



DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 224

RIN 1076-AF65

[212D0102DR/DS5A300000/DR.5A311.IA000118]

Tribal Energy Resource Agreements

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Interim final rule.

SUMMARY: On December 18, 2019, the Bureau of Indian Affairs (BIA) amended its regulations governing Tribal Energy Resource Agreements (TERAs) between the Secretary of the Interior (Secretary) and Indian Tribes. That document inadvertently failed to include the statutory requirement that any application for a Tribal Energy Development Organization (TEDO) be submitted by the Tribe, rather than the TEDO itself, and incorrectly listed three cross-references. This interim final rule would correct that omission and cross-references.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Submit comments by [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- Federal rulemaking portal www.regulations.gov. The rule is listed under the agency name “Bureau of Indian Affairs.”
- Email: comments@bia.gov
- We cannot ensure that comments received after the close of the comment period (see DATES) will be included in the docket for this rulemaking and considered.

Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273-4680; elizabeth.appel@bia.gov.

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I. Background

On December 18, 2019, BIA updated its TERA regulations under the authority of the Indian Tribal Energy Development and Self-Determination Act of 2005, as amended by the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017, 25 U.S.C. 3501-3504, Pub. L. 115-325, and 25 U.S.C. 2 and 9. The rule addressed the requirements of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 (2017 Amendments), including establishing a process and criteria for TEDOs to obtain certification from the Secretary so that they may enter into leases, business agreements, and rights-of-way with Tribes on Tribal land without Secretarial approval. *See* Section 103(b) of the 2017 Amendments.

II. Corrections to Final Rule

The 2019 regulation stated at § 224.202 that a TEDO must submit an application. The statute, however, states that the Tribe submits the application for certification of a

TEDO. *See* 25 U.S.C. 3504(h)(1). For that reason, the regulation at § 224.202 must be corrected to provide that a Tribe must submit the application.

Additionally, Indian Affairs identified typographical errors in the cross-references to paragraphs in § 224.53, which should be corrected as follows:

- In paragraph (a)(3), the cross-reference should be to paragraph (b), rather than paragraph (c);
- In paragraph (a)(5), the cross-reference should be to paragraph (c) rather than paragraph (d); and
- In paragraph (b), the cross reference should be to paragraph (a)(3) rather than paragraph (a)(6).

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866, 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more;
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and
- (c) Does 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 because this rule makes minor corrections.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a monetarily significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this rule does not affect individual property rights protected by the Fifth Amendment or involve a compensable "taking." A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary

impact statement because the rule affects only agreements entered into by Tribes and the Department. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it does not have substantial direct effects on federally recognized Indian Tribes because the Department consulted on substantive requirements of the rule that is in effect, and this rule merely makes minor corrections to that substantive rule.

I. Paperwork Reduction Act

OMB Control No. 1076-0167 currently authorizes the collections of information contained in 25 CFR part 224. This rule does not affect those collections of information.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary

circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of this Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "ADDRESSES" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you think lists or tables would be useful, etc.

M. Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

N. Determination to Issue an Interim Final Rule with Immediate Effective Date

We are publishing this interim final rule with a request for comment without prior notice and comment, as allowed under 5 U.S.C. 553(b). Under section 553(b) we find that there is good cause to effectuate this rule without prior notice, and comments are unnecessary and would be contrary to the public interest. This rule is necessary to ensure that the regulation is clear in that the Tribe must approve a TEDO application, and correct internal section cross-references.

As allowed under 5 U.S.C. 553(d)(3), the effective date of this rule is the date of publication in the Federal Register. Good cause for an immediate effective date exists because the delay in publishing this rule serves no useful purpose as the statute already requires what this interim final rule updates in the regulation and any delay in correcting internal cross-references to sections may cause confusion on the part of potential TEDO applicants. We are requesting comments on this interim final rule. We will review any comments received and, by a future publication in the Federal Register, address any comments received.

List of Subjects in 25 CFR Part 224

Agreement, Appeals, Application, Business Agreements, Energy Development, Interested Party, Lease, Record keeping requirements, Reporting requirements, Right-of-Way, Tribal Energy Resource Agreements, Tribal capacity, Tribal lands, Trust, Trust asset.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, amends part 224 in 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

1. The authority for part 224 continues to read as follows:

§ 224.53 [Amended]

2. In § 224.53:

a. Amend paragraph (a)(3) by removing “paragraph (c)” and adding “paragraph (b)” in its place;

b. Amend paragraph (a)(5) by removing “paragraph (d)” and adding “paragraph (c)” in its place.

c. Amend paragraph (b) introductory text by removing “paragraph (a)(6)” and adding “paragraph (a)(3)” in its place.

3. Revise § 224.202 to read as follows:

§ 224.202 How must a Tribe submit an application for certification of a TEDO?

A Tribe must submit an application for certification of a TEDO and all supporting documents in a searchable portable document format (PDF) to TERA@bia.gov.

Bryan Newland,
Principal Deputy Assistant Secretary – Indian Affairs.