

whether an extension of the review period is necessary under § 224.62(b).

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

#### **§ 224.70 Will the Secretary review a proposed TERA under the National Environmental Policy Act?**

Yes, the Secretary will conduct a review under the National Environmental Policy Act (NEPA) of the potential impacts on the quality of the human environment that might arise from approving a final proposed TERA. The scope of the Secretary's evaluation will be limited to the scope of the TERA. The public comment period, when required, under the NEPA review will occur concurrently with the public comment period for a TERA under § 224.67.

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

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

#### **§ 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 to regulate;
- (b) The scope of the administrative or regulatory activities the tribe seeks to assume;
- (c) Materials and information submitted with the application for a TERA, the result of meetings between the tribe and a representative of the

Department and the Director's written report;

(d) The history of the tribe's role in energy resource development, including negotiating and approval or disapproval of 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 TERA 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;

(h) The tribe's past performance monitoring activities undertaken by third parties under approved leases, business agreements, or rights-of-way; and

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

#### **§ 224.73 How will the scope of energy resource development 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 TERA will include a determination as to each type of energy resource development subject to the TERA for which the tribe seeks to regulate, and each type of regulatory activity the tribe proposes to assume. The Secretary's review of a TERA must be limited to activities specified by its provisions.

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

The Secretary must approve or disapprove a final proposed TERA or a revised final proposed TERA within 270 days of the Director's receipt of a complete application for a TERA. With the

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consent of the tribe, or as provided in § 224.62(b), the Secretary may extend the period for a decision.

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

Within 10 days of the Secretary's approval or disapproval of a final proposed TERA, the Secretary must notify the tribal governing body in writing and take the following actions:

If the Secretary's decision is . . .	Then the Secretary will . . .
(a) To approve the final proposed TERA.	(1) Sign the TERA making it effective on the date of signature, and return the signed TERA to the tribal governing body; and (2) Maintain a copy of the TERA and any subsequent amendments or supplements to the TERA.
(b) To disapprove the final proposed TERA.	Send the tribe a notice of disapproval that must include: (1) The basis of the disapproval; (2) The changes or other actions required to address the Secretary's basis for disapproval; and (3) A statement that the decision is a final agency action and is subject to judicial review.

If the Secretary's decision is . . .	Then the Secretary will . . .
(a) To approve the revised final proposed TERA.	(1) Sign the TERA making it effective on the date of signature, and return the signed TERA to the tribal governing body; and (2) Maintain a copy of the TERA and any subsequent amendments or supplements to the TERA.
(b) To disapprove the revised final proposed TERA.	Send the tribe a notice of disapproval that 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 TERA or a revised final proposed TERA?**

Only a tribe applying for a TERA may appeal the Secretary's decision to disapprove a final proposed TERA or a revised final proposed TERA 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 TERA or a revised final proposed TERA is a final agency action.

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

Yes, within 45 days of receiving 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 TERA, 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 TERA within 60 days of the Director's receipt of the revised final proposed TERA. Within 10 days of the Secretary's approval or disapproval of a revised final proposed TERA, the Secretary must notify the tribal governing body in writing and take the following actions:

**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?**

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

**§ 224.81 What laws are applicable to activities?**

Federal and tribal laws apply to activities under a TERA, unless otherwise specified in the TERA.