

¹Supporting Statement A

25 CFR 224, Tribal Energy Resource Agreements

OMB Control Number 1076-0167

Terms of Clearance: None.

General Instructions

A completed Supporting Statement A must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified below. If an item is not applicable, provide a brief explanation. When the question “Does this ICR contain surveys, censuses, or employ statistical methods?” is checked "Yes," then a Supporting Statement B must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

Title V, Section 503 of the Energy Policy Act of 2005 (Pub. L. 109-58) amended Title XXVI (Indian Energy) of the Energy Policy Act of 1992 by adding new provisions concerning development of energy resources on tribal lands. As amended, Title XXVI, Section 2604, authorizes the Secretary to approve individual Tribal Energy Resource Agreements (TERAs).

The intent of these agreements is to promote tribal oversight and management of energy resource development on tribal lands and further the goal of Indian self-determination. A TERA offers a tribe an alternative for developing energy-related business agreements and awarding leases and granting rights-of-way for energy facilities without having to obtain further approval from the Secretary of the Interior (Secretary).

The regulations implementing Title XXVI are at 25 CFR 224. The following table details the IC requirements in subparts B, C, D, E, F, G, and H of these regulations:

Table 1 – Information Collections Associated with Tribal Energy Resource Agreements Under The Indian Tribal Energy Development And Self-Determination Act		
Citation 25 CFR 224	Section Title	Information Collection Requirement
Subpart B – Procedures for Obtaining Tribal Energy Resource Agreements		
224.53 and 224.63	What must an Application for a TERA contain? What provisions must a TERA contain?	224.53 Provisions (a) through (f) outline TERA application information requirements and 224.63 provisions (a) through (l) outline TERA requirements
224.57(a)	What must the Director do upon receipt of an application?	Director issues written notice to tribe listing additional information requirements
224.61	What will the tribe provide to the Director after receipt of the Director's report on the application consultation meeting?	Tribe must submit final proposed TERA
224.64	How may a tribe assume management of development of different types of energy resources?	A tribe may assume management of other types of energy resources by applying for a new TERA under the same requirements as §224.53 and §224.54 for that additional type of energy resource
224.65	How may a tribe assume additional activities under a TERA?	There is an amendment process for making changes to an already approved TERA
224.68 (d)	How will the Secretary use public comments?	If the tribe makes changes to final proposed TERA based on public comment the tribe must approve final changes in writing
Subpart C – Approval of Tribal Energy Resource Agreements		
224.76	Upon notification of disapproval, may a tribe re-submit a revised final proposed TERA?	Yes – tribe may submit a revised final proposed TERA
Subpart D – Implementation of Tribal Energy Resource Agreements		
224.83	What must a tribe do after executing a lease or business agreement, or granting a right-of-way?	Inform public and send copy of any such agreements to the Director
224.87	What are the responsibilities of a tribe if it discovers a violation or breach?	Tribe must provide written notice to Director with specified content
Subpart E – Interested Party Petitions		
224.110	What must a petition to the Secretary contain?	Provisions (a) through (i) outline petition information requirements
224.113 and 224.114	What must the tribe do after it completes petition consultation with the	After completion of petition consultation, the tribe must submit a written response to any claim of noncompliance. Contents of that response are outlined in 224.114(a) through (d)

Table 1 – Information Collections Associated with Tribal Energy Resource Agreements Under The Indian Tribal Energy Development And Self-Determination Act		
Citation 25 CFR 224	Section Title	Information Collection Requirement
	Director? How may the tribe address a petition in its written response?	
224.118 and 224.121	How must the tribe respond to the Director's notice of the opportunity for a hearing? How may a tribe or a petitioner appeal the Director's decision about the tribe's compliance with the TERA?	If it wants a hearing, the tribe must request one within 20 days of the notice. After the Director makes a decision, the tribe or a petitioner may appeal to the Principal Deputy Assistant Secretary—Indian Affairs
Subpart F — Periodic Reviews		
224.139 (b)	What must a tribe do after receiving a notice of imminent jeopardy to a physical trust asset?	Submit a written response to the Director
Subpart G — Reassumption		
224.156	What information must the tribe's response to the notice of intent to reassume include?	The tribe must respond in writing, indicating that it is pursuing one of three possible options
Subpart H – Rescission		
224.173	How does a tribe rescind a TERA?	The tribe must submit a written tribal resolution to initiate a rescission

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.

