

**DEPARTMENT OF THE INTERIOR****Bureau of Ocean Energy Management****30 CFR Part 585**

[Docket No. BOEM–2023–0005]

RIN 1010–AE04

**Renewable Energy Modernization Rule****AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The first Outer Continental Shelf (OCS) renewable energy regulations were promulgated in 2009 by BOEM's predecessor, the Minerals Management Service (MMS). BOEM's renewable energy program has matured over the past 13 years, during which time BOEM conducted eleven auctions and issued and managed 27 active commercial leases. Based on this experience, the Department has identified opportunities to modernize its regulations to facilitate the development of offshore wind energy resources to meet U.S. climate and renewable energy objectives. This proposed rule contains reforms identified by the Department and recommended by industry since 2010, including proposals for incremental funding of decommissioning accounts; more flexible geophysical and geotechnical survey submission requirements; streamlined approval of meteorological (met) buoys; revised project verification procedures; reform of BOEM's renewable energy auction process; and greater clarity regarding safety requirements. This proposed rule would advance the Department of the Interior's (DOI) energy policies in a safe and environmentally sound manner that would provide a fair return to the U.S. taxpayer.

**DATES:** Submit comments regarding the substance of this proposed rule to BOEM on or before March 31, 2023. Submit comments regarding the information collection burden of this proposed rule to the Office of Management and Budget (OMB) and to BOEM on or before March 1, 2023. Comments received after these dates might not be considered.

**ADDRESSES:** You may send comments regarding the substance of this proposed rule, identified by docket number BOEM–2022–0019 and regulation identifier number (RIN) 1010–AE04, using any of the following methods:

- *Federal e-rulemaking portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

Helpful search terms are “RIN 1010–AE04” or “BOEM–2022–0019.”

- *U.S. Postal Service or other mail delivery service:* Address comments to Office of Regulations, Bureau of Ocean Energy Management, Department of the Interior, Attention: Georgeann Smale, 45600 Woodland Road, Mailstop: DIR–BOEM, Sterling, VA 20166.

- *Information Collection Addresses:* Written comments and recommendations for this particular proposed information collection should be submitted within 30 days of this notice's publication to <https://www.reginfo.gov/public/do/PRAMain>. From this main web page, you can find and submit comments on this particular information collection by proceeding to the boldface heading “Currently under Review,” selecting “Department of the Interior” in the “Select Agency” pull down menu, clicking “Submit,” then, checking the box “Only Show ICR for Public Comment” on the next web page, scrolling to OMB Control Number 1010–0176, and clicking “Comment” button at the right margin. Or, you may use the search function on the main web page. Please provide a copy of your comments to the Information Collection Clearance Officer, Office of Regulations, Bureau of Ocean Energy Management, Attention: Anna Atkinson, 45600 Woodland Road, Sterling, VA 20166; or by email to [anna.atkinson@boem.gov](mailto:anna.atkinson@boem.gov). Please reference OMB Control Number 1010–0176 in the subject line of your comments.

*Instructions:* All comments submitted regarding this proposed rule and its information collection requirements should reference the docket number BOEM–2022–0019 or RIN 1010–AE04. All comments received by BOEM will be reviewed and may be posted to <https://www.regulations.gov>, including any personal information provided with the submission. For further instructions on submitting comments and protecting personally identifiable information, see “What Should I Consider as I Prepare My Comments?” in section II.A under the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* To access this proposed rule's docket to read related documents and public comments, visit <https://www.regulations.gov> and enter the docket number BOEM–2020–0033 into the search engine.

**FOR FURTHER INFORMATION CONTACT:** Georgeann Smale, Renewable Energy Modernization Rule Lead, Office of Regulations, BOEM, at telephone number 703–544–9246 or email address [Georgeann.Smale@boem.gov](mailto:Georgeann.Smale@boem.gov); or Karen Thundiyl, Chief, Office of Regulations,

BOEM, at telephone number 202–742–0970, or email address [Karen.Thundiyl@boem.gov](mailto:Karen.Thundiyl@boem.gov).

*To obtain a copy of the information collection supporting statement, contact:* Information Collection Clearance Officer, Office of Regulations, Bureau of Ocean Energy Management, Attention: Anna Atkinson, 45600 Woodland Road, Sterling, VA 20166.

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### I. Executive Summary

This proposed rule would facilitate the development of OCS renewable energy and would promote U.S. climate and renewable energy objectives in a safe and environmentally sound manner while providing a fair return to the U.S. taxpayer. These important goals would be accomplished by modernizing regulations, streamlining overly complex and burdensome processes, clarifying ambiguous provisions, enhancing compliance provisions, and correcting technical errors and inconsistencies. Through these changes, the Department aims to reduce administrative burdens for both developers and the Department's staff, reduce developer<sup>1</sup> costs and uncertainty, and introduce greater regulatory flexibility in a rapidly changing industry to foster the supply of OCS renewable energy to meet increasing demand, while maintaining environmental safeguards. This proposed rule is a major modernization of the regulations, reflects lessons learned from the past 13 years, and is projected to save the renewable energy industry \$1 billion over 20 years.<sup>2</sup>

These updates are necessary to ensure a durable and appropriate process is in place to advance renewable energy on the OCS.

The proposed rule contains eight major components:

#### 1. *Eliminating unnecessary requirements for the deployment of meteorological (met) buoys.*

<sup>1</sup> As used in this preamble, the term “developer” includes those interested in constructing, operating, and maintaining OCS facilities to produce, transport, or support the generation of energy from renewable resources. Developers may include applicants seeking noncompetitive leases and grants, bidders in competitive auctions, holders of BOEM-issued leases (lessees) and grants (grant holders), and operators of facilities and support contractors.

<sup>2</sup> For the supporting economic analyses, see section VII.B.2 of this preamble, including the associated tables, that summarizes BOEM's estimated 20-year compliance cost savings as well as the initial regulatory impact analysis available in this proposed rule's docket at <https://www.regulations.gov/docket?D=BOEM-2020-0033>. The estimated cost reduction is expressed in net present value of 2022 dollars estimated over a 20-year period at a 7 percent discount rate. The estimated annualized cost reduction at the 7 percent discount rate is about \$95 million. At a 3 percent discount rate, the estimated cost reduction over a 20-year period is about \$1.4 billion in net present value of 2022 dollars. The estimated annualized cost reduction at the 3 percent discount rate is about \$93 million.

BOEM requires a site assessment plan (SAP) for data collection activities that measure met conditions and that aid the siting and design of an offshore renewable energy project. Such activities include the use of met towers and buoys. BOEM first formulated the SAP requirement in 2009, when the offshore wind industry gathered meteorological data primarily from towers fixed in place by foundations pile-driven into the seafloor. The industry has since transitioned to buoys anchored to the seafloor that gather the same data at lower cost and with less environmental impact.

