

Overview

Tribal Energy Resource Agreement
(TERA)

AND

Tribal Energy Development Organization
(TEDO)



Tribal Energy Resource Agreement

(TERA)



WHAT IS TERA?

- ❑ Tribal Energy Resource Agreement (TERA)
 - Agreement between a Tribe and Interior (DOI);
 - Once TERA is approved: Tribe may enter into energy-related leases, business agreements, and rights-of-way on Tribal lands without the Secretary's review and approval of each individual lease, business agreement, or right-of-way.

- ❑ TERAs
 - Promote Tribal oversight and management of energy resource development on Tribal lands.
 - Provide another avenue under which Tribes may develop their mineral resources.
 - Support the national energy policy of increasing utilization of domestic energy resources.



AUTHORITY

1. 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
2. 25 U.S.C. 3501-3504
3. Public Law 115-325
4. 25 U.S.C. 2 and 9



APPLICATION PROCESS AND TIMELINE

TERA APPROVAL STEP	TIME FRAME	RESPONSIBLE PARTY
Date Pre-Application Letter Received		Tribe
DOI Response Letter	30 days	BIA - IESC
Pre-Application Consultation Meeting	Determined by Tribe	Tribe/DOI
Tribe Submits TERA Application	Determined by Tribe	Tribe
Determine if Application is Complete	30 days	IESC
Application Consultation Meeting	Determined by Tribe	Tribe/DOI
Application Consultation Meeting Report	30 days	BIA
Submit Final Proposed Application	45 days	Tribe
Approve TERA	270 days	DOI



POTENTIAL SCOPE OF APPLICATION

CONTRACTIBLE FEDERAL FUNCTIONS

Pre-leasing Functions

Surface and Mineral Lease Approval, Amendments, Inspection/Enforcement, Cancellation

CA/UA Approval

Securing and Enforcing bonds

Rights-of-Way Renew and Enforcement

PL 93-638

Approval for Application Permit to Drill (APD)

Lease Inspection, Enforcement, and Production Oversight

Securing and Enforcing Bonds

Royalty compliance

Section 202

INHERENTLY FEDERAL FUNCTIONS

Archaeological Resources Protection Act Permit

Royalty Collection/Distribution

Issuance of Royalty Order and Notices of Noncompliance



REQUIRED CONTENT IN TERA APPLICATION

- ❑ Must specify the type of energy resource included
- ❑ Must specify the services or resources related to the specific activity related to energy resource development that the Tribe proposes to assume from the Department
- ❑ The Tribe must submit an application and all supporting documents in a searchable portable document format (PDF) to TERA@bia.gov.

[25 CFR 224 SUBPART B, §224.52-54]



REQUIRED CONTENT IN TERA APPLICATION

An application for a TERA must contain **ALL** of the following:

- 1) A proposed TERA between the Tribe and the Secretary, signed by the authorized representative of the Tribe
- 2) A map, legal description, and general description of the Tribal land that the Tribe intends to include in the TERA
- 3) Documentation that the Tribe meets the definition of “qualified Tribe”
- 4) A statement of the scope and explanation of administrative activities that the Tribe intends to conduct
- 5) A designation of, and contact information for, the Designated Tribal Official

[25 CFR 224 SUBPART B, §224.53]



REQUIRED CONTENT IN TERA APPLICATION

- ❑ An Application must describe the amount of administrative activities related to the permitting, approval, and monitoring of activities, as applicable, that the Tribe proposes to undertake under any lease, business agreement, or right-of-way the Tribe executes under an approved TERA.
 - If the Tribe proposes to regulate activities, the Tribe must state its intent and describe the scope of the Tribe's plan for such administration and management.
 - The Tribe's intended scope of administrative responsibilities may not include the responsibilities of the Federal Government under the Endangered Species Act or other inherently Federal functions.
 - If the Tribe intends to regulate activities, it should also describe the regulatory activities it desires to assume in the geographical area

[25 CFR 224 SUBPART B, §224.53]



LIMITATIONS AND AUTHORITIES

➤ AUTHORITIES [25 CFR 224 SUBPART D]

- A Tribe will perform activities for energy resource development activities undertaken under a TERA under the Federal 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.