The Office of Indian Energy and Economic Development (IEED) uses the information collected through these regulations to determine the capacity of tribes to manage the development of energy resources on tribal lands. Information collected in subparts B and C enables IEED to engage in a consultation process with tribes designed to foster optimal pre-planning of development proposals and speed up the review and approval process for TERAs.

Information collected in subpart D provides public notice and opportunity for review of TERAs by the public, industry, and government agencies. Specifically, the information collection associated with subpart D, section 224.83 requires a tribe to notify the public of actions taken under a TERA. This constitutes a third party notification. This third party notification is necessary so that the public is fully informed of a tribe's energy development activity and has an opportunity to comment on any potential impacts from these activities. This third party notification is a mandate of Title V, Section 503 of the Energy Policy Act of 2005.

Taken together, the information collected by IEED in subparts D and F will enhance and ensure the accountability of tribes for the prudent development of energy resources.

Information collected by IEED in subpart E: (1) ensures that the public has an avenue to review tribes' performance in implementing a TERA; (2) creates a process for preventing damage to sensitive resources; (3) ensures that the public has fully communicated with the tribe in the petition process; (4) ensures that the tribes are not subject to complaints based on erroneous or irrelevant information; and (5) ensures that tribes are made fully aware of any requirements for a change in operations.

As part of this process, information collected by IEED in subpart G ensures that a tribe is fully aware of any attempt by the Department of the Interior (DOI) to resume management authority over energy resources on tribal lands.

If a tribe wants to voluntarily relinquish its energy resource management authority, information IEED collects in subpart H ensures that the tribal government fully endorses this change.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden and specifically how this collection meets GPEA requirements.**

IEED accepts applications and progress reports electronically (email), by fax, and by regular mail.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

The information needed to fulfill the Energy Policy Act provisions regarding TERAs is not available from any other collection. Other collections related to energy development on tribal lands are project-specific and do not envision the wholesale assumption by a tribe of management responsibilities for the entire energy development process.

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

Tribes are not considered small entities. However, the IEED has done its best to minimize the amount of information requested to only that which is necessary.

- 6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

Title V, Section 503 of the Energy Policy Act of 2005 (Pub. L. 109-58) is very specific in the types of information that IEED must collect to ensure Departmental and tribal accountability.

Without the collections outlined in Table 1 this program of review, approval and monitoring of TERA's would not be possible to carry out.

- 7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**
- * **requiring respondents to report information to the agency more often than quarterly;**
 - * **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
 - * **requiring respondents to submit more than an original and two copies of any document;**
 - * **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
 - * **in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
 - * **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
 - * **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
 - * **requiring respondents to submit proprietary trade secrets, or other confidential information, unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances that would necessitate any of the conditions stated in Question 7 except that there may be decision points during the 270-day statutorily mandated period for review and approval of a TERA that will require a tribe to provide a written response in fewer than 30 days after receipt.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

IEED published the 60-day notice soliciting comments in the Federal Register on January 13, 2015 (80 FR 1662). There were no comments received in response to this notice.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

There have been no TERA applications to date; however, IEED has held pre-application consultations in accordance with 25 CFR 224.51 with a small number of tribes interested in pursuing the TERA process. Preliminary feedback is that the TERA application process is more daunting than expected; however, much of the application process is required by statute, so IEED is exploring ways to simplify the statutes that create the TERA procedure.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

IEED does not provide gifts or payments to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

IEED does not provide any assurance of confidentiality. The information that IEED collects is subject to the requirements of the Privacy Act and the Freedom of Information Act.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

Not applicable. There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- * Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- * If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- * Provide estimates of annualized cost to respondents for the hour burdens for**

collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.