The U.S. Army Corps of Engineers (USACE) permits scientific measurement devices used for a variety of purposes deployed in U.S. navigable waters and on the OCS, including met towers and met buoys. The USACE permitting process is tailored to buoys and is subject to the same Federal environmental laws<sup>3</sup> as BOEM's SAP process. BOEM's existing SAP process is well suited for the complexities involved with installing met towers but has proven to be unreasonably burdensome for simply anchoring met buoys on the seafloor and redundant with USACE's process.

This proposed rule would eliminate both the SAP requirement for met buoys and the limited lease requirement for installing off-lease met towers and met buoys.<sup>4</sup> Off-lease met towers and met buoys would continue to require USACE permits, given that agency's jurisdiction over obstructions deployed in U.S. navigable waters under section 10 of the Rivers and Harbors Act.

#### 2. *Increasing survey flexibility.*

Before constructing an offshore renewable energy project, lessees and grant holders must conduct geotechnical, geophysical, and archaeological surveys. The primary purposes of these surveys are to ensure the site is suitable for construction, avoid seafloor hazards, and identify historic and cultural resources. Currently, BOEM requires detailed geotechnical survey data for each proposed wind turbine location in the construction and operations plan (COP) submitted by the lessee before project construction is authorized. However, the Department has learned that the precise location of each wind turbine

<sup>3</sup> *E.g.*, National Environmental Policy Act, Endangered Species Act, and National Historic Preservation Act.

<sup>4</sup> As used throughout this notice, “off-lease” means activities occurring on the OCS that are conducted outside the leasehold of a commercial lease issued by BOEM. “On-lease” means activities occurring on the OCS within the boundaries of a commercial lease issued by BOEM.

may be uncertain at the COP submittal stage, and geotechnical data collected primarily for engineering purposes are more relevant to the review process after COP approval. Consequently, lessees have requested permission to submit geotechnical data for each turbine location after COP approval, but before construction.

This proposed rule would defer certain geotechnical survey requirements, such as engineering site-specific surveys (e.g., boreholes, vibracores, grab samplers, cone penetrometer tests and other penetrative methods). This proposed change would allow more time to complete the required surveys and would provide greater flexibility in designing projects. BOEM's guidelines for geotechnical surveys are available online.<sup>5</sup>

### 3. Improving the project design and installation verification process.

A certified verification agent (CVA) provides independent third-party review of a project's design, fabrication, and installation. The proposed rule would expand the CVA's role to include verification of the design and commissioning of the critical safety systems to assist the Department in meeting requirements of the Outer Continental Shelf Lands Act (OCS Lands Act; 43 U.S.C. 1331 *et seq.*), and its implementing regulations at 30 CFR 585.102(a), to ensure that any activities authorized by BOEM are carried out safely. BOEM's regulations require CVAs to "certify" projects, but CVAs have informed BOEM that the proper industry standard is "verification." This proposed rule would change the regulatory language defining the CVA's role from "certify" and "certification" to "verify" and "verification." This proposed change likely would encourage additional firms to participate in offshore renewable energy projects as CVAs. Industry also has suggested changes that would enable BOEM to approve CVA nominations before COP submittal and would allow separate facility design reports (FDRs) and fabrication and installation reports (FIRs) for major project components. These changes would encourage developers to seek CVA review throughout their project design process and would permit the use of specialized CVAs to verify specific project components.

### 4. Establishing a Public Renewable Energy Leasing Schedule.

This proposed rule would introduce a new commitment by the Secretary of the Interior (Secretary) to publish a

schedule of anticipated lease sales that BOEM intends to hold in the subsequent 5 years. This provision is intended to provide advance notice to stakeholders of areas being considered for future lease sales. The proposed schedule for leasing would provide increased certainty and enhanced transparency. This is intended to facilitate planning by industry, the States, and other stakeholders. Comments on the timing and scope of a scheduled lease sale can be made during the public comment opportunities afforded by BOEM during the planning process for each particular lease sale scheduled (e.g., Request for Interest, Call for Information and Nominations, etc.). The proposed schedule would be updated at least once every 2 years to reflect any changes. This proposed schedule would include a general description of the area of each proposed lease sale, the anticipated quarter of each sale, and reasons for changes made to the previously issued leasing schedule, if any.

### 5. Reforming BOEM's renewable energy auction regulations.

In response to lessons learned from eleven auctions, BOEM proposes to reorganize and clarify its pre- and post-auction procedures. These changes would also address the use of bidding credits, deter potential bidder collusion, and more clearly outline auction processes and requirements. They also would specify actions to be taken if a provisional winner fails to meet its obligations, or if an existing lease is relinquished, contracted, or cancelled. The proposed rule would preserve the option to use multiple factor auctions.

### 6. Tailoring financial assurance requirements and instruments.

BOEM requires financial assurances from lessees and grant holders to protect the U.S. taxpayer against potential liabilities arising from any default on lessee or grant holder regulatory obligations. The proposed rule would tailor the financial assurance requirements to better align those requirements with actual risk by allowing incremental funding of decommissioning accounts in accordance with a BOEM-approved schedule during the lease term and by expanding the acceptable categories of financial assurance instruments.

### 7. Clarifying safety management system regulations.

The proposed rule would clarify the information requirements for safety management systems and would add two safety reporting requirements. The proposed rule would incentivize lessees and grant holders to obtain a safety management certification from an accredited conformity assessment body

(CAB) as a means to reduce the frequency and intensity of regulatory oversight activities.

### 8. Revising other provisions and making technical corrections.

The proposed rule contains numerous additional provisions that do not fit within the categories described above. The most significant of these provisions would: restructure commercial lease terms into four periods tied to activities required to develop the lease; explicitly allow regulatory departures before and after a lease or grant is issued or made; authorize civil penalties without either notice or a time period for corrective action when violations cause or threaten to cause serious, irreparable, or immediate harm or damage; add specific procedures regarding lease segregation and consolidation; and standardize the annual rental rate per acre across most grants. The proposed rule would correct technical errors in the existing regulations and would make corrections to ensure consistency between the proposed changes and existing practice.

The Department has authority to promulgate OCS renewable energy regulations under the OCS Lands Act. The proposed rule would be consistent with and would advance DOI's energy policies as outlined in various executive orders.

## II. General Information

### A. What should I consider as I prepare my comments?

#### 1. Contact Information

Please include your name, address, and telephone number or email address so BOEM can contact you with any questions regarding your submission. BOEM will not consider anonymous comments.

#### 2. Public Availability of Comments

Responses will be posted on <https://www.regulations.gov>. Your entire comment will become publicly available after submission, including your name, address, phone number, email address, and any other personally identifiable information (PII) in your comment.

If you wish to protect the confidentiality of your comments, clearly mark the relevant sections and request that BOEM treat them as confidential. In order for BOEM to withhold from disclosure your PII, you must identify any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm.

<sup>5</sup> <https://www.boem.gov/sites/default/files/documents/about-boem/GG-Guidelines.pdf>.

Please label privileged or confidential information as “Contains Confidential Information,” and consider submitting such information as a separate attachment. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release.

While you can request that your PII be withheld from public view, BOEM cannot guarantee that it will be able to do so.

