INFORMATION CONTACT:**

Darryl Francois, Program Analyst, Office of Indian Energy and Economic Development, Room 20—South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245. Telephone (202) 219-0740 or fax (202) 208-4564.

**SUPPLEMENTARY INFORMATION:** The Secretary of the Interior is issuing this part under authority of the Indian Tribal Energy Development and Self-Determination Act of 2005, Pub. L. 109-58, 119 Stat. 763, 25 U.S.C. 3501-3504, and 25 U.S.C. 2 and 9.

Title V, Section 503 of the Energy Policy Act of 2005 (Pub. L. 109-58) amends Title XXVI (Indian Energy) of the Energy Policy Act of 1992 to require the Secretary of the Interior (Secretary) to promulgate regulations that implement new provisions concerning energy resource development on tribal lands. Specifically, the Indian Energy Development and Self-Determination Act, Title XXVI, Section 2604 of the Energy Policy Act, as amended, authorizes the Secretary to enter into TERAs with Indian tribes. The intent of these agreements is to promote tribal oversight and management of energy and mineral resource development on tribal lands and further the goal of Indian self-determination. A TERA offers a tribe an entirely new alternative for entering into energy-related business agreements and leases and for granting rights-of-way for pipelines, electric transmission and distribution lines without the Secretary's review and approval.

The proposed regulations provide that entering into a TERA requires a tribal application and Secretarial determination of a tribe's capacity to manage the full scope of administrative, regulatory, and energy resource development a tribe proposes to assume under an approved TERA. In addition, the Act requires that a TERA include provisions that cover environmental compliance measures and a process for review of any potential environmental impacts to areas affected by activities that the tribe could approve under the TERA. The TERA regulations must also provide a process for interested parties to challenge a tribe's non-compliance

with terms of an approved TERA and for the Secretary to take necessary actions to protect trust resources if activities undertaken under an approved TERA cause or will cause imminent jeopardy to a trust resource.

The Act became law on August 8, 2005 and requires the Secretary to establish and implement regulations governing the TERA approval process within 365 days of its passage. In addition, the implementation of these regulations will further the Federal Government's policy of providing enhanced self-determination and economic development opportunities for American Indian tribes and support the national energy policy of increasing utilization of domestic energy resources.

Under the Act, the Department held a series of public meetings and tribal consultations in January 2006 to solicit stakeholder and tribal comment on the implementation of the Act. In addition, the Department in two letters to tribal leaders solicited direct involvement of tribes in drafting a framework for development of these proposed regulations.

Written and oral comments in public meetings with stakeholders identified several concerns that the Department considered in drafting the proposed regulations. Three issues raised the most concern: tribal capacity determination by the Department, TERA-authorized activity on fee land held by tribes; and environmental review of proposed and ongoing activities authorized by a TERA.

The Act requires that the implementing regulations include criteria the Secretary will use to determine the capacity of a tribe. These include the tribe's experience managing natural resources and administrative and financial resources that will be available to it when implementing an approved TERA; a process and requirements under which a tribe may voluntarily rescind a TERA and return to the Secretary the review and approval authority for future leases, business agreements and rights-of-way for energy resource development; a scope of and provisions for periodic review and evaluation of a TERA, including provision for review of transactions, reports and site inspections and any other review processes the Secretary deems appropriate; and provisions for final agency actions after exhaustion of administrative appeals of Secretarial decisions.

In drafting the proposed regulations the Department has diligently attempted to conform to the provisions of the Act to include provisions for the items the Act states must be included in the

regulations and to address concerns that arose during the consultation process.

With respect to a capacity determination, the proposed regulations include a provision for tribes considering entering into a TERA agreement to go through a pre-application process designed to provide a preliminary analysis of the type of expertise necessary to manage particular types of energy resource development projects. In addition, tribes as part of the TERA application process must outline the level of expertise they possess to manage the energy resource development projects within the scope of the proposed TERA or how they would acquire the needed expertise. The Department welcomes comment on whether these provisions are sufficient to allow the Secretary to determine tribal capacity to develop energy resources.

The proposed regulations adopt the definition of tribal lands contained in the Act. However, some tribes suggest that a more expansive definition that includes real property held in fee by a tribe regardless of location would potentially create more economically robust development projects. The Department welcomes comment on whether to include this definition of Tribal land in the proposed regulations. The suggested language for a definition of tribal land is as follows:

*Tribal land* means those lands for which the Secretary has determined that interests in real property held in fee by a tribe and located outside of Indian Country, as defined in 18 U.S.C 1151, are not subject to a restriction on alienation, unless otherwise specifically imposed by Congress. Should a final, non-appealable decision of a court of competent jurisdiction invalidate the Secretary's determination that such land is not subject to a restriction on alienation and conclude such land is subject to a restriction on alienation, this definition of Tribal land will include real property held in fee by a tribe, regardless of location, except in those instances in which Congress has removed the restriction on alienation.

The proposed regulations also include provisions that require tribes seeking approval for a TERA to demonstrate their capacity to identify and evaluate all significant environmental effects and reasonable mitigation measures, including those related to cultural resources. The Department welcomes comment on whether these provisions are sufficient to allow the Secretary to determine tribal capacity to develop energy resources.

## Procedural Matters

### *Regulatory Planning and Review (Executive Order 12866)*

This document is not a significant rule and does not require review by the Office of Management and Budget under Executive Order 12866. These regulations create a process that will allow tribes to enter into an agreement with the Department intended to promote tribal oversight and management of energy and mineral resource development on tribal lands. The approval of a Tribal Energy Resource Agreement will, not, by itself, result in energy development related leases, business agreements, or rights-of-way. Therefore, this proposed rule will not have an effect of \$100 million or more on the economy and will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

By implementing the provisions of the Act, these regulations will further the goal of Indian self-determination that is a longstanding goal of the Federal Government and the Department and so will not create serious inconsistency or otherwise interfere with any action taken or planned by another agency or raise novel legal or policy issues. This proposed rule does not interact with entitlements, grants, user fees, or loan programs so it will not affect any such programs or the rights or obligations of their recipients.

### *Regulatory Flexibility Act (RFA)*

The Department certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the RFA (5 U.S.C. 601 *et seq.*). Most of the costs for complying with this proposed rule would be information collection costs. The total estimated annual burden hours for responding to the information collection requirements in this proposed rule are 10,752. Respondents to the information collection required by these regulations would need to acquire the services of individuals in the project management and energy, environmental, financial and legal analyses fields as well as administrative service staff. The annual non-hour burden associated with the proposed regulations is \$48,200 for office and maintenance expenses associated with preparation of reports and a variety of correspondence. When added to the salary and benefits for personnel, the annual industry-wide cost for the information collection burden in this proposed rule would be about \$375,795.

Therefore, complying with "Part 224—Tribal Energy Resource Agreements Under the Indian Tribal Energy Development and Self-Determination Act" should not be a significant financial burden. For a proposed rule with these relatively low projected costs, a Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards will consider comments from small businesses about Federal agency enforcement actions. The Ombudsman annually evaluates each agency's responsiveness to small business. If you wish to comment, call toll-free 1-(888)-734-3247.

### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This proposed rule is not a major rule under SBREFA (5 U.S.C. 804(2)). This proposed rule:

(a) Most of the costs for complying with this proposed rule would be information collection costs. The total estimated industry-wide cost for the information collection burden in this proposed rule would be about \$375,000. Therefore, the proposed rule will not have an annual effect on the economy of \$100 million or more.

(b) The approval of a Tribal Energy Resource Agreement will not, by itself, result in energy development related leases, business agreements, or rights-of-way. Therefore, the proposed regulations will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic areas.

(c) Because the proposed regulations do not directly result in energy resource development projects, they will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

### *Unfunded Mandates Reform Act (UMRA)*

Participation in the development of Tribal Energy Resource Agreements as outlined in these proposed regulations is voluntary. In addition, there are regulatory alternatives for tribes that want to develop energy resources on tribal lands, but they may not want to develop a TERA. Furthermore, the proposed regulations will not result in the expenditure by the state, local or tribal governments or private sector of

\$100 million or more in any one year. Therefore, these proposed regulations do not impose an unfunded mandate on state, local, or tribal governments, or the private sector, of more than \$100 million per year, and the proposed regulations do not have a significant or unique effect on state, local, or tribal governments, or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

#### *Federalism (Executive Order 13132)*

According to Executive Order 13132, these proposed regulations do not have Federalism implications. While these regulations are of interest to tribes, there is no federalism impact on the trust relationship or balance of power between the United States government and the various tribal governments affected by this rulemaking. Therefore, the proposed regulations do not substantially and directly affect the relationship between the Federal and State governments, and would not impose costs on states or localities and so do not require a federalism assessment.

#### *Civil Justice Reform (Executive Order 12988)*

With respect to Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system, and meets the requirements of

sections 3(a) and 3(b)(2) of the Executive Order.

#### *Paperwork Reduction Act (PRA)*

This proposed rule contains a collection of information that has been submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the PRA. As part of our continuing effort to reduce paperwork and respondent burdens, the Department invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burden. If you wish to comment on the information collection aspects of this proposed rule, you may send your comments directly to OMB (see the **ADDRESSES** section of this document). Please identify your comments with RIN 1076-AE80/Tribal Energy Resource Agreements, 25 CFR 224. Send a copy of your comments to the Office of Indian Energy and Economic Development, Room 20—South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245. Please reference “Proposed Rule—Tribal Energy Resource Agreements” in your comments. You may obtain a copy of the supporting statement for the new collection of information by contacting the Bureau of Indian Affairs’ Information Collection Clearance Officer at (703) 735-4414.

The PRA provides that an agency may not conduct or sponsor, and a person is

not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it early during the comment period. This does not affect the deadline for the public to comment to the Department of the Interior about the proposed regulations.

The title of the collection of information for the rule is “Tribal Energy Resource Agreements, 25 CFR Part 224.” Respondents to the information collections in these regulations derive economic benefit from an enhanced ability to manage energy resources that exist on tribal lands within their jurisdiction. Therefore, the frequency of response will vary and depends on the respondents needs. The information collection (IC) does not include questions of a sensitive nature. The IEED will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 522) and its implementing regulations (43 CFR part 2) or other applicable laws.