The total universe of possible respondents includes all the tribes in the 48 contiguous states of the United States and the Metlakatla Indian Community in Alaska. The timing of a tribe’s application for a TERA is entirely up to the tribe and is not tied to a schedule. Once an application is submitted to the Department it starts a 270-day clock with several milestones for the Department to achieve before a TERA agreement is approved.

The TERA program has only been in place since mid-2008, and no tribes have yet submitted an application for a TERA. We based our estimates for the number of respondents and responses on an understanding that, as the energy development industry increasingly reaches out to Indian Country, tribes will begin participating in the program. On average, we estimate that the total number of respondents, on an annual basis, is 14 and results annually in 34 instances of information collection related to the TERA regulations.

The information collection costs in Table 2 result from taking the number of hours multiplied by an hourly salary and benefits for tribal staff and private consultants performing work on behalf of the tribe.

$$\text{Total IC cost} = [(\text{staff hours}) \times (\text{salary} + \text{benefits})]$$

This results in a total hour burden of **10,752 hours** per year or the amount equivalent to \$340,946.

*To obtain the hourly rate, we used the wages and salaries figure for all workers from BLS Release USDL-15-0386, *Employer Costs for Employee Compensation—December 2014*, Table 1, *Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, December 2014*. That figure is \$22.65. To account for benefits, we then multiplied this figure by 1.4. The resulting salary and benefits rates is \$31.71.

Table 2 – Public Burden from Information Collections Associated with TERAs						
Citation 25 CFR 224	Section Title	Information Collection Requirement	Hour Burden for respondent	Average No. of Annual Responses	Annual Burden Hours for Respondent	Total Annual Cost (salary & benefits*)
Subpart B — Procedures for Obtaining Tribal Energy Resource Agreements						
224.53	What must an application for a TERA contain?	224.53 (a) - (f) Prepare and submit application	1080	4	4,320	\$136,987.20

Table 2 – Public Burden from Information Collections Associated with TERAs

Citation 25 CFR 224	Section Title	Information Collection Requirement	Hour Burden for respondent	Average No. of Annual Responses	Annual Burden Hours for Respondent	Total Annual Cost (salary & benefits*)
224.63	What provisions must a TERA contain?	224.63 (a) - (l) Prepare and submit TERA				
224.57(a)	What must the Director do upon receipt of an application?	Respond to written request for additional information	480	6	2,880	\$91,324.80
224.68(d)	How will the Secretary use public comments?	Approve changes to final agreement in writing				
224.61	What will the tribe provide to the Director after receipt of the Director's report on the application consultation meeting?	Prepare and submit final proposed TERA	32	4	128	\$4,058.88
224.64	How may a tribe assume management of development of different types of energy resources?	Apply for new TERA to assume management other types of energy resources (under the same requirements as §224.53 and §224.54 for that additional type of energy resource)	720	1	720	\$22,831.20
224.65	How may a tribe assume additional activities under a TERA?	Amend an already-approved agreement	520	2	1040	\$32,978.40
224.76	Upon notification of disapproval, may a tribe re-submit a revised final proposed TERA?	Prepare and submit revised final proposed TERA				
Subpart C — Approval of Tribal Energy Resource Agreements						
See section 224.76, above.						
Subpart D — Implementation of Tribal Energy Resource Agreements						
224.83	What must a tribe do after executing a lease or business agreement, or granting a right-of-	Inform public and send copy of any such agreements to the Director	32	10	320	\$10,147.20