### 3. Information Collection Comments

OMB is required to provide its comments concerning the information collection in this proposed rule 30–60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of being fully considered if OMB receives it by March 1, 2023. This does not affect the deadline for public comments to BOEM on the proposed rule. To review a copy of the information collection request submitted to OMB, go to <https://www.reginfo.gov>, select “Information Collection Review.” Under the heading “Currently Under Review,” select “Department of the Interior” from the pull-down menu; click “submit;” check the box “Only Show ICR for Public Comment” on the next web page; scroll to OMB Control Number 1010–0176; and click “Comment” button at the right margin. You may obtain a copy of the supporting statement for this proposed information collection by contacting BOEM’s information collection clearance officer at (703) 787–1025.

### 4. Scope of Comments

BOEM seeks public comments on the changes in regulatory text and interpretation contained in this proposed rule. As part of this rulemaking, BOEM will consider whether this proposed rule or any additional modifications would improve, clarify, or streamline its OCS renewable regulations. BOEM also seeks comment on several specific areas of inquiry for which it is not proposing regulatory text. Based on comments received and its experience in administering the OCS renewable energy programs, BOEM may include in the final rule revisions to any provisions in part 585 that are a logical outgrowth of this proposed rule, consistent with the Administrative Procedure Act.

### 5. Suggestions for Preparing Your Comments

(a) Label your comments on this proposed rule with RIN 1010–AE04 or docket number BOEM–2020–0033.

(b) Organize your comments sequentially by the preamble section

heading or by the proposed rule section number when addressing specific rule sections.

(c) Explain why you agree or disagree with specific provisions; suggest alternative provisions or provide substitute language.

(d) Describe your assumptions, information, and data used in formulating your comments.

(e) Provide specific examples to illustrate your concerns and suggested alternatives.

(f) Explain your views clearly and succinctly.

(g) Ensure your comments are submitted by the deadline.

### III. Preamble Glossary of Abbreviations, Terms, and Acronyms

The following abbreviations, terms, and acronyms are used in the preamble:

ANCSA	Alaska Native Claims Settlement Act
BOEM	Bureau of Ocean Energy Management
BSEE	Bureau of Safety and Environmental Enforcement
CAA	Clean Air Act
CAB	Conformity Assessment Body
Call	Call for Information and Nominations
CFR	Code of Federal Regulations
COP	Construction and Operations Plan
CVA	Certified Verification Agent
CZMA	Coastal Zone Management Act
DNCI	Determination of No Competitive Interest
DOE	Department of Energy
DOI	Department of the Interior
E.O.	Executive Order
ESA	Endangered Species Act
FDR	Facility Design Report
FERC	Federal Energy Regulatory Commission
FIR	Fabrication and Installation Report
FR	Federal Register
FSN	Final Sale Notice
GAP	General Activities Plan
Met	Meteorological
MSA	Magnuson-Stevens Act
MMPA	Marine Mammal Protection Act
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NWP 5	U.S. Corps of Engineers Nationwide Permit 5
OCS	Outer Continental Shelf
OCS Lands Act	Outer Continental Shelf Lands Act
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
ONRR	Office of Natural Resources Revenue
OSHA	Occupational Safety and Health Administration
PDE	Project Design Envelope
PPA	Power Purchase Agreement
PRA	Paperwork Reduction Act
PSN	Proposed Sale Notice
RIN	Regulation Identifier Number
ROW	Right-of-Way Grant

RUE Right-of-Use and Easement Grant  
 SAP Site Assessment Plan  
 Secretary Secretary of the Interior  
 SMS Safety Management System  
 USACE United States Army Corps of Engineers  
 U.S.C. United States Code  
 USCG United States Coast Guard  
 USEPA United States Environmental Protection Agency

### IV. Background

#### A. Statutory Authority

Congress authorized the Secretary to grant OCS leases for renewable energy activities when it enacted the Energy Policy Act of 2005, which amended the OCS Lands Act by adding a new subsection 8(p).<sup>6</sup> OCS Lands Act subsection 8(p) authorizes the Secretary to award OCS leases, right-of-way grants (ROWs), and right-of-use and easement grants (RUEs) for activities not authorized by other applicable laws that produce, or that support the production, transportation, or transmission of, energy from sources other than oil and gas. Subsection 8(p) requires the Secretary to competitively award such leases, ROWs, and RUEs unless the Secretary determines following public notice that competitive interest does not exist. Subsection 8(p) also authorizes the Secretary to issue regulations to carry out the subsection’s grant of authority. The Secretary first delegated that authority to BOEM’s predecessor, MMS.

On April 29, 2009, MMS promulgated regulations for leasing and managing OCS renewable energy activities. On May 19, 2010, the Secretary signed Secretary’s Order 3299, dividing MMS into three separate agencies: BOEM, the Bureau of Safety and Environmental Enforcement (BSEE), and the Office of Natural Resources Revenue (ONRR). Amendment 2 of Secretary’s Order 3299 assigned BOEM all renewable energy-related management functions—including resource evaluation, planning, leasing, and safety and environmental enforcement functions—until the “Assistant Secretary—Land and Minerals Management determines that an increase in activity justifies transferring the inspection and enforcement functions to [BSEE].”<sup>7</sup> On October 18, 2011, BOEM’s regulations were codified at 30 CFR chapter V, and its renewable energy regulations were,

<sup>6</sup> Codified at 43 U.S.C. 1337(p).

<sup>7</sup> Secretary’s Order 3299, Amendment No. 2, August 29, 2011, [https://www.doi.gov/sites/doi.gov/files/elips/documents/3299a2-establishment\\_of\\_the\\_bureau\\_of\\_ocean\\_energy\\_management\\_the\\_bureau\\_of\\_safety\\_and\\_environmental\\_enforcement\\_and\\_the\\_office\\_of\\_natural\\_resources\\_revenue.pdf](https://www.doi.gov/sites/doi.gov/files/elips/documents/3299a2-establishment_of_the_bureau_of_ocean_energy_management_the_bureau_of_safety_and_environmental_enforcement_and_the_office_of_natural_resources_revenue.pdf) (last visited Mar. 6, 2019).

and remain, located in 30 CFR part 585.<sup>8</sup>

### B. Existing Regulatory Framework

This section provides an overview of BOEM's existing renewable energy regulatory framework.

#### 1. Conducting Renewable Energy Activities on the Outer Continental Shelf

BOEM's regulations specify that a lease, ROW, or RUE is required before a person may construct, operate, or maintain a renewable energy facility on the OCS. A lease authorizes the lessee to propose a plan for development. Following review of the development plans and associated consultations, BOEM may authorize installation and operation of a renewable energy facility on a designated portion of the OCS. A lease also confers the right to one or more project easements necessary for the use of the lease, which in most cases is a corridor from the facility to shore for one or more transmission cables.

BOEM may issue a commercial lease or a non-commercial (or limited) lease for renewable energy activities, subject to obtaining the necessary approvals. A commercial lease specifies the terms and conditions for activities that generate, store, or transmit renewable energy on the OCS for distribution, sale, or other commercial use. These activities include facility construction and project decommissioning.