The following table details the IC burden for the proposed requirements in subparts B, C, D, E, F, G, and H:

TABLE 1.—TRIBAL ENERGY RESOURCE AGREEMENTS UNDER THE INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF DETERMINATION ACT

| Citation 25 CFR 224                                                         | Section title                                                                                                               | Information collection requirement                                                                                                                                                               | Hour burden for respondent | Average number of annual responses | Annual burden hours for respondent | Total annual cost (salary & benefits) |
|-----------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|------------------------------------|------------------------------------|---------------------------------------|
| <b>Subpart B—Procedures for Obtaining Tribal Energy Resource Agreements</b> |                                                                                                                             |                                                                                                                                                                                                  |                            |                                    |                                    |                                       |
| 224.53 and 224.63.                                                          | What must an Application for an Agreement contain and What provisions must an Agreement contain?                            | 224.53 Provisions (a) through (p) outline Application information requirements and 225.63 Provisions (a) through (c) outline Agreement requirements.                                             | 1080                       | 4                                  | 4,320                              | \$151,328 (\$131,328)                 |
| 224.57(d) .....                                                             | What must the Director do upon receipt of an Application?                                                                   | Director issues written notice to tribe listing additional information requirements.                                                                                                             | 480                        | 2                                  | 960                                | \$33,468 (\$29,468)                   |
| 224.61 .....                                                                | What will the tribe provide to the Director after receipt of the Director’s report on the Application consultation meeting? | Tribe must submit final proposed Agreement.                                                                                                                                                      | 32                         | 4                                  | 128                                | \$4,352 (\$3,952)                     |
| 224.64 .....                                                                | How may a tribe assume management of development of different types of energy resources?                                    | A tribe may assume management of other types of energy resources by applying for a new Agreement under the same requirements as §224.53 and §224.54 for that additional type of energy resource. | 720                        | 1                                  | 720                                | \$24,888 (\$21,888)                   |

TABLE 1.—TRIBAL ENERGY RESOURCE AGREEMENTS UNDER THE INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF DETERMINATION ACT—Continued

| Citation 25 CFR 224                                                  | Section title                                                                                                                      | Information collection requirement                                                                                                                                               | Hour burden for respondent | Average number of annual responses | Annual burden hours for respondent | Total annual cost (salary & benefits) |
|----------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|------------------------------------|------------------------------------|---------------------------------------|
| 224.65 .....                                                         | How may a tribe assume additional activities under an Agreement?                                                                   | Outlines an amendment process for making changes to an already approved Agreement.                                                                                               | 520                        | 1                                  | 520                                | \$17,838<br>(\$15,838)                |
| 224.68(d) .....                                                      | How will the Secretary use public comment?.                                                                                        | If the Secretary makes changes to final proposed Agreement based on public comment the tribe must approve final changes in writing.                                              | 480                        | 4                                  | 1920                               | \$66,936<br>(\$58,936)                |
| <b>Subpart C—Approval of Tribal Energy Resource Agreements</b>       |                                                                                                                                    |                                                                                                                                                                                  |                            |                                    |                                    |                                       |
| 224.76 .....                                                         | Upon notification of disapproval, may a tribe re-submit a revised final proposed Agreement?                                        | Yes—Tribe may submit a revised final proposed Agreement.                                                                                                                         | 520                        | 1                                  | 520                                | \$17,838<br>(\$15,838)                |
| <b>Subpart D—Implementation of Tribal Energy Resource Agreements</b> |                                                                                                                                    |                                                                                                                                                                                  |                            |                                    |                                    |                                       |
| 224.83 .....                                                         | What are the responsibilities of a tribe following execution of leases, business agreements, and rights-of-way under an Agreement? | Inform public, send copy of any agreements to the Director, and provide documentation to Director of information that would allow Secretary to discharge trust responsibilities. | 32                         | 10                                 | 320                                | \$10,920<br>(\$8,920)                 |
| 224.87 .....                                                         | What are the responsibilities of a tribe if it discovers a Violation or Breach?                                                    | Tribe must provide written notice to Director for provisions (a) through (c).                                                                                                    | 120                        | 1                                  | 120                                | \$4,291<br>(\$3,791)                  |
| <b>Subpart E—Interested Party Petitions</b>                          |                                                                                                                                    |                                                                                                                                                                                  |                            |                                    |                                    |                                       |
| 224.108 .....                                                        | What must a petition contain?                                                                                                      | Provisions (a) through (j) outline petition information requirements.                                                                                                            | 464                        | 1                                  | 464                                | \$16,024<br>(\$14,024)                |
| 224.112 .....                                                        | What may the tribe do after it completes petition consultation with the Director?                                                  | After completion of petition consultation tribe may submit a written response.                                                                                                   | 408                        | 1                                  | 408                                | \$15,546<br>(\$12,546)                |
| 224.120(a) .....                                                     | How must the Director proceed with a petition if it meets the threshold determinations?                                            | The tribe must provide a written response to the Director's determination.                                                                                                       | 120                        | 1                                  | 120                                | \$4,291<br>(\$3,791)                  |
| <b>Subpart F—Periodic Reviews</b>                                    |                                                                                                                                    |                                                                                                                                                                                  |                            |                                    |                                    |                                       |
| 224.139(b) .....                                                     | What must a tribe do after receiving a notice of imminent jeopardy to a physical trust asset.                                      | Submit a written response to the Director.                                                                                                                                       | 120                        | 1                                  | 120                                | \$4,291<br>(\$3,791)                  |
| <b>Subpart G—Reassumption</b>                                        |                                                                                                                                    |                                                                                                                                                                                  |                            |                                    |                                    |                                       |
| 224.156 .....                                                        | What information must the tribe's response to the notice of intent to reassume include?                                            | Information requirements for tribes response to notice of intent to reassume.                                                                                                    | 80                         | 1                                  | 80                                 | \$2,696<br>(\$2,496)                  |
| <b>Subpart H—Rescission</b>                                          |                                                                                                                                    |                                                                                                                                                                                  |                            |                                    |                                    |                                       |
| 224.173 .....                                                        | How does a tribe rescind an Agreement?                                                                                             | Tribe must submit a written tribal resolution to initiate a rescission.                                                                                                          | 32                         | 1                                  | 32                                 | \$1,088<br>(\$988)                    |
| Total Burden.                                                        | .....                                                                                                                              | .....                                                                                                                                                                            | .....                      | .....                              | 10,752                             | \$375,795<br>(\$327,595)              |

IEED specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for IEED to

properly perform its functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

#### *National Environmental Policy Act (NEPA)*

Under NEPA and 516 Departmental Manual 6, Appendix 10.4C, "Issuance and/or modification of regulations," these proposed regulations do not constitute a major Federal action significantly affecting the quality of the human environment. The proposed regulations fall within the categorical exclusion of Appendix 10.4C(1) because the impact of the proposed rule would be limited to administrative and economic effects. There are no extraordinary circumstances that would require preparation of an environmental assessment or an environmental impact statement.

#### *Data Quality Act*

In developing these regulations, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554).

#### *Energy Supply, Distribution, or Use (Executive Order 13211)*

This proposed rule is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 13211. The proposed regulations are administrative in nature and will not directly lead to energy development projects. Therefore, they will not have a significant effect on energy supply, or distribution. Thus, a Statement of Energy Effects is not required.

#### *Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)*

Pursuant to Executive Order 13175 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments, the Department has determined that because the proposed rulemaking will uniquely affect tribal governments it will follow Department and Administrative protocols in consulting with tribal governments on the rulemaking. Consequently, tribal governments will be notified through this **Federal Register** notice and through

the BIA field offices, of the ramifications of this rulemaking. This will enable tribal officials and the affected tribal constituency throughout Indian country to have meaningful and timely input in the development of the final rule. This will reinforce good intergovernmental relations with tribal governments and better inform, educate and advise such tribal governments on compliance requirements of the rule making. We consulted with tribal representatives during the formulation of this proposed regulation.

The Department sent letters to tribal leaders on October 31, 2005 with information about the TERA provisions of Title V, Section 503 and soliciting participation in a process to develop a framework for the implementing regulations. On December 9, 2005, the Department published a **Federal Register** notice (70 FR 73257) announcing public meetings and tribal consultations in 10 cities between January 9 and 20, 2006. The **Federal Register** notice also solicited written comments and was distributed through the BIA regional offices to all tribes. We held the meetings in the following cities: Tulsa, OK; Denver, CO; Houston, TX; Albuquerque, NM; Las Vegas, NV; Sacramento, CA; Minneapolis, MN; Billings, MT; Portland, OR; and Washington, DC. The comments received from these public meetings and consultations and the written comments submitted were taken into consideration in the formulation of the following proposed regulations. We have committed to consulting with tribal representatives in the formulation of a final rule for Tribal Energy Resource Agreements regulations.

#### *Public Comment Procedures*

The Department's practice is to make comments, including the names and addresses of respondents, available for public review. Individual respondents may request that we withhold their addresses from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, the Department will not consider anonymous comments. We will make all submissions from tribes, organizations, or businesses, and from individuals identifying themselves as representatives or officials of tribes, organizations, or businesses, available for public inspection in their entirety.

#### *Clarity of This Regulation*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to the following questions:

(1) Are the requirements in the proposed rule clearly stated?

(2) Does the proposed rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the rule?

(5) What else can we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to the Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

#### **List of Subjects in 25 CFR Part 224**

Agreement, Appeals, Application, Business agreements, Energy development, Interested party, Lease, Recordkeeping requirements, Reporting requirements, Right-of-Way, Tribal Energy Resource Agreements, Tribal capacity, Tribal lands, Trust, Trust asset.

Dated: August 1, 2006.

**Michael D. Olsen,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

For the reasons stated in the preamble, the Department proposes to add a new Part 224 in Chapter I of Title 25 of the Code of Federal Regulations as follows:

#### **PART 224—TRIBAL ENERGY RESOURCE AGREEMENTS UNDER THE INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF DETERMINATION ACT**

##### **Subpart A—General Provisions**

Sec.

224.10 What is the purpose of this part?

224.20 How will the Secretary interpret and implement this part and the Act?

224.30 What definitions apply to this part?

224.40 How does the Act or an agreement affect the Secretary's trust responsibility?

224.41 When does the Secretary require agreement of more than one tribe to approve a TERA?

224.42 How does the Paperwork Reduction Act affect these regulations?

#### **Subpart B—Procedures for Obtaining Tribal Energy Resource Agreements**

224.50 What is the purpose of this subpart?

#### **Pre-Application Consultation and the Form of Application**

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

224.52 What may a tribe and the Secretary include in an agreement?

224.53 What must an application for an agreement contain?

#### **Processing Applications**

224.54 How must a tribe submit an application?

224.55 Will information a tribe submits during the application process be subject to disclosure to third parties?

224.56 What is the effect of the Director's receipt of a tribe's complete application?

224.57 What must the Director do upon receipt of an application?

#### **Application Consultation Meeting**

224.58 What is an application consultation meeting?

224.59 How may the Director use the results of the application consultation meeting?

224.60 What will the Director provide to the tribe after the application consultation meeting?

224.61 What will the tribe provide to the Director after receipt of the Director's report on the application consultation meeting?

