

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

(1) The tribe has designated the information as confidential commercial or financial information; or

(2) The Department has reason to believe that the information requested may be protected under FOIA Exemption 4 (trade secrets and commercial or financial information which is obtained from a person and is privileged or confidential).

(d) The notice to the tribe will:

(1) Include a copy of the FOIA request;

(2) Describe the information requested or include copies of the pertinent records;

(3) Advise the tribe of procedures for objecting to the release of the requested information and specify the time limit for the tribe's response;

(4) Give the tribe no less than ten (10) working days from the Department's notice to object to the release and explain the basis for objection, if any;

(5) Advise the tribe that:

(i) Information contained in the tribe's objections may be subject to disclosure under FOIA if the Department receives a FOIA request for it; and

(ii) If the tribe's objections contain commercial or financial information and a requestor asks for the objections under FOIA, the same notification procedures as above will apply;

(6) Advise the tribe that it is the Department, rather than the tribe, that is responsible for deciding whether the information will be released or withheld;

(7) If the tribe designated the information as commercial or financial information 10 or more years before the FOIA request, the Department will request the tribe's views on whether the tribe still considers the information to be confidential;

(e) If the tribe has any objection to disclosure of the information, the tribe must submit a detailed written statement to the Department including the following:

(1) The justification for withholding any portion of the information under any exemption of FOIA, and if the applicable exemption is Exemption 4, the tribe must submit a specific and detailed discussion of:

(i) Whether the Federal government required the information to be submitted, and, if so, how substantial competitive harm or other business harm would likely result from release of the information; or

(ii) Whether the tribe provided the information voluntarily and, if so, how the information fits into a category of information that the tribe customarily does not release to the public;

(2) A certification that the information is confidential, has not been disclosed to the public by the tribe, and is essentially non-public because it is not routinely available to the public from other sources;

(3) If not already provided, a tribal contact telephone and fax number so that the Department can communicate with the tribe about the FOIA request;

(f) The Department will review and consider all objections to release that are received within the time limits specified in the notice to the tribe, and if the tribe does not respond within the time limits specified in the notice, the Department will presume that the tribe has no objection to release of the information;

(g) If the Department decides to release the information over the objection of the tribe, it will notify the tribe in writing by certified mail, return receipt requested, and will include copies of the records the Department intends to release and the reasons for deciding to release them. The notice will also inform the tribe that it intends to release the records within 10 working days after the tribe's receipt of the notice.

§ 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 statutorily mandated period during which the Secretary must approve or disapprove a proposed TERA. With the consent of the tribe, the Secretary may

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extend the 270-day period for making a decision.

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

(a) Upon receiving an application for a TERA, the Director must:

(1) Promptly notify the Designated Tribal Official in writing that the Director has received the application and the date it was received;

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

(3) Take the following actions:

If the Director determines that . . .	Then the Director must . . .
(i) The application is complete.	(A) Issue a written notice and a request for an application consultation meeting to the Designated Tribal Official; and (B) If appropriate, notify other Departmental bureaus and offices of receiving the application and provide copies.
(ii) The application is not complete.	(A) Issue a written notice to the Designated Tribal Official that the application is not complete; (B) Specify the additional information the tribe is required to submit to make the application complete; and (C) Start the 270-day review period only when the Director receives a complete application.

(b) Unless the Director notifies the Designated Tribal Official during the 30-day review period that the application is not complete, the application is presumed to be complete and the 270-day review period under 25 U.S.C. 3504(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?

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 TERA application. The Secretary will designate representatives of appropriate Departmental offices or bureaus to attend the application consultation meeting, as necessary. The tribe may record the meeting. The meeting will:

(a) Be held at the earliest practicable time after the Director receives a tribe's complete application;

(b) Include a thorough discussion of the tribe's application;

(c) Identify the specific services consistent with the Secretary's ongoing trust responsibility and available resources that the Department would provide to the tribe upon the approval of a TERA;

(d) 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;

(e) 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 a TERA or by leases, business agreements, or rights-of-way that the tribe may enter into or grant under an approved TERA;

(f) Include a discussion of the tribal administrative, financial, technical, and managerial capacities needed to carry out the tribe's obligations under a TERA; and

(g) Include a discussion of the form of the TERA and the timing and relative responsibilities of the parties for its preparation.

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

The Director will use the information gathered during the application consultation meeting in conjunction with information provided through §§ 224.53 and 224.63 to determine the energy resource development capacity of the tribe as detailed in § 224.72.

§ 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 Designated Tribal Official a written report on the application consultation meeting. The report must include the Director's recommendations, if any, for revising the proposed TERA that was submitted as part of the tribe's application.