A limited lease specifies the terms and conditions for activities that support the production of energy on the OCS, but do not produce energy for sale, distribution, or other commercial use exceeding a limit specified in the lease. In addition to commercial and limited leases, a lease may be issued to a Federal agency or a State for research activities supporting future renewable energy development.

A ROW authorizes the installation and maintenance of cables, pipelines, and associated facilities on the OCS that involve the transportation or transmission of any energy product from renewable energy projects. A RUE authorizes the operation of facilities or other installations on the OCS that support the production, transportation, or transmission of electricity or other energy product from any renewable energy source, including shared transmission solutions. The term 'grant,' as used in this document, refers to ROWs or RUEs issued pursuant to the regulations of part 585.

BOEM makes leases, ROWs, and RUEs available on a competitive basis, unless BOEM determines that there is no competitive interest. When competitive interest is absent, BOEM may issue leases, ROWs, and RUEs noncompetitively.

BOEM has discretion to issue departures from its regulations. BOEM may approve departures if they are documented in writing; are consistent with the requirements of the OCS Lands Act; protect the environment, public health, and safety; protect the rights of third parties; and are necessary to facilitate activities on a lease or grant, conserve natural resources, or protect life, property, the environment, or archaeological resources.

#### 2. Issuing Competitive Leases and Grants

Subpart B of 30 CFR part 585 describes the process for issuing a renewable energy lease. BOEM may begin the leasing process by publishing a request for interest to assess interest in leasing all or part of a region of the OCS for renewable energy activities. The request for interest is typically followed by a call for information and nominations (Call) in the **Federal Register**. The Call requests that respondents nominate OCS areas for commercial renewable energy development. BOEM uses the feedback from the request for interest and the Call to assess competitive interest in specified OCS areas.

BOEM also will consider unsolicited requests for a lease on a case-by-case basis. If BOEM determines that competitive interest exists for an area nominated through an unsolicited request, BOEM will use the competitive process if it decides that a lease in that area is appropriate.

After potential OCS renewable energy development areas are identified, BOEM evaluates the potential impacts of leasing those areas on the human, marine, and coastal environments under the OCS Lands Act and consults with Federal agencies and affected States regarding the requirements of other potentially applicable Federal statutes, including the National Environmental Policy Act (NEPA), Coastal Zone Management Act (CZMA), Endangered Species Act (ESA), Magnuson-Stevens Act (MSA), Marine Mammal Protection Act (MMPA), and National Historic Preservation Act (NHPA), National Marine Sanctuaries Act (NMSA), and Native American Graves Protection and Repatriation Act (NAGPRA).

Under the competitive process, BOEM initiates a sale by publishing a proposed sale notice (PSN) in the **Federal Register**

detailing the areas proposed for leasing and the competitive leasing process for those areas, including auction procedures and lease provisions and conditions. The PSN also invites public comment on the areas and proposed auction procedures. BOEM assesses the comments received in response to the PSN and may incorporate changes in the final sale notice (FSN) in response to these comments. The FSN is published in the **Federal Register** at least 30-calendar days before the auction date. The FSN finalizes the areas offered for lease, auction procedures, and lease provisions based on the PSN. The FSN also provides details regarding a mock auction, which is an optional practice auction intended to familiarize bidders with auction procedures.

BOEM may end the competitive process for a specific lease area at any time before the FSN if it believes competitive interest no longer exists. BOEM does so by issuing a notice and considering the responsive comments to reassess competitive interest.

If BOEM concludes that competitive interest is absent in a lease area, BOEM may publish a determination of no competitive interest (DNCI) in the **Federal Register**. BOEM then may offer a noncompetitive lease to the sole interested developer, if one exists, after consulting potentially affected Federal agencies, State and local governments, and federally recognized Tribes (Tribes), and, if applicable, Alaska Native Claims Settlement Act (ANCSA) corporations, and after the interested developer submits the requisite certifications, information, and payments.

If BOEM concludes that competitive interest exists, BOEM may proceed with an auction on the date specified in the FSN. Existing regulations specify four auction types and six bidding systems from which BOEM may choose to conduct its auctions. The auction format and bidding system for a specific auction are specified in the FSN. Among the auction types is multiple factor bidding, in which BOEM may allow bids with a non-monetary component based on certain beneficial attributes identified in the FSN, including technical merit, financing and economics, and compatibility with State and local needs.

BOEM conducts an auction for the relevant lease areas in accordance with the FSN. At the end of the auction, BOEM determines the winning bidder for each area to be leased. BOEM may reject any bid if it determines that the bid was inadequate, illegal, or the result of anti-competitive behavior, administrative error, or the presence of unusual bidding patterns.

<sup>8</sup>Reorganization of Title 30: Bureaus of Safety and Environmental Enforcement and Ocean Energy Management, 76 FR 64432 (October 18, 2011).

Once a winning bidder has been identified, BOEM implements a statutorily mandated 30-day antitrust review by the Department of Justice and Federal Trade Commission. If the antitrust review does not raise concerns and no appeals of the auction result are pending, BOEM typically accepts the winning bid within 90-calendar days of the auction and sends three unsigned copies of the lease to the winning bidder. The winning bidder has 10-business days from date of receipt to sign these copies, return them to BOEM, provide financial assurance, and pay the balance due on its bid. BOEM may extend the deadline for good cause. The winner must pay a sum equal to the first 12 months' rent within 45-calendar days of receiving the unsigned copies of the lease. After receiving the signed copies, BOEM executes the lease on behalf of the United States, and sends one fully executed copy to the winning bidder. BOEM reserves the right to withdraw an OCS area at any time prior to lease execution, whereupon BOEM would refund the bid deposit.

A bidder may appeal to the BOEM Director within 15-business days of bid rejection to seek reconsideration. BOEM will send a response either affirming or reversing the final bid decision.

Subpart C of 30 CFR part 585 describes the process for issuing ROWs and RUEs. BOEM conducts the competitive process for awarding a ROW or RUE using procedures similar to those for a lease. This would involve publishing a public notice, describing the parameters of the project in order to give affected and interested parties an opportunity to comment on the proposed ROW grant or RUE grant area. If such interest exists, BOEM would conduct a competitive auction for issuing the ROW grant or RUE grant. The auction process for ROW grants and RUE grants, following the same process for leases set forth in §§ 585.211 through 585.225.

### 3. Administration of Leases and Grants

Subpart D of 30 CFR part 585 describes the various processes that BOEM can use to enforce the terms of its leases and grants once they have been issued. This subpart also describes the requirements for transferring ownership interests and modifying the duration of a lease or grant.

BOEM has broad enforcement discretion under this subpart and may act whenever a lessee or grant holder has violated a term or condition of a lease or grant, an order or approval, or a regulation. BOEM's potential remedies include corrective actions, a cessation

order, civil penalties, and lease or grant termination.