224.62 May a final proposed agreement differ from the original proposed agreement?

#### **Agreement Requirements**

224.63 What provisions must an agreement contain?

224.64 How may a tribe assume management of development of different types of energy resources?

224.65 How may a tribe assume additional activities under an agreement?

#### **Public Notification and Comment**

224.67 What must the Secretary do upon the Director's receipt of a final proposed agreement?

224.68 How will the Secretary use public comments?

#### **Subpart C—Approval of Tribal Energy Resource Agreements**

224.70 Will the Secretary conduct a review of a final proposed agreement under the National Environmental Policy Act (NEPA)?

224.71 What standards will the Secretary use to decide to approve a final proposed agreement?

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

224.73 How will the scope of energy resource development proposed in a tribe's agreement affect the Secretary's determination of the tribe's capacity?

224.74 When must the Secretary approve or disapprove a final proposed agreement?

224.75 What must the Secretary do upon approval or disapproval of a final proposed agreement?

224.76 Upon notification of disapproval, may a tribe re-submit a revised final proposed agreement?

224.77 Who may appeal the Secretary's decision on a final proposed agreement or a revised final proposed agreement?

#### **Subpart D—Implementation of Tribal Energy Resource Agreements**

##### **Applicable Authorities and Responsibilities**

224.80 Under what authority will a tribe perform activities undertaken under an agreement?

224.81 What laws are applicable to activities under an agreement?

224.82 What services will the Department provide to a tribe after approval of an agreement?

224.83 What are the responsibilities of a tribe following execution of leases, business agreements, and rights-of-way under an agreement?

##### **Leases, Business Agreements, and Right-of-Way Under an Agreement**

224.84 When may a tribe grant a right-of-way under an agreement?

224.85 When may a tribe enter into a lease or business agreement under an agreement?

224.86 Are there limits for terms of leases, business agreements, and rights-of-way entered into under an agreement?

##### **Violation or Breach**

224.87 What are the responsibilities of a tribe if it discovers a violation or breach?

224.88 What are the responsibilities of the Director after receiving notice of a violation or breach from the tribe?

224.89 What procedures will the Secretary use to enforce leases, business agreements, or rights-of-way entered into under an agreement?

##### **Subpart E—Interested Party Petitions**

224.100 May a person or entity ask the Secretary to review a tribe's compliance with an agreement?

224.101 Who is an interested party?

224.102 Must a tribe establish a comment or hearing process under an agreement for addressing environmental concerns?

224.103 Must a tribe establish a process for public participation regarding an agreement or activities undertaken under an agreement?

224.104 Must a tribe enact tribal laws, regulations, or procedures permitting persons or entities to allege a tribe's noncompliance with an agreement?

224.105 How may a person or entity obtain copies of tribal laws, regulations, or procedures that establish hearing or comment processes or that permit allegations of a tribe's noncompliance with its agreement?

§ 224.106 If a tribe has enacted tribal laws, regulations, or procedures for challenging tribal action under an agreement, how must the tribe respond to a petitioner's challenge?

224.107 What must a petitioner claim or request in a petition filed with the Secretary?

224.108 What must a petition contain?

224.109 What must a petitioner do before filing a petition with the Secretary?

224.110 When may a petitioner file a petition with the Secretary?

224.111 What must the Director do upon receipt of a petition?

224.112 What may the tribe do after it completes petition consultation with the Director?

224.113 How may the tribe address a petition in its written response?

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**Authority:** 25 U.S.C. 2 and 9; 25 U.S.C. 3501–3504; Pub. L. 109–58.

### Subpart A—General Provisions

#### § 224.10 What is the purpose of this part?

This part:

(a) Establishes procedures by which a tribe may enter into and manage leases, business agreements, and rights-of-way for purposes of energy resource development on tribal land; and

(b) Describes the process for obtaining, implementing, and enforcing an agreement that will allow a tribe to enter into individual leases, business agreements, and rights-of-way without obtaining Secretarial approval.

#### § 224.20 How will the Secretary interpret and implement this part and the Act?

(a) The Secretary will interpret and implement this part and the Indian Tribal Energy Development and Self-Determination Act (the Act) in keeping with the self-determination and energy development provisions and policies in the Act.

(b) The Secretary will liberally construe this part and the Act for the benefit of tribes to implement the Federal policy of self-determination. The Secretary will construe any ambiguities in this part or the Act in favor of the tribe to implement Tribal Energy Resource Agreements as authorized by this part and the Act.

#### § 224.30 What definitions apply to this part?

*Act* means the Indian Tribal Energy Development and Self-Determination Act of 2005, as promulgated in Title V of the Energy Policy Act of 2005, Pub. L. 109–58, 25 U.S.C. 3501–3504.

*Agreement* means a tribal energy resource agreement (TERA) provided for by the Act and this part.

*Application* means the application submitted for an agreement under subpart B.

*Business agreement* means:

(1) Any permit, contract, joint venture, option, or other agreement that furthers any activity related to locating, producing, transporting, or marketing energy resources on or across tribal land;

(2) Any amendment, supplement, or other modification to such an agreement; or

(3) Any other business agreement entered into or subject to administration under a TERA.

*Days* mean calendar days. In computing any period prescribed or allowed by the Act and this part:

(1) Do not include the day of the event from which the period begins to run;

(2) Include the last day of the period, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Federal holiday; and

(3) When the period prescribed or allowed is less than 11 days, exclude intermediate Saturdays, Sundays, and Federal holidays from the computation.

*Decision Deadline* means the 120-day period within which the Director will make a decision about a petition submitted by an interested party under subpart E. The Director may extend this period for up to 120 days.

*Department* means the Department of the Interior.

*Director* means the Director of the Office of Indian Energy and Economic Development or the Secretary's designee authorized to act on behalf of the Secretary.

*Energy Resources* means both renewable and nonrenewable energy sources, including, but not limited to, natural gas, oil, uranium, coal, nuclear, wind, solar, geothermal, biomass, and hydrologic resources.

*Imminent jeopardy to a physical trust asset* means an immediate threat of devaluation, degradation, damage, or loss of a physical trust asset, as determined by the Secretary, caused by the noncompliance of a tribe with an agreement or applicable Federal law.

*Interested party* means a person or entity who has filed a petition with the Secretary under subpart E seeking review of a tribe's compliance with an agreement and who meets the criteria in § 224.51.

*Lease* means a written agreement, or modification to an agreement, between a tribe and a tenant or lessee, whereby the tenant or lessee is granted a right to possession of tribal land or energy resources for purposes of energy resource development, including:

(1) Exploration, extraction, processing, refining, marketing or other activities that further the development of energy resources; and

(2) Construction or operation of facilities on tribal lands used to generate, transmit, or distribute electricity or to process, transport, or refine energy resources.

*Petitioner* means a person or entity who has filed a petition under subpart E with a tribe or the Secretary seeking review of a tribe's compliance under an agreement. A petitioner is not considered to be an interested party unless the petitioner meets the criteria in § 224.51.

*Physical trust asset* means a physical asset held in trust by the United States in trust for a tribe or individual Indian or by a tribe or individual Indian subject to a restriction against alienation under the laws of the United States. "Physical trust asset" does not include:

- (1) Any improvements (for example, wells or structures) to the assets held in trust or restricted status; or
- (2) Monetary assets.

*Public* means one or more natural or legal persons, and their associations, organizations, or groups; or Federal, State, tribal and local government agencies; or private industry and their associations, organizations, or groups.

*Right-of-way* means an easement, right, or other authorization over tribal lands, granted or subject to administration under an agreement, for a pipeline or electric transmission or distribution line that serves a facility located on tribal land that is related to energy resources or an agreement to grant a right-of-way.

*Secretary* means the Secretary of the Interior or the Secretary's designee.

*Tribal Designated Official* means the official designated in a tribe's pre-application consultation request, application, or agreement to assist in scheduling consultations or to receive communications from the Secretary or the Director to the tribe regarding the status of an agreement or activities under an agreement.

*Tribal governing body* means a tribe's governing entity, such as tribal council or tribal business committee, as established under tribal or Federal law and recognized by the Secretary.

*Tribal land* means any land or interests in land owned by a tribe, title to which is held in trust by the United States, or is subject to a restriction against alienation under the laws of the United States. For the purposes of this part, tribal land includes land taken into trust or subject to restrictions on alienation under the laws of the United States after the effective date of the agreement.

*Tribes* means any Indian tribe, band, nation, or other organized group or community, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, except a Native Corporation as defined in the Alaska Native Claims Settlement Act, 43 U.S.C. 1602.

*Violation or breach* means any breach or violation of a lease, business agreement, or right-of-way or a Federal or tribal environmental law resulting from an activity undertaken under a lease, business agreement, or right-of-way under an agreement.

#### **§ 224.40 How does the Act or an agreement affect the Secretary's trust responsibility?**

(a) The Act (25 U.S.C. 3504(e)(6)) preserves the Secretary's trust responsibilities relating to trust resources and requires the Secretary to act in good faith and in the best interest of Indian tribes at all times.

(b) Neither the Act nor this part absolve the Secretary of responsibilities to Indian tribes under the trust relationship, treaties, statutes, regulations, Executive Orders, agreements or other Federal law.

(c) The Act and this part preserve the Secretary's trust responsibility to ensure that the rights and interests of an Indian tribe are protected if:

(1) Another party to a lease, business agreement, or right-of-way violates any term thereof; or any applicable Federal law; or

(2) Any provision of a lease, business agreement, or right-of-way violates an agreement under which it was executed.

(d) The United States is not liable for losses that may result to a tribe or to third parties from terms or provisions contained in a lease, business agreement, or right-of-way negotiated by an Indian tribe and executed under an agreement.

#### **§ 224.41 When does the Secretary require agreement of more than one tribe to approve a TERA?**

When a TERA includes leases, business agreements and rights-of-way on tribal land held for the benefit of more than one tribe, as part of the pre-application process each tribal governing body must submit a resolution or enactment approving the submission of an application. Each tribal governing body must also sign the agreement, if approved.