Table 2 – Public Burden from Information Collections Associated with TERAs

Citation 25 CFR 224	Section Title	Information Collection Requirement	Hour Burden for respondent	Average No. of Annual Responses	Annual Burden Hours for Respondent	Total Annual Cost (salary & benefits*)
	way?					
224.87	What are the responsibilities of a tribe if it discovers a violation or breach?	Provide written notice to Director				
224.118 and 224.121	How must the tribe respond to the Director's notice of the opportunity for a hearing? How may a tribe or a petitioner appeal the Director's decision about the tribe's compliance with the TERA?	Request a hearing and if unsatisfied with the Director's determination, appeal to the Principal Deputy Assistant Secretary—Indian Affairs	120	3	360	\$11,415.60
224.139 (b)	What must a tribe do after receiving a notice of imminent jeopardy to a physical trust asset?	Prepare and submit a written response to the Director				
Subpart E — Interested Party Petitions						
224.110	What must a petition to the Secretary contain?	Prepare and submit interested party petition	464	1	464	\$14,713.44
224.113 and 224.114	What must the tribe do after it completes petition consultation with the Director? How may the tribe address a petition in its written response?	Prepare and submit a written response	408	1	408	\$12,937.68
See section 224.121 above						
Subpart F — Periodic Reviews						
See section 224.139 (b) above						
Subpart G — Reassumption						
224.156	What information must the tribe's response to the notice of intent to reassume include?	Respond to notice of intent to reassume	80	1	80	\$2,536.80
Subpart H — Rescission						

Table 2 – Public Burden from Information Collections Associated with TERAs						
Citation 25 CFR 224	Section Title	Information Collection Requirement	Hour Burden for respondent	Average No. of Annual Responses	Annual Burden Hours for Respondent	Total Annual Cost (salary & benefits*)
224.173	How does a tribe rescind a TERA?	Submit a written tribal resolution to initiate a rescission	32	1	32	\$1,014.72
TOTAL BURDEN					10,752	\$340,945.92

13. Provide an estimate of the total annual non-hour cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)

- * **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information (including filing fees paid for form processing). Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- * **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- * **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

An essential component of the evaluation of proposed TERAs is for the tribe to demonstrate that it has preexisting capabilities to manage energy development projects. The tribe should have resident technical and environmental expertise in addition to expertise in leasing and financial management. Therefore, to fulfill the regulatory requirements, tribes will have IT and other office systems already in place and have personnel with experience in their operation. Consequently, any costs for the acquisition of enterprise systems, technology, or capital equipment by a tribe, as a result of these regulations, will either be minimal or already a part of their everyday business operations. We estimate that respondents will incur a total annual cost of \$48,200 for operations and maintenance from all information collections associated with these

regulations.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

Federal employees in IEED working on the TERA program will spend part of their overall time on each aspect of the approval, review, and monitoring of TERA related information collections. This work will also require extensive consultation with tribes that submit TERA applications and coordination with other affected bureaus and offices in the Department. The time involved is tied to the time limits defined in the TERA regulations (*i.e.*, TERA Application approval – 270 days). In addition, the Office of the Solicitor, while not IEED employees, will need to conduct extensive review of many TERA related collections. We estimate that the annual cost to the Federal Government to administer this information collection is **\$1,132,102**. This includes \$1,107,102 in salary costs, plus \$25,000 in administrative costs consisting of miscellaneous services and supplies.

Table 3 – Federal Government Burden from Information Collections Associated with TERAs						
Citation 25 CFR 224	Section Title	Federal Government Activity	Hour Burden	Average No. of Annual Responses	Annual Burden Hours	Total Annual Cost (salary & benefits)*
Subpart B — Procedures for Obtaining Tribal Energy Resource Agreements						
224.53 and 224.63	What must an application for a TERA contain? What provisions must a TERA contain?	Review application / agreement	2,160	4	8,640	\$583,891.20
224.57(a)	What must the Director do upon receipt of an application?	Request additional information				
224.61	What will the tribe provide to the Director after receipt of the Director's report on the application consultation meeting?	Review final proposed TERA	450	4	1,800	\$ 83,196.00