Lessees and grant holders are allowed to designate an operator to act on their behalf to perform activities on a lease or grant. Whenever the regulations in part 585 require the lessee or grant holder to conduct an activity in a prescribed manner, the lessee or grant holder and the operator are jointly and severally responsible for complying with the regulations. Lessees and grant holders may assign all or part of their lease or grant interests using procedures set forth in this subpart; assignors remain jointly and severally liable for liabilities that accrued before BOEM approves the assignment. An assignee must be legally, technically, and financially qualified to hold the lease or grant under 30 CFR part 585.

BOEM's regulations contain several mechanisms for extending the lease duration. The term of a lease or grant can be suspended through request by a lessee or grant holder that is approved by BOEM, through a BOEM order, or when necessary to comply with a judicial decree, avoid an imminent threat of irreparable harm, or for reasons of national security. A suspension has the effect of pausing the running of the term of a lease, thereby extending the termination date by the same length as the pause. In BOEM's discretion, a suspension of the lease may also suspend lease payments. BOEM also may approve the renewal of a lease or grant term requested by a lessee or grant holder based on an enumerated set of criteria.

There are numerous means by which a lease or grant may be terminated in whole or in part. First, it may be terminated through expiration of the lease or grant term without a renewal. Second, BOEM may cancel a lease or grant for reasons enumerated in the regulations, including proof that the lease or grant was obtained fraudulently. Third, BOEM may require a partial cancellation of a lease by reducing the area of the leasehold. Fourth, a lessee or grant holder may voluntarily relinquish some or all of its lease or grant, subject to BOEM approval.

### 4. Payments and Financial Assurance

Lessees and grant holders are required to make regular payments to the U.S. Treasury in exchange for use of their leases and grants. Under the OCS Lands Act, BOEM is required to ensure that U.S. taxpayers obtain a fair return from OCS renewable energy leases, ROWs, and RUEs.<sup>9</sup> Lessees and grant holders

also must provide financial assurance—in the form of a bond or other qualifying instrument—in an amount sufficient to guarantee compliance with terms and conditions of their leases and grants. Subpart E of BOEM's regulations detail these respective obligations.

Before an entity may bid to acquire a lease or grant competitively, it must submit a bid deposit that is applied to the winning bid and refunded to unsuccessful bidders. Obtaining a lease (but not a grant) noncompetitively requires the payment of an acquisition fee. Lessees and grant holders must make annual rental payments that are calculated according to the acreage of the lease or grant. Rental payments for ROWs are based on the length of the right-of-way as well as the acreage. Under a commercial lease, an operating fee replaces rental payments when commercial operations begin. The operating fee is calculated using a formula set forth in the regulations. The regulations provide a mechanism for lessees and grant holders to request a reduction or waiver of their payments. Under OCS Lands Act section 8(g), BOEM will distribute offshore renewable energy revenue among eligible coastal States for OCS projects that are wholly or partially located within three miles seaward of a State's submerged lands.

Financial assurance must be provided at various stages in the commercial development process. A lessee must provide financial assurance in the amount of \$100,000 before acquiring a commercial lease and supplemental financial assurance before approval of a site assessment plan (SAP) and a construction and operations plan (COP), and before commencement of construction. BOEM bases its financial assurance requirements on calculations of the lessee's cumulative liabilities and obligations, including payments due the following year, and the cost of decommissioning facilities on the lease. Financial assurance requirements for limited leases and grants are calculated in a similar fashion, although the initial financial assurance requirement is \$300,000.

BOEM imposes several general requirements that must be met by any financial assurance and provides guidance on acceptable financial instruments. Such instruments include surety bonds, Treasury securities, AAA-rated securities, insurance, self-insurance, third-party guaranties, and decommissioning accounts funded on a schedule approved by BOEM. Subpart E also sets forth procedures to follow if a lessee's or grant holder's financial assurance lapses or reduces in value or

<sup>9</sup>43 U.S.C. 1337(p)(2)(A).

if a surety prematurely terminates a lessee's or a grant holder's financial assurance. This subpart also explains when and how BOEM will call for forfeiture of financial assurance. BOEM requires the maintenance of financial assurance until no less than 7 years after a lease or grant ends.

#### 5. Plan Submittal and Review

Once a lease has been issued, a lessee may, but is not required to, conduct site assessment activities to assess the energy potential of a commercial renewable energy project in the lease area and site characterization surveys to inform project design and the preparation of plans. Site assessment activities include the installation and use of meteorological towers and buoys to gather oceanographic and meteorological information. A lessee planning to install site assessment facilities must submit a SAP to BOEM. The SAP must include general structural, design, fabrication, and installation information for each type of facility associated with the proposed site assessment activities, and must also include information about the environment gathered from geological and geophysical surveys, hazard surveys, baseline environmental surveys, and archaeological surveys that the lessee must conduct.

The lessee must submit its SAP or a combined SAP/COP no later than 12 months after the date of lease issuance. BOEM may approve or disapprove the SAP or may approve it with modifications. A commercial lease has a term of five years for the lessee to conduct site assessment activities and to submit a COP; the five-year site assessment term begins upon approval of the SAP. BOEM will determine if the proposed facilities described in the SAP are complex or significant. If BOEM determines that they are not complex or significant, the lessee may begin its proposed site assessment activities when BOEM approves the SAP. If BOEM determines the facilities are complex or significant, the lessee must comply with additional requirements in subpart G of 30 CFR part 585 before beginning its proposed site assessment activities. Implementation of activities described in the SAP, whether or not deemed complex or significant, is required to follow a safety management system (SMS) that accounts for and mitigates risks to personnel and the environment associated with such activities. SAP approval does not authorize the lessee to build and install facilities for commercial energy production.

Before fabricating and installing any facility for commercial operations, a lessee must submit a COP for BOEM review and approval. The COP must be submitted at least 6 months before the five-year site assessment term expires.

The COP must describe the facilities that a lessee will construct or use for its commercial operations, including any project easements and associated onshore and support facilities. The COP also must describe all proposed activities the lessee intends to conduct on its lease, including construction, commercial operations, and decommissioning. The COP must include general structural and project design, fabrication, and installation information for each type of structure associated with the project, as well as the results of geological, geotechnical, biological, and archaeological surveys undertaken in support of the project. BOEM may approve or disapprove the lessee's COP or may approve it with modifications.

Activities conducted under a limited lease, ROW, or RUE must be approved by BOEM under a general activities plan (GAP). Like a SAP, the GAP must be submitted no later than 12 months after the date of lease or grant issuance. The GAP must describe the facilities that a lessee or grant holder will construct or use for its proposed activities, including any project easements and any associated onshore and support facilities. The GAP must describe the design, fabrication, construction, use, and decommissioning of those facilities. The GAP also must include the results of geological, geotechnical, biological, and archaeological surveys undertaken in support of the proposed activities.

BOEM may approve or disapprove the lessee's GAP or may approve it with modifications. BOEM also will determine if the proposed facilities described in the GAP are complex or significant. If BOEM determines that they are not complex or significant, the proposed activities may begin when BOEM approves the GAP. If BOEM determines the facilities are complex or significant, the lessee must comply with additional requirements in subpart G of 30 CFR part 585 before beginning the proposed activities.