#### **224.42 How does the Paperwork Reduction Act affect these regulations?**

The information collected from the public is cleared and covered by OMB Control Number 1076-XXXX. The sections of this rule which have information collections are §§ 224.53, 224.57(d), 224.61, 224.63, 224.64, 224.65, 224.68(d), 224.76, 224.83, 224.87, 224.108, 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 governing:

- (a) The pre-application process;
- (b) The required content of applications;
- (c) Submitting 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 an agreement should request a pre-application consultation by writing to the Director, Office of Indian Energy and Economic Development, Department of the Interior, Room 20—South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245. The request should include the name and contact information of the tribal Designated Official who will coordinate scheduling with the Director.

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

(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 an agreement;
- (4) The tribe's capacity to manage and regulate energy resource development identified in the scope of its application;
- (5) Potential opportunities for funding capacity-building and other activities of the tribe under an agreement; and
- (6) Any other matters applicable to this part, the Act, and the tribe.

##### **§ 224.52 What may a tribe and the Secretary include in an agreement?**

An agreement under this part:

- (a) May include development of all or part of a tribe's energy resources;
- (b) Must be explicit as to the type of energy resource included;
- (c) May include assumption by the tribe of certain activities normally carried out by the Secretary, except for inherently Federal functions; and

(d) Must be explicit as to what activities related to specific energy resource developments the tribe proposes to assume.

**§ 224.53 What must an application for an agreement contain?**

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

(1) A proposed agreement between the tribe and the Secretary that contains the provisions required in § 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 be covered by an agreement;

(6) A coverage statement meeting 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 Federal laws other than the Act, including descriptions of significant leases, business agreements, and rights-of-way it 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 agreement that meets the requirements of paragraph (d) of this section;

(9) A statement of the scope of administrative responsibility that the tribe intends to exercise 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 assume any of the activities the tribe has identified in the application;

(11) A copy of the resolution or enactment of the tribal governing body or tribal governing bodies under § 224.41 approving the submission of an application for an agreement; and

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

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

(c) The coverage statement required by paragraph (a)(7) 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 covered by the agreement; and

(2) State one of the following:

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

(ii) The tribe intends to exclude certain tribal land, energy resources, or categories of energy-related leases, business agreements, or rights-of-way from the agreement. In this case, the statement must include a description of the tribal land, energy resources, or energy-related leases, business agreements, or rights-of-way intended to be excluded from the agreement.

(d) The statement required by paragraph (a)(8) of this section must describe the expertise that the tribe will use in the three areas specified in paragraph (d)(1) of this section. It must address at a minimum the 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 agreement;

(ii) Evaluate the environmental effects, including those related to cultural resources, of the agreement;

(iii) Review proposals or monitor compliance with financial terms and conditions of leases, business agreements, or rights-of-way under the agreement; and

(iv) Monitor the compliance of a third party with the terms of any arrangement covered by the agreement

(2) The statement must address the following areas of the tribe's expertise:

(i) Existing departments or administrative divisions within the tribe;

(ii) Proposed departments or administrative divisions within the tribe;

(iii) Existing internal and external expertise possessed by the tribe, including a description of applicable tribal employees and consultants or advisors; and

(iv) Proposed internal and external expertise that the tribe may acquire, including a description of anticipated tribal employees and consultants or advisors.

(e) The statement required by paragraph (a)(9) of this section must address the amount of administrative

responsibility related to the permitting, approval, or monitoring of activities to be undertaken under a lease, business agreement, or right-of-way.

(1) If a tribe desires to exercise regulatory responsibilities, the tribe must indicate that intent and describe the tribe's plan for such administration and management.

(2) Examples of regulatory authority that a tribe may wish to exercise include, but are not limited to review and approval of applications for permits to drill; review of archaeological resources or historical or cultural resources; royalty accounting, collection, and auditing; production accounting; or other review and enforcement activities associated with compliance.

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

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

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

(2) Include a discussion of the estimated annual costs to the tribe to assume those responsibilities and the availability and source of revenue needed by the tribe to carry out those responsibilities; and

(3) If the intended source of tribal funds includes grants or contract awards from the Department, the Department of Energy, or other Federal agencies, describe the estimated annual amounts needed and the Federal program under which such funds are to be requested.

(4) Include a description of contracts entered into between the tribe and the Secretary under the Indian Self-Determination and Education Assistance Act, as amended; or environmental programs a tribe assumes under the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C.A. 7401); or 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 both written and electronic formats to the Director, Office of Indian Energy and Economic Development, Room 20—South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245.

**§ 224.55 Will information a tribe submits during the application process be subject to disclosure to third parties?**

(a) Information the tribe submits during the application process, including information provided during pre-application consultation, may be subject to disclosure to third parties under the Freedom of Information Act (5 U.S.C. 552);

(b) If information a tribe submits contains commercial or financial information that is confidential and proprietary, exceptions to disclosure under the Freedom of Information Act may apply to those portions of the information;

(c) During the application process, a tribe may identify information in the documents it submits that it considers commercial or financial and also confidential and proprietary;

(d) The terms of existing mineral agreements previously entered into under the Indian Mineral Development Act are statutorily protected under the Act against disclosure; and

(e) A tribe is under no Federal obligation to disclose to any person or party the fact that it has submitted an application to the Secretary.

**§ 224.56 What is the effect of the Director's receipt of a tribe's complete application?**

The Director's receipt of a tribe's complete application begins a 270-day period during which the Secretary must approve or disapprove a proposed agreement. With the consent of the tribe, the Secretary may extend the period for a decision.

**§ 224.57 What must the Director do upon receipt of an application?**

(a) Upon receipt of an application, the Director must:

(1) Promptly notify the tribal Designated Official in writing that the Director has received the application and the date of such receipt;

(2) Within 30 days from the date of receipt of the application, determine whether the application is complete;

(3) If the Director determines that the application is complete, issue a written notice together with a request for an application consultation meeting to the tribal Designated Official. As appropriate, the Director will also notify other Department bureaus and offices that the Director has received a complete application and provide copies; or

(4) Issue a written notice to the tribal Designated Official that the application is not complete and specify the additional information the tribe is required to submit to make the application complete. If the Director

determines that an application is not complete, the 270-day review period does not begin until the Director receives a complete application.

(b) Unless, within the 30-day period, the Director notifies the tribal Designated Official that the application is not complete, the application is presumed complete and the 270-day review period under Section 2604(e)(2)(A) of the Act will begin as of the date that the application was received.

**Application Consultation Meeting**

**§ 224.58 What is an application consultation meeting?**

(a) An application consultation meeting is a meeting held at the tribe's headquarters between the Director and the tribal governing body and any other representatives that the tribe may designate to discuss the scope of the application. The Secretary will designate representatives of appropriate Department offices or bureaus to attend the application consultation meeting, as necessary. The meeting will:

(1) Be held at the earliest practicable time after the Director receives the application;

(2) Be a thorough review of the tribe's application;

(3) Identify specific services that the Department would provide, consistent with the Secretary's ongoing trust responsibilities, in the event that the agreement is approved;

(4) Include a discussion of the relationship of the tribe to other Federal agencies with responsibilities for implementing or ensuring compliance with the terms and conditions of leases, business agreements, or rights-of-way and applicable Federal laws;

(5) Include a discussion of the relationship of the tribe to its members, to State and local governments, and to non-Indians who may be affected by approval of an agreement or by leases, business agreements, or rights-of-way that may be granted or entered into by the tribe;

(6) Include a discussion of the tribal administrative structure and financial and management capacities needed to carry out the tribe's obligations under an agreement; and

(7) Include a discussion of the form of the agreement and the timing and relative responsibilities for its preparation.

(b) The tribe may record the meeting.

**§ 224.59 How may the Director use the results of the application consultation meeting?**

The Director may use the results of the application consultation meeting to

assist the Secretary in evaluating the capacity of the tribe to:

(a) Analyze the business and legal terms and the potential effect of proposals for leases, business agreements, and rights-of-way;

(b) Monitor and enforce third party compliance with the terms of leases, business agreements, and rights-of-way; and

(c) Carry out the tribe's responsibilities under an agreement if the agreement is approved.

**§ 224.60 What will the Director provide to the tribe after the application consultation meeting?**

Within 30 days following the meeting with the tribe, the Director will provide to the tribal Designated Official a written report summarizing the content of the meeting. The report must include the Director's recommendations, if any, for revising the proposed agreement submitted with the tribe's application.

**§ 224.61 What will the tribe provide to the Director after receipt of the Director's report on the application consultation meeting?**

If the tribe wishes to proceed with the application process, the tribe must submit a final proposed agreement to the Director within 45 days following the issuance of the Director's report on the application consultation meeting.

**§ 224.62 May a final proposed agreement differ from the original proposed agreement?**

The final proposed agreement may or may not contain provisions that differ from the original proposed agreement submitted with the application.

(a) If a final proposed agreement does not differ significantly or materially from the original complete application, the running of the 270-day period commenced by either the receipt of the original complete application or by operation of § 224.16(d) is not changed.

(b) If a final proposed agreement differs significantly or materially from the original complete application, the Secretary may extend the 270-day period for a reasonable time. The Secretary will notify the tribe in writing if an extension of time is necessary.

**Agreement Requirements**

**§ 224.63 What provisions must an agreement contain?**

An agreement must contain the following:

(a) Provisions for periodic review and evaluation of the tribe's performance under the agreement and recognizing the authority of the Secretary, upon a finding of imminent jeopardy to a physical trust asset, to take actions the Secretary determines to be necessary to

protect the asset, including reassumption under subparts F and G.

(b) Provisions ensuring:

(1) Appropriate evaluation of all significant environmental effects (as compared to a no-action alternative), including effects on cultural resources, arising from leases, business agreements, or rights-of-way, and measures ensuring that appropriate mitigation measures will be identified and implemented in performance of activities under leases, business agreements, or rights-of-way;

(2) A process for informing the public and providing opportunity for public comment on the environmental impacts of the proposed action;

(3) A process for providing tribal responses to relevant and substantive public comments before tribal approval of the lease, business agreement or right-of-way;

(4) Sufficient tribal administrative support and technical capability to carry out the environmental review process; and

(5) The tribe's oversight of energy resource development activities any other party conducts to determine whether the activities comply with the agreement and applicable Federal environmental laws.