Table 3 – Federal Government Burden from Information Collections Associated with TERAs						
Citation 25 CFR 224	Section Title	Federal Government Activity	Hour Burden	Average No. of Annual Responses	Annual Burden Hours	Total Annual Cost (salary & benefits)*
224.64	How may a tribe assume management of development of different types of energy resources?	Review application for new TERA to assume management other types of energy resources	2,160	1	2,160	\$ 99,835.20
224.65	How may a tribe assume additional activities under a TERA?	Review amendment	2,160	1	2,160	\$ 99,835.20
224.68 (d)	How will the Secretary use public comments?	Make changes to finalize TERA	Included in 224.61, above			
Subpart C — Approval of Tribal Energy Resource Agreements						
224.76	Upon notification of disapproval, may a tribe re-submit a revised final proposed TERA?	Review submission of a revised final proposed TERA	Included in 224.61, above			
Subpart D — Implementation of Tribal Energy Resource Agreements						
224.83	What must a tribe do after executing a lease or business agreement, or granting a right-of-way?	Review copy of any agreements and documentation of information	160	10	1,600	\$ 73,952.00
224.87	What are the responsibilities of a tribe if it discovers a violation or breach?	Review notice of violation	240	1	240	\$ 11,092.80
Subpart E — Interested Party Petitions						
224.110	What must a petition to the Secretary contain?	Review petition	960	1	960	\$ 44,371.20
224.113 and 224.114	What must the tribe do after it completes petition consultation with the Director? How may the tribe address a petition in its written response?	Review written response				
224.118 and	How must the tribe respond to the	Review request for hearing and appeal				

Table 3 – Federal Government Burden from Information Collections Associated with TERAs						
Citation 25 CFR 224	Section Title	Federal Government Activity	Hour Burden	Average No. of Annual Responses	Annual Burden Hours	Total Annual Cost (salary & benefits)*
224.121	Director's notice of the opportunity for a hearing? How may a tribe or a petitioner appeal the Director's decision about the tribe's compliance with the TERA?					
Subpart F — Periodic Reviews						
224.139 (b)	What must a tribe do after receiving a notice of imminent jeopardy to a physical trust asset?	Review written response	960	1	960	\$ 44,371.20
Subpart G — Reassumption						
224.156	What information must the tribe's response to the notice of intent to reassume include?	Review response to notice of intent to reassume	960	1	960	\$ 44,371.20
Subpart H — Rescission						
224.173	How does a Tribe rescind a TERA?	Review tribal resolution to initiate a rescission	480	1	480	\$ 22,185.60
TOTAL BURDEN						\$ 1,107,102

* Salary is based on a mix of personnel including: Project Manager at GS-15; a Solicitor at GS-14; two Program Analysts at GS-13; and an Administrative Assistant at GS-10. IEED has averaged the hourly rate required based on the mix of personnel required for each task, using the Office of Personnel Management Salary Table 2015-GS (http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2015/GS_h.pdf.) IEED estimates that the mix of work required to review the initial application will require more Project Manager and Solicitor time than for other tasks. For this reason, the average salary rate is higher for that task than for the others. Specifically, IEED estimates:

- The average hourly salary based on the mix of personnel required for review of the initial application to be **\$67.58 per hour**; and
- The average hourly salary based on the mix of personnel required for review of each other task to be **\$46.22 per hour**.

Both of these estimated average salary costs include a 1.5 multiplier to account for benefits.

15. Explain the reasons for any program changes or adjustments in hour or cost burden.

No program changes or adjustments are requested as part of this renewal.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

We have no plans to publish these collections of information associated with the TERA process except for where the regulations require public notice and opportunity for review and comment about TERA plans.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

IEED displays the OMB control number and expiration date on any correspondence with respondents and in the regulations in Section 224.42.

18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

There are no exceptions to the certification statement.