#### 6. Design, Fabrication, and Installation of Facilities

Subpart G requires detailed design, fabrication, and installation information for each complex or significant facility that a lessee or grant holder proposes to operate.<sup>10</sup> The purpose of subpart G is

<sup>10</sup> By definition, all facilities proposed in a COP are complex or significant. BOEM makes a case-by-

to ensure that facilities operate in a safe manner using accepted engineering practices in conformance with approved plans.

The regulations achieve this objective primarily by requiring an independent assessment of a facility's design, fabrication, and installation by one or more outside experts called certified verification agents (CVAs). The CVA should be "experienced in the design, fabrication, and installation of offshore marine facilities or structures, [and] will conduct specified third-party reviews, inspections, and verifications."<sup>11</sup> Although hired by a lessee or grant holder, the CVA reports directly to BOEM. The CVA must not act in a capacity that creates a conflict of interest or the appearance of a conflict of interest. Subpart G outlines the circumstances necessitating a CVA, the CVA nomination and waiver processes, and the duties of the CVA. BOEM regulations contemplate that BOEM will approve or disapprove the CVA nomination or waiver request during its review of the SAP, COP, and GAP. If the CVA requirement is waived, the lessee's or grant holder's project engineer must perform the same duties and responsibilities as the CVA, except that the project engineer would not be acting as an independent third-party reviewer.

After obtaining BOEM's approval of the SAP, COP, or GAP, a lessee or grant holder must submit an FDR to BOEM describing the final design of all proposed facilities. The CVA must certify that the facilities are designed to withstand the environmental and functional load conditions appropriate for the intended service life at the proposed location. The CVA must also use good engineering judgment and practice in conducting independent assessments of the commissioning of critical safety systems.

Before any fabrication (*e.g.*, assembly) or installation of facility components takes place on the OCS, a lessee or grant holder must submit an FIR to BOEM describing how the facilities will be fabricated and installed consistent with accepted industry standards, the approved SAP, COP, or GAP, and the FDR. The FIR must also describe how fabrication of facility components that took place outside of the OCS (*e.g.*, manufacturing) is consistent with accepted industry standards, the approved SAP, COP, or GAP, and the FDR. However, fabrication of facility components outside of the OCS does not

case determination about whether facilities proposed in a SAP or GAP are complex or significant.

<sup>11</sup> 30 CFR 585.112.

require the submittal of an FDR and FIR. The CVA must certify that the facilities were fabricated and installed in such a manner. The lessee or grant holder may begin approved activities 30-calendar days after BOEM deems submitted the fabrication and installation certification from the CVA, unless BOEM objects in the interim. If BOEM objects to the CVA verification report, the lessee or grant holder must resolve those objections to BOEM's satisfaction before commencing approved activities.

#### 7. Facility Operations

The conduct of lease or grant activities under an approved plan is covered by subpart H. BOEM requires that approved activities be conducted in a way that ensures safety, prevents undue harm or damage to natural resources, uses trained personnel, and complies with approved plans. Activities must comply with the various wildlife protection statutes—particularly the MMPA and ESA. Lessees and grant holders also must follow prescribed procedures if they encounter potential archaeological resources while conducting approved activities. This subpart contains numerous operational requirements, including safety management systems, incident reporting, inspections, and self-inspections.

#### 8. Decommissioning

Except when otherwise authorized by BOEM, lessees and grant holders must decommission (*i.e.*, remove) all facilities and clear the seafloor of all obstructions created by their activities within 2 years following termination of their lease or grant or earlier if BOEM determines a facility is no longer useful for operations. Subpart I sets forth BOEM's decommissioning requirements and process.

#### C. Need for Rulemaking

The existing regulations were finalized in 2009, when the OCS renewable energy industry in the United States was in its infancy. In response to Executive Order (E.O.) 13610, the Department determined that aspects of BOEM's renewable energy regulations could be made less burdensome and costly while clarifying ambiguities and filling gaps that have become apparent during the past 13 years. Through its experience and engagement with industry and other stakeholders, the Department has identified opportunities for reducing burdens, making regulations more efficient, clarifying ambiguities, and correcting errors. E.O. 14008, "Tackling the Climate Crisis at Home and Abroad," states that it is the

policy of the U.S. "to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure." In furtherance of the goals of E.O. 14008, the Departments of the Interior, Energy, and Commerce established a target to deploy 30 gigawatts (30,000 megawatts) of offshore wind by 2030, creating nearly 80,000 jobs.

These proposed revisions to BOEM's regulations would facilitate safe and environmentally sound renewable energy production in offshore waters and help the Biden-Harris Administration meet its offshore wind energy commitment. This proposed rulemaking would implement reforms identified by BOEM and BSEE or suggested by industry, align regulations to practices that have evolved since 2009, and reduce regulatory uncertainty. The proposed regulations are estimated to save lessees and grant holders about \$1 billion over a 20-year period.<sup>12</sup> The proposed changes would continue to protect environmental and cultural resources and to ensure that U.S. taxpayers receive a fair return from OCS renewable energy activities.

The Department also plans to issue another rule related to its OCS renewable energy program. That rule would reorganize the current renewable energy regulations between BOEM and BSEE consistent with Secretary's Order 3299, as amended, and the Departmental Manual. Specifically, that rule would move regulations pertaining to safety, environmental oversight, and enforcement from BOEM to BSEE under 30 CFR part 285. Following that rulemaking, any future OCS renewable energy rulemaking, including any rule that finalizes the provisions of this proposed rule, would reflect the reorganized regulations. The Department will continue to work closely with both BOEM and BSEE in finalizing provisions of this proposed rule within their respective delegated authorities.

<sup>12</sup> See *supra* note 2.

## V. Analytical Overview of the Proposed Rule

The proposed rule contains seven main components that would accomplish the following: (1) eliminate site assessment plan requirements for met buoys; (2) adopt a flexible and performance-based approach to geophysical and geotechnical surveying; (3) conform the CVA review standard to industry practice and provide flexibility in the CVA nomination and engineering report submittal process; (4) clarify auction procedures; (5) align financial assurances with the risk to U.S. taxpayers and permit incremental funding of decommissioning accounts; (6) clarify and enhance safety management requirements; and (7) make other revisions and technical corrections that would improve BOEM's OCS renewable regulatory program and fix technical errors and inconsistencies. These components are analyzed below.

### A. Site Assessment Facilities

#### 1. Existing Regulations

In its regulations and guidance documents, BOEM uses the term "site assessment" to describe the activities used to estimate the OCS renewable energy resource and baseline ocean conditions before any potential development occurs. BOEM's regulations currently contemplate that a lessee will deploy at least one facility, typically a met tower or buoy, to conduct site assessment activities before submitting a COP. Data from these met buoys and towers are used to design the offshore renewable energy project (*e.g.*, the turbine array for a wind project) for a particular OCS area, calculate its energy generation potential, estimate its revenue potential, and obtain project financing. At the time BOEM promulgated its regulations in 2009, the industry standard for site assessment activities was fixed-bottom met towers pile-driven into the seabed. BOEM crafted its requirements for the approval of site assessment activities under the assumption that most lessees would continue to install met towers.