(c) Provisions that require, with respect to any lease, business agreement, or right-of-way approved under an agreement, the following:

(1) Mechanisms for obtaining corporate, technical, and financial qualifications of a third party that has applied to enter into a lease, business agreement, or right-of-way;

(2) Express limitations on duration that meet the restrictions of the Act;

(3) Mechanisms for amendment, transfer, and renewal;

(4) Mechanisms for obtaining, reporting and evaluating economic return to the tribe;

(5) Mechanisms for securing technical information about activities and ensuring that technical activities are performed in compliance with terms and conditions;

(6) Assurances of compliance with all applicable environmental laws;

(7) Requirements that the lessee, operator or right-of-way grantee will comply with all applicable environmental laws;

(8) Identification of tribal offices or entities with authority to approve a lease, business agreement, or right-of-way and the activities to be undertaken under a lease, business agreement, or right-of-way;

(9) Public notification that a lease, business agreement, or right-of-way has received final tribal approval;

(10) A process for consultation with affected States regarding off-reservation impacts, if any, identified under (b) of this section;

(11) A description of remedies for breach;

(12) A statement that any provision that violates an express term or requirement of the agreement is null and void;

(13) A statement that if the Secretary determines that any provision that violates an express term or requirement of the agreement is material, the Secretary may reassume or rescind the lease, business agreement, or right-of-way, or take any action the Secretary determines to be in the best interest of the tribe;

(14) A statement that the lease, business agreement, or right-of-way goes into effect when the tribe delivers executed copies to the Director by first class mail return receipt requested or express delivery;

(15) Citations to any applicable tribal laws, regulations, or procedures that permit persons or entities to submit comments on or participate in hearings regarding activities to be undertaken by a tribe under an agreement;

(16) Citations to any applicable tribal laws, regulations, or procedures establishing remedies that petitioning parties must exhaust before filing a petition with the Secretary under subpart E;

(17) Provisions that require a tribe to provide the Secretary with citations to any tribal laws, regulations, or procedures tribes adopt after the effective date of an agreement that establish, amend, or supplement tribal comment or hearing provisions or tribal remedies that petitioning parties must exhaust prior to filing a petition with the Secretary under subpart E;

(18) Provisions that designate a person or entity authorized by the tribe to maintain and to disseminate to requesting members of the public current copies of tribal laws, regulations, or procedures that establish or describe tribal comment or hearing processes that petitioning parties must participate in or tribal remedies that petitioning parties must exhaust before instituting appeals under subpart E, together with contact information;

(19) Identification of financial assistance, if any that the Secretary will provide to assist in implementation of the agreement, including the tribe's environmental review of individual energy development activities;

(20) Provisions that require a tribe to notify the Secretary and the Director in writing of violations or breaches; and

(21) Provisions that require the tribe and the tribe's financial experts to adhere to Government auditing standards and continuing professional education requirements when performing audits and periodic reviews of the audits.

#### **§ 224.64 How may a tribe assume management of development of different types of energy resources?**

In order for a tribe to assume responsibility for development of energy resources that are not included in the Agreement, a tribe must apply for a new agreement covering the responsibilities for the development of the other energy resources it wishes to assume. The Secretary's approval of a new agreement will include a determination of the tribe's capacity to develop that type of energy resource.

#### **§ 224.65 How may a tribe assume additional activities under an agreement?**

A tribe may assume additional activities related to the development of the same type of energy resource included in an agreement by negotiating an amendment to the existing agreement with the Secretary to include the additional activities.

#### **Public Notification and Comment**

#### **§ 224.67 What must the Secretary do upon the Director's receipt of a final proposed agreement?**

Within 10 days of the Director's receipt of a final proposed agreement, the Secretary must submit a notice for publication in the **Federal Register** advising the public that the Secretary is considering a final proposed agreement for approval or disapproval. The notice will:

(a) Contain information advising the public how to request and receive copies of the final proposed agreement from the Secretary;

(b) Contain information advising the public how to request and receive copies of or participate in any National Environmental Policy Act (NEPA) reviews, as prescribed in subpart C, related to approval of the final proposed agreement; and

(c) Invite written public comments, state the due date for comments, and state the address to which to send comments.

#### **§ 224.68 How will the Secretary use public comments?**

(a) The Secretary will review public comments and provide copies of the comments to the tribal Designated Official;

(b) The Secretary will consider public comments in deciding to approve or

disapprove the final proposed agreement;

(c) Upon mutual agreement between the tribe and the Secretary, the tribe may make changes in the final proposed agreement based on the comments received; and

(d) If the tribe revises the final proposed agreement based on public comments, the tribal governing body must approve the changes, the authorized representative of the tribe must sign the final proposed agreement as changed, and the tribe must send the revised final proposed agreement to the Director.

### **Subpart C—Approval of Tribal Energy Resource Agreements**

#### **§ 224.70 Will the Secretary conduct a review of a final proposed agreement under the National Environmental Policy Act (NEPA)?**

Yes, the Secretary will conduct a review under NEPA of the potential impacts on the quality of the human environment that might arise from approving a final proposed agreement. The scope of the Secretary's evaluation will be limited to the scope of the activities and the energy resource developments the tribe is proposing to undertake as specified by the provisions of the agreement. The public comment period, if any, under the NEPA review will occur concurrently with the public comment period for an agreement under § 224.67.

#### **§ 224.71 What standards will the Secretary use to decide to approve a final proposed agreement?**

The Secretary will consider the best interests of the tribe and the Federal policy of promoting tribal self-determination in deciding to approve a final proposed agreement. The Secretary must approve a final proposed agreement if it contains the provisions required by the Act and this part and the Secretary determines that the tribe has demonstrated sufficient capacity to:

(a) Make prudent decisions in negotiating, approving or disapproving proposals for leases, business agreements, or rights-of-way affecting tribal land; and

(b) Monitor and regulate activities undertaken by third parties under approved leases, business agreement, or rights-of-way in accordance with the final proposed agreement.

#### **§ 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;

(b) The scope of the administrative or regulatory authority the tribe seeks to assume;

(c) Materials and information submitted with the application for an agreement, the results of meetings between the tribe and representatives of the Department, and the Director's written report;

(d) The history of the tribe's role in energy resource development, including 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 agreement 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; and

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

#### **§ 224.73 How will the scope of energy resource development proposed in a tribe's agreement 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 agreement will include a determination as to each energy resource development subject to the agreement, and each activity the tribe proposes to assume. The Secretary's review of an agreement must be limited to activities specified by the provisions of the agreement.

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

The Secretary must approve or disapprove a final proposed agreement or a revised final proposed agreement within 270 days of the Director's receipt of a complete application for an agreement. With the consent of the tribe, or as provided in § 224.16, the Secretary may extend the period for a decision.

#### **§ 224.75 What must the Secretary do upon approval or disapproval of a final proposed agreement?**

Within 10 days of the Secretary's approval or disapproval of a final proposed agreement, the Secretary must notify the tribal governing body in writing;

(a) If the Secretary's decision is to approve the final proposed agreement, the Secretary will sign the agreement, which will be effective on the date of the Secretary's signature, and return the signed agreement to the tribal governing body.

(b) If the Secretary's decision is to disapprove the final proposed agreement, the Secretary's notice of disapproval must include:

- (1) The basis of the disapproval;
- (2) The revisions needed, if any, to meet the Secretary's concerns; and
- (3) A statement that the decision is a final agency action and is subject to judicial review.

(c) If the Secretary approves the final proposed agreement, the Secretary will maintain a copy of the agreement and any subsequent amendments or supplements to the agreement, and provide copies to persons or entities upon request under the Freedom of Information Act (5 U.S.C. 552).

#### **§ 224.76 Upon notification of disapproval, may a tribe re-submit a revised final proposed agreement?**

Yes, within 45 days of receipt of the notice of disapproval, or a later date as the Secretary and the tribe agree to in writing, the tribe may re-submit a revised final proposed agreement, approved by the tribal governing body and signed by the tribe's authorized representative, to the Director that addresses the Secretary's concerns. Unless the Secretary and the tribe otherwise agree, the Secretary must approve or disapprove the revised final proposed agreement within 60 days of the Director's receipt of the revised final proposed agreement. Within 10 days of the Secretary's approval or disapproval of a revised final proposed agreement, the Secretary must notify the tribal governing body in writing;

(a) If the Secretary's decision is to approve the revised final proposed agreement, the Secretary will sign the agreement, which will be effective on the date of the Secretary's signature, and return the signed agreement to the tribal governing body.

(b) If the Secretary's decision is to disapprove the revised final proposed agreement, the Secretary's notice of disapproval must include:

- (1) The reasons for the disapproval; and

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

**§ 224.77 Who may appeal the Secretary's decision on a final proposed agreement or a revised final proposed agreement?**

Only a tribe applying for an agreement may appeal the Secretary's decision to disapprove a final proposed agreement or a revised final proposed agreement in accordance with the appeal procedures contained in subpart I of this part. No other person or entity may appeal the Secretary's decision. The Secretary's decision to approve a final proposed agreement or a revised final proposed agreement is a final agency action.

**Subpart D—Implementation of Tribal Energy Resource Agreements**

**Applicable Authorities and Responsibilities**

**§ 224.80 Under what authority will a tribe perform activities for energy resource development undertaken under an agreement?**

A tribe will perform activities for energy resource development activities undertaken under an agreement under the authorities provided in the approved agreement. Notwithstanding anything in this part or an approved agreement to the contrary, a tribe will retain all sovereign and other powers it otherwise possesses.

**§ 224.81 What laws are applicable to activities under an agreement?**

Federal and tribal laws apply to activities under an agreement, unless otherwise specified in the agreement.

**§ 224.82 What services will the Department provide to a tribe after approval of an agreement?**

After approval of an agreement, the services the Department will provide to a tribe include:

- (a) Access to title status information and support services needed by a tribe in the course of evaluating proposals for leases, business agreements, or Rights-of-Way;
- (b) Coordination between the tribe and the Department for ongoing maintenance of accurate real property records;
- (c) Access to technical support services within the Department to assist the tribe in evaluating the physical, economic, financial, cultural, social, environmental, and legal consequences of approving proposals for leases, business agreements, or rights-of-way under an agreement;
- (d) Assistance to ensure that violations of the terms of leases,

business agreements, or rights-of-way and applicable provisions of Federal law by third parties are handled appropriately; and

- (e) Any other Department activities that the agreement does not affect.

**§ 224.83 What are the responsibilities of a tribe following execution of leases, business agreements, and rights-of-way under an agreement?**

Following execution of leases, business agreements, and rights-of-way under an agreement, a tribe must:

- (a) Inform the public of approval of a lease, business agreement, or right-of-way under the agreement;
- (b) Send a copy of the executed lease, business agreement, or right-of-way, or amendments, to the Director within one business day of execution. The copy must be sent by certified mail return receipt requested or by overnight delivery; and
- (c) Provide, to the Director, sufficient information and documentation of payments made directly to the tribe to enable the Secretary to discharge the trust responsibility of the United States to enforce the terms of, and the rights of the tribe, under a lease, business agreement, or right-of-way.