[73 FR 12821, Mar. 10, 2008, as amended at 84 FR 69613, Dec. 18, 2019]

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

[25 CFR 224 SUBPART D, §224.80-81]



LIMITATIONS AND AUTHORITIES

➤ LIMITATIONS [25 CFR 224 SUBPART D]

- After approval of a TERA, the Department will provide a Tribe:
 - (a) All activities that the Department performs unless the Tribe has assumed such activities under the TERA;
 - (b) Access to title status information and support services needed by a Tribe in the course of evaluating proposals for leases, business agreements, or rights-of-way;
 - (c) Coordination between the Tribe and the Department for ongoing maintenance of accurate real property records;
 - (d) Access to technical support services within the Department to assist the Tribe in evaluating the physical, economic, financial, cultural, social, environmental, and legal consequences of approving proposals for leases, business agreements, or rights-of-way under a TERA; and
 - (e) Assistance to ensure that third-party violations or breaches of the terms of leases, business agreements, or rights-of-way or applicable provisions of Federal law by third parties are handled appropriately.

[25 CFR 224 SUBPART D, §224.82]



Tribal Energy Development Organization

(TEDO)



WHAT IS TEDO?

- Tribal Energy Development Organization
 - Any enterprise, partnership, consortium, corporation, or other type of business organization that is engaged in the development of energy resources and is wholly owned by a Tribe
 - Any organization of two or more entities, at least one of which is a Tribe, that has the written consent of the governing bodies of all Tribes participating in the organization, to apply for a grant, loan, or other assistance under 25 U.S.C. 3502 or to enter into a lease or business agreement with, or acquire a right-of-way from, a Tribe



AUTHORITY

1. 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
2. 25 U.S.C. 3501-3504
3. Public Law 115-325
4. 25 U.S.C. 2 and 9
5. Source: 84 FR 69614, Dec. 18, 2019, unless otherwise noted



APPLICATION PROCESS AND TIMELINE

TEDO APPROVAL STEP	TIME FRAME	RESPONSIBLE PARTY
Date Application Signed	-	Tribe
Date Application Received	-	BIA - IESC
DOI Approval Response Letter	90 days	BIA - IESC
DOI TEDO Application for Certification	10 days	BIA – IESC



REQUIRED CONTENT IN TEDO APPLICATION

- The Tribe has carried out a contract or compact under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.) for a period of not less than 3 consecutive years ending on the date on which the Tribe submits the application, and the contract or compact:
 - Has been carried out by the Tribe without material audit exceptions (or without any material audit exceptions that were not corrected within the 3-year period)
 - Has included programs or activities relating to the management of Tribal land
- The TEDO is organized under the Tribe's laws

[25 CFR 224 SUBPART J, §224.201]



REQUIRED CONTENT IN TEDO APPLICATION

- The majority of the interest in the TEDO is owned and controlled by the Tribe (or the Tribe and one or more other Tribes) the Tribal land of which is being developed
- The TEDO's organizing document:
 - Requires the Tribe with jurisdiction over the land to maintain, at all times, the controlling interest in the TEDO
 - Requires the Tribe (or the Tribe and one or more other Tribes the Tribal land of which is being developed) to own and control, at all times, a majority of the interest in the TEDO
 - Includes a statement that the TEDO is subject to the jurisdiction, laws, and authority of the Tribe
- A TEDO must submit an application and all supporting documents in a searchable portable document format (PDF) to TERA@bia.gov

[25 CFR 224 SUBPART J, §224.201 - 202]



WHAT IS THE EFFECT OF A TEDO RECEIVING CERTIFICATION?

- Upon receiving certification, a TEDO may enter into a lease, business agreement, or right-of-way with an Indian Tribe without Secretarial approval as long as:
 - The scope of the lease or business agreement does not exceed that of a TERA as established in §224.85
 - The scope of a right-of-way does not exceed that of a TERA as established in §224.84
 - The term of a lease, business agreement, or right-of-way does not exceed that of a TERA as established in §224.86

[25 CFR 224 SUBPART J, §224.206]



CONTACT INFORMATION

If you have any questions, please email:



IndianEnergyServiceCenter@bia.gov

or



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<https://www.bia.gov/bia/ots/indian-energy-service-center>

