

## Bureau of Indian Affairs, Interior

## § 224.41

*Physical trust asset* means a physical asset held in trust by the United States 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 a TERA, for a pipeline or electric transmission or distribution line that serves a facility located on tribal land that is related to energy resource development.

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

*TERA* means tribal energy resource 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 or tribes, 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.

*Tribe* means any Indian tribe, band, nation, or other organized group or community that 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 other violation by another party of any provision in a lease, business agreement, or right-of-way under a TERA or any activity or occurrence

under a lease business agreement or right-of-way that constitutes a violation of Federal or tribal environmental law.

### § 224.40 How does the Act or a TERA affect the Secretary’s trust responsibility?

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

(b) Neither the Act nor this part absolves 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 executed under an approved TERA violates any term of the lease, business agreement, or right-of-way, or any applicable Federal law; or

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

(d) The United States is not liable for losses to any party (including any tribe) for any negotiated term of, or any loss resulting from, the negotiated terms of a lease, business agreement, or right-of-way the tribe executes under a TERA.

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

When tribal land held for the benefit of more than one tribe is contemplated for inclusion in a TERA, each appropriate tribal governing body must request a pre-application consultation meeting, and submit a resolution or formal act of the tribal governing body approving the submission of any application. Each appropriate tribal governing body must also sign the TERA, if it is approved.