

§ 224.103

(c) Provides for 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 other public participation processes?

No. Except for the environmental review process required by the Act and § 224.63(b)(1), a tribe is not required to establish a process for public participation concerning non-environmental issues in a TERA or leases, business agreements or rights-of-way undertaken under a TERA. However, a tribe may elect to establish procedures that permit the public 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 a person or entity to allege that a tribe is not complying with a TERA?

No. A tribe is not required, but may elect, to enact tribal laws, regulations, or procedures permitting a person or entity that may be an interested party to allege that a tribe is not complying with its TERA.

§ 224.105 How may a person or entity obtain copies of tribal laws, regulations, or procedures that would permit an allegation of noncompliance with a TERA?

(a) A person or entity that may be an interested party may obtain copies of tribal laws, regulations, or procedures that establish tribal remedies that permit a person or entity to allege that the tribe is not complying with its TERA by making a request to the tribe in accordance with the TERA and § 224.63(g).

(b) Upon obtaining copies of tribal laws, regulations, or procedures under subsection (a), a person or entity that may be an interested party may file a petition with the tribe under those tribal laws, regulations, or procedures.

(c) If the person or entity that may be an interested party files a petition alleging noncompliance with a TERA, the person or entity becomes a peti-

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tioner, and the tribe must respond according to § 224.106.

§ 224.106 If a tribe has enacted tribal laws, regulations, or procedures for challenging tribal action, how must the tribe respond to a petition?

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

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

(b) Provide a copy of its final written decision to the petitioner; and

(c) If the tribe fails, within a reasonable period, to issue a written decision to a petitioner brings under applicable tribal laws, regulations, or procedures the petitioner may file a petition with the Secretary.

§ 224.107 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 exhausted tribal remedies by participating in any tribal process under § 224.106, including any tribal appeal process.

§ 224.108 May tribes offer a resolution of a petitioner's claim?

Yes. In responding to a petition filed under tribal laws, regulations or procedures, a tribe may, with the petitioner's written consent, resolve the petitioner's claims.

§ 224.109 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 has failed to comply with terms or provisions of a TERA, and, as a result, the petitioner's interest has sustained or will sustain an adverse environmental impact.

(b) Request that the Secretary review the claims raised in the petition; and

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

§ 224.110 What must a petition to the Secretary contain?

A petition must contain:

(a) The petitioner's name and contact information;

(b) Specific facts demonstrating that the interested party under § 224.101, including identification of the affected interest;

(c) Specific facts demonstrating that the petitioner exhausted tribal remedies, if tribal laws, regulations, or procedures permitted the petitioner to allege tribal noncompliance with a TERA;

(d) A description of facts supporting the petitioner's allegation of the tribe's noncompliance with a TERA;

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

(f) A copy of any written decision the tribe issued responding to the petitioner's claims;

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

(h) If applicable, a statement and supporting documentation that the tribe did not respond to the petitioner's request under § 224.105(a) for copies of any tribal laws, regulations, or procedures allowing the petitioner to allege that the tribe is not complying with a TERA; and

(i) Any other information relevant to the petition.

§ 224.111 When may a petitioner file a petition with the Secretary?

(a) A petitioner may file a petition with the Secretary:

(1) By delivering the petition to the Director within 30 days of receiving the tribe's final written decision addressing the allegation of noncompliance under applicable tribal laws, regulations, or procedures;

(2) Within a reasonable period following the tribe's constructive denial

of the petition under § 224.106(c), and the Secretary will determine if the petition is timely in light of the applicable facts and circumstances; or

(3) The tribe did not respond to the petitioner's request for copies of any tribal laws, regulations, or procedures under § 224.105(a).

(b) A petitioner may file a petition directly with the Secretary if the tribe has no tribal laws, regulations or procedures that provide the petitioner an opportunity to allege tribal noncompliance with a TERA.

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

Within 20 days after receiving 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 a TERA and alternatives to resolve any noncompliance; and

(d) Notify the tribe in writing by certified mail, return receipt requested, when the petition consultation is complete.

§ 224.113 What must the tribe do after it completes petition consultation with the Director?

(a) Within 45 days of receiving the Director's notice that the petition consultation is complete, the tribe must respond to any claim made in the petition by submitting a written response to the Director; and

(b) Within a reasonable time after 45 days following the completion of the petition consultation process, the tribe must cure or otherwise resolve each claim of noncompliance made in the petition.

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

In addition to responding to the petitioner's claims, the tribe may also:

(a) Include its interpretation of relevant provisions of the TERA and other legal requirements;

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