**Leases, Business Agreements, and Rights-of-Way Under an Agreement**

**§ 224.84 When may a tribe grant a right-of-way under an agreement?**

A tribe may grant a right-of-way under an agreement if the grant of right-of-way is over tribal land for a pipeline or an electric transmission or distribution line if the pipeline or electric transmission or distribution line serves.

- (a) An electric generation, transmission, or distribution facility located on tribal land; or
- (b) A facility located on tribal land that processes or refines energy resources developed on tribal land.

**§ 224.85 When may a tribe enter into a lease or business agreement under an agreement?**

A tribe may enter into a lease or business agreement for the purpose of energy resource development on tribal land for:

- (a) Exploration for, extraction of, processing of, or other development of the tribe's energy resources;
- (b) Construction or operation of an electric generation, transmission, or distribution facility located on tribal; and
- (c) A facility to process or refine energy resources developed on tribal land.

**§ 224.86 Are there limits for terms of leases, business agreements, and rights-of-way entered into under an agreement?**

Yes. There are limits for terms of leases, business agreements, and rights-of-way as follows:

- (a) For leases and business agreements, except as provided in paragraph (b) of this section, terms are limited to 30 years;

(b) For leases for production of oil resources and gas resources, or both, terms are limited to 10 years and as long after as oil or gas production continues in paying quantities; and

- (c) For rights-of-way, terms are limited to 30 years.

**Violation or Breach**

**§ 224.87 What are the responsibilities of a tribe if it discovers a violation or breach?**

As soon as practicable after discovering or receiving notice of a Violation or Breach of a lease, business agreement, or right-of-way or a Federal or tribal environmental law resulting from an activity undertaken under a lease, business agreement, or right-of-way, the tribe must provide written notice to the Director describing:

- (a) The nature of the Violation or Breach in reasonable detail;
- (b) The corrective action taken or planned by the tribe; and
- (c) The proposed period for the corrective action to be completed.

**§ 224.88 What are the responsibilities of the Director after receiving notice of a violation or breach from the tribe?**

After receiving notice of a violation or breach from the tribe, the Director will review the notice and:

- (a) If the Director determines that a violation or breach does not cause imminent jeopardy to a physical trust asset, the Director will review, for concurrence or disapproval, the corrective action to be taken by the tribe and the proposed period for completion of the corrective action.
- (b) If the Director determines that a violation or breach causes imminent jeopardy to a physical trust asset, the Director will proceed under the imminent jeopardy provisions of subpart F.

(c) Before making a determination whether a violation or breach will or will not cause imminent jeopardy to a physical trust asset, the Director may, as appropriate:

- (1) Conduct an on-site inspection; and
- (2) Review relevant transactions and reports.

**§ 224.89 What procedures will the Secretary use to enforce leases, business agreements, or rights-of-way entered into under an agreement?**

When appropriate, the Secretary will use the notification and enforcement procedures established in 25 CFR parts 162, 211 and 225 to ensure compliance with leases and business agreements. When appropriate, the Secretary will use the notification and enforcement procedures of 25 CFR part 169 to ensure compliance with rights-of-way. All enforcement remedies established in 25 CFR parts 162, 211, 225, and 169 are available to the Secretary. The Secretary and a tribe will consult with each other regarding enforcement of and Secretarial assistance needed to enforce leases, business agreements, or rights-of-way.

**Subpart E—Interested Party Petitions**

**§ 224.100 May a person or entity ask the Secretary to review a tribe's compliance with an agreement?**

In accordance with this subpart, a person or entity that is an interested party may submit a petition to review a tribe's compliance with an agreement to the Secretary. However, before filing a petition with the Secretary, a person or entity that is an interested party must first exhaust tribal remedies, if a tribe has provided for tribal remedies. If a tribe has not provided for tribal remedies, the person or entity that is an interested party may file a petition directly with the Secretary.

**§ 224.101 Who is an interested party?**

An interested party is a person or an entity that has demonstrated that an interest of the person or entity has sustained, or will sustain, an adverse environmental impact because of a tribe's failure to comply with an agreement.

**§ 224.102 Must a tribe establish a comment or hearing process under an agreement for addressing environmental concerns?**

Yes. The Act (25 U.S.C. 3504(e)(2)(C)(iii)(I), (II) and 25 U.S.C. 3504(e)(2)(B)(iii)(X)) and this subpart require that a tribe must establish an environmental review process under an agreement that:

(a) Ensures that the public is notified about and has an opportunity to comment on the environmental impacts of proposed tribal action to be taken under an agreement;

(b) Requires that a tribe respond to relevant and substantive comments about the environmental impacts of a proposed tribal action before a tribe approves a lease, business agreement, or right-of-way; and

(c) Establishes a process for consultation with any affected States regarding off-reservation environmental impacts, if any, resulting from approval of a lease, business agreement, or right-of-way.

**§ 224.103 Must a tribe establish a process for public participation regarding an agreement or activities undertaken under an agreement?**

No. Except for the environmental review process required by the Act and § 224.63(b)(i), a tribe is not required to establish a process for public participation, including taking comments or holding hearings, regarding an agreement or activities undertaken under an agreement. However, a tribe may elect to establish procedures that permit persons or entities to participate in public hearings or that expand the scope of matters about which the public may comment.

**§ 224.104 Must a tribe enact tribal laws, regulations, or procedures permitting persons or entities to allege a tribe's noncompliance with an agreement?**

No. A tribe is not required to enact tribal laws, regulations, or procedures permitting persons or entities to allege that a tribe does not comply with its agreement. However, a tribe may elect to enact laws, regulations, or procedures permitting persons or entities to allege that a tribe does not comply with its agreement.

**§ 224.105 How may a person or entity obtain copies of tribal laws, regulations, or procedures that establish hearing or comment processes or that permit allegations of a tribe's noncompliance with its agreement?**

A person or entity may obtain copies of tribal laws, regulations, or procedures that establish a hearing or comment process or that permit allegations of a tribe's noncompliance under its agreement by requesting such information from the tribe under procedures established in the agreement. Under § 224.63 the agreement must:

(a) Cite applicable tribal laws, regulations, or procedures in place at the time the agreement is approved that establish tribal hearing or comment procedures regarding an agreement or activities undertaken under an agreement;

(b) Cite applicable tribal laws, regulations, or procedures in place at the time the agreement is approved permitting allegations of a tribe's noncompliance with its agreement;

(c) Describe how, when, and under what conditions copies of current applicable tribal laws, regulations, or

procedures or amendments may be obtained from the tribe; and

(d) Require a tribe to supply the Secretary with citations to amendments and supplements to applicable laws, regulations, or procedures that the tribe adopts after the effective date of an agreement related to tribal hearing or comment processes or to establishment of tribal remedies for challenging tribal action or inaction under an agreement, which citations the Secretary will append to the agreement.

**§ 224.106 If a tribe has enacted tribal laws, regulations, or procedures for challenging tribal action under an agreement, how must the tribe respond to a petitioner's challenge?**

If a tribe has enacted tribal laws, regulations, or procedures under which a petitioner may file a petition alleging noncompliance with an agreement, the tribe must:

(a) Within a reasonable time issue a written decision under the tribal laws, regulations, or procedures that addresses the allegation, which decision may include a determination of whether the petitioner is an interested party; and

(b) Provide a copy of its written decision to the petitioner.

**§ 224.107 What must a petitioner claim or request in a petition filed with the Secretary?**

In a petition filed with the Secretary, a petitioner must:

(a) Claim that the tribe, through its action or inaction:

(1) Has failed to comply with terms or provisions of an agreement; and

(2) That, because of the tribe's noncompliance, the petitioner's interest has sustained or will sustain an adverse environmental impact;

(b) Request that the Secretary review the matters described in the petition; and

(c) Request that the Secretary take action necessary to bring a tribe into compliance with the agreement.

**§ 224.108 What must a petition contain?**

A petition must contain:

(a) The name and contact information of the petitioner;

(b) Specific facts demonstrating that the petitioner is an interested party under § 224.101;

(c) Specific facts demonstrating that the petitioner participated in a tribal hearing or comment process regarding the tribal action to which the petitioner objects, if a hearing or comment process was available;

(d) Specific facts demonstrating that the petitioner exhausted tribal remedies, if tribal laws, regulations, or procedures

permitted the petitioner to allege tribal noncompliance with an agreement to which the petitioner objects and that the petitioner followed to completion the procedures accorded by those tribal laws, regulations, or procedures;

(e) A description of the petitioner's allegation of noncompliance with an agreement;

(f) A description of the adverse environmental impact that the petitioner's interest has sustained or will sustain because of the tribe's noncompliance with the agreement;

(g) A copy of any written decisions the tribe issued responding to the petitioner's allegation;

(h) If applicable, a statement that the tribe has issued no written decision within a reasonable time related to an allegation a petitioner has filed with the tribe under applicable tribal laws, regulations, or procedures;

(i) A description of the action the Secretary may take under § 224.120 to bring the tribe into compliance with the agreement; and

(j) Any other information relevant to the petition.

**§ 224.109 What must a petitioner do before filing a petition with the Secretary?**

Before a petitioner may file a petition with the Secretary under this subpart, the petitioner must have:

(a) Participated in the tribal process, if the tribe has laws, regulations, or procedures that provided the petitioner an opportunity to participate in a tribal hearing or comment process regarding allegations of tribal noncompliance; and

(b) Pursued to completion procedures accorded by those tribal laws, regulations, or procedures.

**§ 224.110 When may a petitioner file a petition with the Secretary?**

A petitioner may file a petition with the Secretary by delivering the petition to the Director:

(a) Within 45 days of receipt of the tribe's written decision addressing the allegation of noncompliance under applicable tribal laws, regulations, or procedures.

(b) If the tribe fails within a reasonable period to issue a written decision to an allegation of noncompliance with an agreement a petitioner brings under applicable tribal laws, regulations, or procedures, the Secretary will deem the allegation as having been denied. The Secretary will determine if the petitioner has filed the petition within a reasonable period following the constructive denial in light of the applicable facts and circumstances.

(c) A petitioner may file a petition directly with the Secretary, if the tribe

has no tribal laws, regulations or procedures that provided the petitioner an opportunity to allege tribal noncompliance with an Agreement.