Since 2009, the offshore wind industry has transitioned to met buoys, which are both less costly and less environmentally impactful than fixed bottom structures. Met buoys are typically between 6 and 12 meters in length, attached to the seabed with a chain and mooring anchor, and deployed for no more than 5 years. Met buoys include different types of instrumentation to collect a variety of data, including wind speed and direction; air and water temperature; wave height; water currents; ambient



noise; and the presence of benthic communities, fish, marine mammals, birds, and bats.<sup>13</sup> Scientific devices similar to met buoys are used widely for research and commercial applications and by other Federal agencies (e.g., National Oceanic and Atmospheric Administration and the Department of Energy (DOE)).

Before installing any facilities for site assessment activities on its commercial lease, a lessee must submit a SAP for BOEM approval.<sup>14</sup> The SAP “describes the activities (e.g., installation of [met] towers, [met] buoys) [the lessee] plan[s] to perform for the characterization of [its] commercial lease, including [its] project easement, or to test technology devices.”<sup>15</sup> The SAP must include the information required by 30 CFR 585.610 through 585.611.<sup>16</sup> BOEM may request additional information during its review and may specify terms and conditions that must be incorporated into the SAP before approval. In BOEM’s experience, a lessee invests substantial time preparing the SAP and awaiting BOEM’s approval. BOEM requires SAP facilities to be decommissioned under subpart I of the current part 585 and requires financial assurance to cover the cost of their decommissioning.<sup>17</sup>

If a developer wants to conduct site assessment activities at a particular OCS location without a commercial lease, a limited lease may be required. BOEM’s regulations require a lease, easement, or ROW for activities that “support generation of electricity or other energy product derived from a renewable energy resource on any part of the OCS.”<sup>18</sup> BOEM has the discretion to determine whether an activity “supports generation” of electricity and, therefore, requires a lease.<sup>19</sup> BOEM issued leases for site assessment activities early in the OCS renewable energy program, but has not received a formal request for a

limited lease for site assessment activities since its regulations took effect in 2009.

If a limited lease is required, a developer must first notify BOEM that it is requesting a lease for a specific portion of the OCS.<sup>20</sup> BOEM then issues a public notice in the **Federal Register** to determine whether competitive interest exists in the requested area. If there is no such interest, BOEM may negotiate a limited lease with the developer.<sup>21</sup> If BOEM and the developer agree to terms, the developer has 12 months to submit a GAP under §§ 585.640 through 585.647 for BOEM’s review and approval. BOEM may request additional information during its review and may specify terms and conditions that must be incorporated into the GAP before approval.<sup>22</sup> Although BOEM has yet to issue a limited lease, BOEM estimates that it could take 3 years between the submission of a limited lease application and authorization to conduct activities on the lease.

## 2. Why the Existing Regulations Should Be Updated

BOEM has determined that its regulations are overly burdensome for authorizing met buoys for site assessment activities for the reasons outlined below.

### (a) Minimal Environmental Impacts of Meteorological Buoys

After 10 years of analyzing the environmental impacts of deployment, operation, and removal of met buoys, BOEM has concluded that, when properly sited, these buoys cause minimal harm to the marine, coastal, and human environments.<sup>23</sup> Given a met buoy’s surficial seabed disturbance during a limited deployment time and

BOEM’s repeated analysis of these devices, BOEM has concluded that their potential environmental effects are short-term and minimal, assuming sensitive benthic habitat and archaeological sites are avoided.<sup>24</sup> Proper deployment will be ensured through the USACE Nationwide Permit 5 (NWP 5), which is reasonably tailored to buoys and is subject to the same applicable Federal environmental laws as BOEM’s authorization of met buoys. USACE’s NWP 5 procedures may require a pre-construction notification under the general conditions for permits, depending on the presence of certain resources, e.g., listed species, critical habitat, or essential fish habitat. These procedures are the same for vast majority of buoys installed offshore; it is only the renewable energy met buoys that require a SAP under the current BOEM regulations.

BOEM determined in 2016 that met buoys meet the criteria for a nondestructive data collection categorical exclusion from the potential requirement to prepare an environmental impact statement under NEPA.<sup>25</sup> Consequently, BOEM’s existing SAP (§§ 585.605 through 585.618) and GAP (§§ 585.640 through 585.657) requirements governing on-lease and off-lease site assessment activities, respectively, are disproportionate to the potential environmental impacts caused by met buoys.

### (b) Duplicative Regulations

BOEM’s regulation of site assessment activities is duplicative of the USACE’s permitting requirements under section 10 of the Rivers and Harbors Act, which applies to obstructions in U.S. navigable waters, including the OCS.<sup>26</sup> The USACE typically authorizes data collection buoys under its NWP 5 for scientific measurement devices, or its equivalent, depending on the geographic district in which the buoy is proposed. NWP 5 addresses the most critical impacts of met buoys—environmental resources, archaeological resources, safety, and navigation—while also requiring that such devices be removed “to the maximum extent practicable and the site restored to pre-construction elevations.”<sup>27</sup> The

<sup>13</sup> Dep’t of Energy & Dep’t of Interior, National Offshore Wind Strategy (2016) [hereinafter *Offshore Wind Strategy*], <https://www.boem.gov/National-Offshore-Wind-Strategy>. At this time, met buoys deployed for this purpose use Light Detection and Ranging (LIDAR) technology, which is capable of collecting measurements to the same height as a typical met tower and the hub height of proposed wind turbines.

<sup>14</sup> 30 CFR 585.600(a).

<sup>15</sup> 30 CFR 585.605(a).

<sup>16</sup> To improve readability and avoid any confusion, all further regulatory section references in the main body of this notice are to 30 CFR part 585 unless otherwise specified. Footnotes will contain the complete citation.

<sup>17</sup> 30 CFR 585.516(a)(2).

<sup>18</sup> 30 CFR 585.104.

<sup>19</sup> Office of Renewable Energy Programs, Bureau of Ocean Energy Mgmt., Guidelines for Activities Requiring Authorization for Renewable Energy Development on the Outer Continental Shelf Pursuant to 30 CFR part 585 (2020), available at <https://www.boem.gov/guidance>.

<sup>20</sup> 30 CFR 585.230.

<sup>21</sup> 30 CFR 585.231.

<sup>22</sup> 30 CFR 585.648.

<sup>23</sup> See, e.g., Office of Renewable Energy Programs, Bureau of Ocean Energy Mgmt., Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore New Jersey, Delaware, Maryland, and Virginia, Final Environmental Assessment (2012), available at [https://www.boem.gov/uploadedFiles/BOEM/Renewable\\_Energy\\_Program/Smart\\_from\\_the\\_Start/Mid-Atlantic\\_Final\\_EA\\_012012.pdf](https://www.boem.gov/uploadedFiles/BOEM/Renewable_Energy_Program/Smart_from_the_Start/Mid-Atlantic_Final_EA_012012.pdf); Office of Renewable Energy Programs, Bureau of Ocean Energy Mgmt., Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore Massachusetts, Revised Environmental Assessment (2014), available at <https://www.boem.gov/Revised-MA-EA-2014/>; and Office of Renewable Energy Programs, Bureau of Ocean Energy Mgmt., Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore New York, Revised Environmental Assessment (2016), available at <https://www.boem.gov/NY-EA-FONSI-2016/>.