**§ 224.111 What must the Director do upon receipt of a petition?**

Within 20 days after receipt of a petition, the Director must:

(a) Notify the tribe in writing that the Director has received a petition;

(b) Provide a copy of the complete petition to the tribe;

(c) Initiate a petition consultation with the tribe that will address the petitioner's allegation of a tribe's noncompliance with an agreement and alternatives to resolve the noncompliance; and

(d) Notify the tribe in writing when the petition consultation is complete.

**§ 224.112 What may a tribe do after it completes petition consultation with the Director?**

Within 45 days of the date of the Director's notice that the tribal petition consultation is complete, the tribe may respond to the petition by submitting a written response to the Director and the petitioner. If the tribe fails to submit a written response to the petition within those 45 days, the tribe will not be permitted to submit any additional information to the Director addressing the petition.

**§ 224.113 How may the tribe address a petition in its written response?**

In its written response, the tribe may or may not dispute the petitioner's claims.

(a) If the tribe disputes the petitioner's claims of tribal noncompliance with an agreement, in its written response, the tribe must describe why it disputes the petitioner's claims of noncompliance, including the tribe's interpretation of relevant provisions of the agreement and other legal requirements;

(b) Whether or not the tribe disputes the petitioner's claims of tribal noncompliance with an agreement, in its written response, the tribe may:

(1) Discuss whether the petitioner is an interested party;

(2) State whether the petitioner participated in a hearing or comment process that was available with respect to the allegation of the tribe's noncompliance with an agreement that is the subject of the petition;

(3) State whether the petitioner has exhausted tribal remedies;

(4) Identify the steps, if any, the tribe will take to comply with the agreement and state when the steps will be taken; or

(5) Offer a resolution of the petitioner's claim of the adverse

environmental impact the petitioner's interest has sustained or will sustain because of the tribe's noncompliance with an agreement.

**§ 224.114 What will the Director do if the tribe offers a resolution of a petitioner's claim in which the petitioner concurs?**

If the tribe submits a proposed resolution and a written statement signed by the petitioner that shows the petitioner concurs with the tribe's proposed resolution of the claim of adverse environmental impact to the petitioner's interest, the Director may accept the resolution, dismiss the petition, and notify the parties of the petition's dismissal.

**§ 224.115 When must the Director make threshold determinations about a petition?**

The Director must make threshold determinations about a petition if:

(a) The tribe does not submit a timely written response to a petition to the Director and the petitioner;

(b) The tribe's written response does not include a proposed resolution in which the petitioner concurs; or

(c) The Director did not accept the tribe's proposed resolution in which the petitioner agreed.

**§ 224.116 What must the Director consider in making threshold determinations about a petition?**

The Director must consider the information contained in the petition and the information submitted in the tribe's written response, if applicable, and determine as threshold matters whether:

(a) The petitioner is an interested party because;

(1) An interest of the petitioner has sustained or will sustain an adverse environmental impact; and

(2) The adverse environmental impact was the result of the failure of the tribe to comply with an agreement.

(b) The petitioner participated in a tribal hearing or comment process under tribal laws, regulations, or procedures that were available with respect to the allegation of the tribe's noncompliance with an agreement that is the subject of the petition.

(c) The petitioner exhausted tribal remedies under § 224.109.

**§ 224.117 When must the Director dismiss a petition after making the threshold determinations about a petition?**

After considering threshold determinations under § 224.116, the Director must dismiss the petition if the Director determines that:

(a) The petitioner is not an interested party;

(b) The petitioner failed to participate under tribal laws, regulations, or

procedures in a tribal hearing or comment process that was available with respect to the allegation of the tribe's noncompliance with an agreement that is the subject of the petition, unless failure to participate was a result of the tribe's failure to provide the petitioner with notice of the tribal hearing or comment process following the petitioner's timely request for information; or

(c) The petitioner failed to exhaust tribal remedies before submitting the petition, unless the failure to exhaust tribal remedies was because the tribe did not:

(1) Issue a written decision within a reasonable time under tribal laws, regulations, or procedures that permitted an allegation of a tribe's noncompliance with an agreement that is the subject of the petition; or

(2) Appropriately respond to the petitioner's timely request for copies of current applicable tribal laws, regulations, or procedures; permitting an allegation of a tribe's noncompliance with an agreement.

**§ 224.118 How must the Director proceed if the Director dismisses a petition based on consideration of threshold determinations?**

If the Director dismisses a petition based on consideration of threshold determinations, the Director must:

(a) Issue a written decision of dismissal that states the basis for the decision and includes finding of fact and conclusions of law; and

(b) Provide a copy of the written decision of dismissal to the petitioner and the tribe, including a notification of the petitioner's right to appeal the dismissal to the Deputy Assistant Secretary—Policy and Economic Development under subpart I.

**§ 224.119 How must the Director proceed if the Director does not dismiss the petition based on threshold determinations?**

If the Director does not dismiss the petition under § 224.117, the Director must:

(a) Evaluate the petition and determine whether the petition states a claim that:

(1) The tribe failed to comply with one or more terms or provisions of an agreement; and

(2) The Secretary's action is necessary to cure or otherwise resolve each claim of adverse environmental impact.

(b) If the Director determines that the petition fails to state a claim, the Director must:

(1) Issue a written decision of dismissal setting forth the basis for the decision;

(2) Provide a copy of the written decision of dismissal to the petitioner and the tribe; and

(3) Notify the tribe and the petitioner of the petitioner's right to appeal the dismissal to the Deputy Assistant Secretary—Policy and Economic Development under subpart I.

**§ 224.120 How must the Director proceed with a petition if it meets the threshold determinations?**

If the Director determines a petition meets the threshold determinations of § 224.116, the Director must:

(a) Issue a written notice to the tribe which states that the Director has accepted the petition and that the tribe must provide a written response within 30 days of receipt of the written notice or provide a written statement that the tribe is declining to provide a written response;

(b) Review and analyze the claims alleged in the petition and the tribe's response, if any, to determine what action the tribe or the Secretary must take to prevent, diminish, eliminate, or reverse the adverse environmental impact alleged in the petition;

(c) Review and analyze the claims alleged in the petition and the tribe's response to determine what action the tribe or the Secretary must take to cure the alleged violation of the agreement;

(d) Review and analyze the tribe's proposed resolution, if any, to determine whether that proposal will resolve the alleged adverse environmental impact;

(e) Accept or reject the tribe's proposed resolution;

(f) Issue a written decision to the petitioner and the tribe that states the basis for the Director's decision including:

(1) Findings of fact and conclusions of law; and

(2) A statement that either party, the petitioner or the tribe, has the right to appeal the Director's decision to the Deputy Assistant Secretary—Policy and Economic Development under subpart I; and

(g) Issue a notice informing the tribe as to what action the Director has determined the tribe must take to cure the violation of the agreement, if any, or whether the Director has determined that the Secretary must take specified actions to cure the violation of the agreement, which may include reassumption under subpart G.

**§ 224.121 What action must the Director take to bring a tribe into compliance with an agreement?**

Upon review of a petition, if the Director determines, that a tribe does

not comply with an agreement, the Director must take action that the Director determines to be necessary to ensure compliance with the agreement, including:

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

(b) Rescinding approval of all or part of the agreement, or

(c) Recommending that the Secretary reassume activities under subpart G.

**§ 224.122 When must the Director act on a petition?**

(a) Within 120 days of the Director's receipt of a petition, the Director must act on the petition. The Director may:

(1) Dismiss the petition;

(2) Grant the petition; or

(3) Take other action on the petition under this subpart.

(b) The Director may extend the time for acting on a petition up to 120 days in any case in which the Director determines that additional time is necessary to evaluate the allegations of 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 a determination and extension before expiration of the initial 120-day period.

**§ 224.123 How may a tribe or a petitioner appeal the Director's disposition of a petition?**

Either a tribe or a petitioner may appeal the Director's decision dismissing, granting, or otherwise disposing of the petition under this subpart to the Deputy Assistant Secretary—Policy and Economic Development.

**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 process required by the Act and by an agreement, when the Secretary may conduct other reviews and evaluations, and how the Secretary will determine and remedy noncompliance with an agreement and imminent jeopardy to a physical trust asset.

**§ 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 an agreement. During the agreement 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 agreement. The tribe will include the agreed upon review and evaluation process in its final proposed agreement.

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

(a) The Director will conduct a periodic review and evaluation under the agreement, in consultation with the tribe, and in cooperation with other Department bureaus and offices whose activities were assumed by the tribe.

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

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

(1) Review transactions and reports prepared under the agreement;

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

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

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

(e) Upon written request, the tribe must provide the Director with records and documents relevant to the provisions of an agreement.

**§ 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 of the periodic review and evaluation and send the report to the tribe.

**§ 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 an agreement. After the third annual review and evaluation, the Secretary and the tribe may mutually agree that periodic reviews and evaluations will be conducted 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;

(b) As part of an investigation undertaken under a notice of Violation or Breach a tribe submits to the Director;

(c) As part of an investigation undertaken under a petition submitted under subpart E; or

(d) As follow-up to a determination of harm or the potential for harm to a physical trust asset previously identified in a periodic review and evaluation.

**Noncompliance**

**§ 224.136 How will the Director's written report address a tribe's noncompliance with Federal law or the terms of an agreement?**

If the Director concludes, as a part of any review and evaluation or investigation of a notice of violation or breach, that the tribe has not complied with Federal law or the terms of an agreement, the Director's report must include a determination of whether the tribe's noncompliance has resulted in harm or the potential for harm to a physical trust asset. If the Director determines that the tribe's noncompliance has harmed or may harm a physical trust asset, the Director must also determine whether the noncompliance poses imminent jeopardy to a physical trust asset.

**§ 224.137 What must the Director do if a tribe's noncompliance has resulted in harm or the potential for harm to a physical trust asset?**

If, because of the tribe's noncompliance with Federal law or the terms of an agreement, the Director determines that there is harm or the potential for harm to a physical trust asset that does not rise to the level of imminent jeopardy to a physical trust asset, the Director must:

(a) Document the issue in the written report of the review and evaluation;

(b) Report the issue in writing to the tribal governing body;

(c) Report the issue in writing to the Assistant Secretary—Indian Affairs; and

(d) Determine what action, if any, the Secretary must take to protect the physical trust asset.

**§ 224.138 What must the Director do if a tribe's noncompliance has caused imminent jeopardy to a physical trust asset?**

If the Director determines that a tribe's noncompliance with Federal law or the terms of an agreement has caused imminent jeopardy to a physical trust asset, the Director must:

(a) Document the issue in the written report of the review and evaluation; and

(b) Immediately notify the tribe by a telephone call to the tribal Designated official followed by a written notice by facsimile to the tribal Designated official and the tribal governing body of the imminent jeopardy to a physical trust asset which notice must contain:

(1) A description of the tribe's noncompliance with Federal law or the terms of the agreement;

(2) A description of the physical trust asset and the nature of the imminent jeopardy to a physical trust asset resulting from the tribe's noncompliance; and

(3) An order to the tribe to cease specific conduct or take specific action deemed necessary by the Director to correct any condition that caused the imminent jeopardy to a physical trust asset.

**§ 224.139 What must a tribe do after receiving a notice of imminent jeopardy to a physical trust asset?**

(a) Upon receipt of the notice of imminent jeopardy to a physical trust asset, the tribe must cease specific conduct or take specific action ordered by the Director as necessary to correct any condition causing imminent jeopardy to a physical trust asset; and

(b) Within 5 days of receipt of a notice of imminent jeopardy to a physical trust asset the tribe must submit a written response to the Director that:

(1) Responds to the Secretary's finding that the tribe has failed to comply with applicable Federal law or the terms of the agreement;

(2) Responds to the Secretary'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 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(b)(iii), the Secretary may take any actions the Secretary deems appropriate to protect the physical trust asset and will immediately reassume all activities the tribe assumed under the agreement. The procedures in subpart G 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) Consider the tribe's response;

(2) Determine whether or not the tribe has complied with the agreement and Federal law; and

(3) If the Secretary determines, after reviewing the tribe's response, that the tribe has not complied with the agreement or with 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 further action deemed necessary by the Secretary to protect the physical trust asset; or

(2) Take action deemed necessary to protect the physical trust asset, including reassumption under subpart G.

(c) If the Secretary determines, after reviewing the tribe's response, that the tribe has complied with the agreement 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 violation of an agreement or applicable 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 or certain activities included within an agreement without the consent of a tribe.

##### **§ 224.151 When may the Secretary reassume activities under an agreement?**

Upon issuing a written finding of imminent jeopardy to a physical trust asset, the Secretary may reassume activities under an agreement in accordance with this subpart. The Secretary may issue a finding of imminent jeopardy to a physical trust asset following any review and evaluation of a tribe's compliance with an agreement. The Secretary may also reassume activities approved under an agreement in response to a petition from an interested party under subpart E. Only the Secretary or the Assistant Secretary—Indian Affairs may reassume activities under an agreement.

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

(a) The Secretary may take whatever actions the Secretary deems appropriate to protect the physical trust asset. These actions may, at the discretion of the Secretary, include reassignment of the activities under an agreement.

(b) If the tribe does not respond to or does not comply with the Director's order under § 224.138(b)(iii), the Secretary will immediately reassume all activities the tribe assumed under the agreement. The procedures in this

subpart will not apply to that immediate reassumption.

#### **Notice of Intent To Reassume**

##### **§ 224.153 Must the Secretary notify the tribe of an intent to reassume activities under an agreement?**

If the Secretary determines under § 224.152 that reassumption is appropriate 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;

(c) The time period within which the tribe must take the measures to correct the violation 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 receipt of the Secretary's notice of intent to reassume. If sent by mail, the tribe must send the response by certified mail, return receipt requested, and the postmark date will be considered the date of response.

##### **§ 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:

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

(b) The measures that the tribe is taking to comply with the Secretary's requirements, and when the tribe will complete such measures, if the time required under § 224.154(c) to complete the required measures is greater than 5 days; or

(c) A declaration that the tribe will not comply with the Secretary's required measures.

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

(a) If the Secretary determines that the tribe's measures to comply with the Secretary's requirements are adequate or will be adequate to correct the violation and any condition that caused the imminent jeopardy or the adverse environmental impact alleged in a petition from an interested party, the Secretary will:

(1) Notify the tribe of the acceptance in writing; and

(2) Terminate the reassumption proceedings in writing.

(b) If the Secretary determines that the tribe's measures 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 notice of reassumption must include:

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

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

(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 that vested or lawful actions taken by the tribe or the Secretary 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.

##### **§ 224.160 How will reassumption affect an agreement?**

Reassumption of an agreement applies to all activities undertaken under an agreement.

##### **§ 224.161 How may reassumption affect the tribe's ability to modify an agreement, administer additional activities or to assume administration of activities that the Secretary previously reassumed?**

Following reassumption, the tribe may request to modify an agreement, administer additional activities, or assume administration of activities the Secretary previously reassumed. In reviewing a subsequent tribal request, however, the Director may consider the fact that activities were reassumed and any changes in circumstances supporting the tribe's request.

## Subpart H—Rescission

### § 224.170 What is the purpose of this subpart?

This subpart explains the process and requirements under which a tribe may rescind an agreement and return to the Secretary the responsibility to approve any future leases, business agreements, or rights-of-way related to energy resource development previously covered under the agreement.

### § 224.171 Who may rescind an agreement?

A tribe, acting through a resolution passed by the tribal governing body, may rescind an agreement and return to the Secretary the responsibility to approve any future leases, business agreements, or rights-of-way related to energy resource development.

### § 224.172 May a tribe rescind its authority to approve or disapprove a specific future lease, business agreement, or right-of-way or the development of a specific energy resource or geographic area?

No. A tribe may only rescind an agreement, not its authority to approve a specific future lease, business agreement, or right-of-way under an agreement or the development of a specific energy resource or geographic area.

### § 224.173 How does a tribe rescind an agreement?

To rescind an agreement, a tribe must submit to the Secretary a written tribal resolution or other official action of the tribe's governing body voluntarily rescinding the agreement.

### § 224.174 When does a voluntary rescission become effective?

A voluntary rescission becomes effective on the date specified by the Secretary, provided that the date is no more than 90 days after the Secretary receives the tribal resolution or other official action the tribe submits under § 224.173.

### § 224.175 How will rescission affect rights that vested before the effective date of the rescission or lawful actions taken by the tribe or the Secretary before the effective date of the rescission?

Rescission does not affect rights that vested before the effective date of the rescission or lawful actions taken by the tribe and the Secretary before the effective date of the rescission.

## Subpart I—General Appeal Procedures

### § 224.180 What is the purpose of this subpart?

The purpose of this subpart is to explain who may appeal Departmental decisions or inaction under this part

and the initial administrative appeal processes, and general administrative appeal processes, including how 25 CFR part 2 and 43 CFR part 4 apply, and the effective dates for appeal decisions.

### § 224.181 Who may appeal Department decisions or inaction under this part?

The following persons or entities may appeal Department decisions or inaction under this part:

(a) A tribe that is unfavorably affected by a decision of or inaction by an official of the Department of the Interior under this part;

(b) A person or entity who has entered into a lease, right-of-way, or business agreement and is unfavorably affected by a decision of or inaction by a Department official under this part; or

(c) An interested party who is unfavorably affected by a decision of or inaction by the Director under subpart E, provided that the interested party may appeal only those issues raised in its prior participation under subpart E and may not appeal any other decision rendered or inaction under this part.

### § 224.182 What is the Initial Appeal Process?

The initial appeal process is as follows:

(a) Within 30 days of receipt of an adverse decision by the Director or within 30 days after the time periods within which the Director was required to act under subpart E, a party that may appeal under this subpart may file an appeal to the Deputy Assistant Secretary—Policy and Economic Development.

(b) Within 60 days of receipt of an appeal, the Deputy Assistant Secretary—Policy and Economic Development will review the record and issue a written decision on the appeal.

(c) Within 7 days of a decision by the Deputy Assistant Secretary—Policy and Economic Development, the Secretary will provide a written copy of the decision to the tribe and other participating parties.

### § 224.183 What other administrative appeals processes also apply?

The administrative appeal processes in 25 CFR part 2 and 43 CFR part 4, subject to the limitations in § 224.184, apply to:

(a) An interested party's appeal from an adverse decision or inaction by the Deputy Assistant Secretary—Policy and Economic Development under § 224.182; and

(b) An appeal by a tribe or a person or entity that has entered into a lease, business agreement, or right-of-way from an adverse decision by or the

inaction of a Department official taken under this part.

### § 224.184 How do other administrative appeals processes apply?

The administrative appeals process in 25 CFR part 2 and 43 CFR part 4 are modified, only as they apply to appeals under this part, as follows:

(a) The definition of interested party in 25 CFR part 2 and as incorporated in 43 CFR part 4 does not apply to this part.

(b) The right of persons or entities other than an appealing party to participate in appeals under 25 CFR part 2 and 43 CFR part 4 does not apply to this part, except as permitted under paragraph (c) of this section.

(c) The only persons or entities, other than appealing parties under § 224.181(a) to (c), who may participate in an appeal under this part are:

(1) The Secretary, if an appeal is taken from a decision of the Director or Deputy Assistant Secretary—Policy and Economic Development;

(2) A tribe, which may intervene, appear as an amicus curiae, or otherwise appear in any appeal taken under this part by a person or entity who has entered into a lease, business agreement, or right-of-way with the tribe or by an interested party under this part; or

(3) A person or entity that has entered into a lease, business agreement, or right-of-way with a tribe, which may intervene, appear as an amicus curiae, or otherwise appear in any appeal taken under this part by the tribe or by an interested party under this part.

(d) Any obligation to provide notice and service upon non-appealing persons provided in 25 CFR part 2 and 43 CFR part 4 does not apply to this part, except that notice and service of all documents must be served consistent with the requirements of 25 CFR part 2 and 43 CFR part 4 on those persons or entities identified in paragraph (c) of this section.

### § 224.185 When are decisions under this part effective?

Decisions under subpart I are effective as follows:

(a) Decisions of the Secretary disapproving a final proposed agreement or revised final proposed agreement under subpart C, finding imminent jeopardy to a physical trust asset under subpart F, and decisions by the Secretary or the Assistant Secretary—Indian Affairs to reassume a program under subpart G are final for the Department and effective upon issuance.

(b) Decisions under this part, other than those in paragraph (a) of this

section that are unfavorable to a tribe and in which an appeal is pending are not final for the Department and are not effective pending appeal, unless:

(1) Before the decision, the tribe had an opportunity for a hearing;

(2) After the decision was rendered, the tribe had a reasonable amount of

time to attain compliance with the agreement; and

(3) The Interior Board of Indian Appeals (Board), the Secretary, or Assistant Secretary—Indian Affairs issued a written decision that, notwithstanding a reasonable period to attain compliance with the agreement, the tribe has not attained compliance.

(c) All other decisions rendered by the Board or the Assistant Secretary of Indian Affairs in an appeal from a Director's decision under subparts E, F, or G are effective when rendered by the Board, the Secretary, or the Assistant Secretary—Indian Affairs.

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