<sup>24</sup> See *supra* note 22; see also *Offshore Wind Strategy*, *supra* note 12, at 31. Another concern is the potential for marine mammal entanglement in anchor chains. However, the Army Corps of Engineers will require mitigation of such risks pursuant to its consultations with NMFS, regardless of any BOEM permit.

<sup>25</sup> See 43 CFR 46.210(e).

<sup>26</sup> 33 U.S.C. 403.

<sup>27</sup> U.S. Army Corps of Engineers, Nationwide Permit 5—Scientific Measurement Devices (2017), available at <https://www.swt.usace.army.mil/>

USACE's permitting process is subject to the same Federal laws concerning environmental analyses and inter-agency consultations that govern BOEM's authorization of met buoys—including NEPA, ESA, MMPA, MSA, NMSA, and NHPA. To date, USACE has participated in BOEM's environmental reviews as a cooperating agency under 40 CFR 1501.6.

The deployment of a met buoy or tower to collect data for potential OCS renewable energy development is subject to two regulatory regimes—BOEM's and USACE's—that largely analyze the same environmental impacts. However, the same type of buoy or tower is subject to only USACE's regime if deployed for other purposes. As discussed below, the proposed rule would resolve this duplication of regulatory compliance by eliminating BOEM's SAP requirement for met buoys.

#### (c) Requirement for Air Permits for Meteorological Buoys

Under the Clean Air Act (CAA), a party proposing to construct a source of air pollution on the OCS that meets the CAA definition of an "OCS source" is required to apply for an air permit before construction. The CAA definition of an "OCS source" of air pollution includes those sources that have the potential to emit air pollutants, are deployed on the OCS, and are regulated or authorized under the OCS Lands Act.<sup>28</sup> Met buoys to support renewable energy development, authorized by BOEM, are currently included as OCS sources because some contain backup diesel generators that emit air pollutants. These met buoys frequently are required to have a CAA permit when deployed in OCS areas under U.S. Environmental Protection Agency (USEPA) jurisdiction, specifically offshore the U.S. Atlantic and Pacific coasts. While emissions from buoy backup generators are minimal due to their limited use, the CAA has no *de minimis* exception to the air permit requirement.

In some instances, obtaining OCS air quality permit for a met buoy can take longer than obtaining SAP approval from BOEM. Under the proposed rule, met buoys deployed in OCS areas solely under USEPA's jurisdiction reasonably and appropriately would no longer require CAA permits since they would neither be regulated nor authorized under the OCS Lands Act and,

consequently, would not meet the definition of an "OCS source." This conclusion also takes into consideration that these buoys are anticipated to have minimal emissions, there is a significant time and cost associated with obtaining a CAA permit, and similar buoys authorized under other statutes do not require a CAA permit (*e.g.*, scientific measurement devices permitted under NWP 5).

#### (d) European Practice

BOEM is aware that European countries with mature offshore wind industries and permitting regimes have more streamlined permitting processes for site assessment activities. In several European countries, including Denmark and The Netherlands, the government will typically undertake the site characterization and site assessment work as part of its "pre-development" efforts before a tender offering (*i.e.*, lease sale in the U.S. model). In the U.K. model, which shares similarities with the U.S. regulatory framework, the developer is responsible for undertaking this work. Pre-construction site assessment activities, including the deployment of met towers and buoys, are described in a separate submission to the U.K. Marine Management Organization following the developer's receipt of governmental approval. Recent met buoy case files show that these site assessment applications are typically approved in roughly 30-calendar days. BOEM has received multiple comments from industry criticizing the length of its present met buoy authorization process and urging BOEM to learn from the European practice. The proposed rule would move the United States closer to Europe's more efficient approach to site assessment activities.

#### (e) Lack of Off-Lease Site Assessment

BOEM believes that public and private entities alike should be encouraged to collect OCS meteorological and oceanographic data for potential renewable energy development in areas not yet leased commercially. BOEM is aware of only four met buoys (and no met towers) that have been deployed on the OCS for such purposes: two off the east coast and two research buoys managed by the DOE off the coast of California. BOEM is concerned that the perceived difficulty of obtaining a limited lease and subsequent GAP approval is deterring off-lease site assessment activities.

### 3. Proposed Changes

The proposed rule would eliminate BOEM's duplicative authorizations for

on-lease site assessment facilities without an engineered foundation (primarily met buoys) and all off-lease site assessment facilities. BOEM proposes to retain its SAP process for facilities installed on a commercial lease using an engineered foundation, such as met towers.

#### (a) On-Lease Meteorological Buoys

The proposed rule would eliminate SAPs for site assessment activities that do not use an engineered foundation, defined as a met tower or other facility installed using a fixed-bottom foundation.<sup>29</sup> Met buoys would be exempt from the SAP requirement unless deployed with an engineered foundation, which BOEM expects will occur rarely. A SAP would still be required for met towers and other site assessment facilities with engineered foundations. BOEM would also recommend that lessees consult with BOEM and other Federal agencies with jurisdiction over submerged lands in off lease areas before deploying site assessment facilities with novel anchoring technologies absent a BOEM-approved SAP. Independent of the need to submit a SAP for approval, all site assessment activities are required to be performed under an SMS that accounts for and mitigates risks to personnel and the environment associated with the assessment activities. In any case where an NMSA permit may be required, NOAA may require certain financial assurances for infrastructure removal activities potentially required under permit.

The proposed rule also would amend the decommissioning regulations in the proposed subpart J to ensure that lessees are not subject to duplicative or conflicting requirements for the removal of met buoys. Under the proposed rule, a lessee would decommission its met buoys according to USACE requirements in lieu of submitting a decommissioning plan for BOEM's approval. In the unlikely event that USACE did not require site clearance, BOEM would retain the authority to require decommissioning of the buoys under proposed § 585.900(c) pursuant to OCS Lands Act subsection 8(p)(6)(C) so that the United States can fulfill its international treaty obligation to restore the lease area.<sup>30</sup> BOEM also would no

<sup>29</sup> Unlike a simple anchor, a fixed-bottom foundation generally requires professional engineering design and assessment of sediment, meteorological, and oceanographic conditions. Examples of fixed bottom foundations are monopiles, jackets with driven piles or suction buckets, and gravity-based foundations.

<sup>30</sup> See 43 U.S.C. 1337(p)(6)(C) and article 5.5 of the Convention on the Continental Shelf, T U.N.

Portals/41/docs/missions/regulatory/NationwidePermits/Nationwide%20Permit%205%20-%20Scientific%20Measurement%20Devices.pdf?ver=2017-03-31-150714-880).

<sup>28</sup> 42 U.S.C. 7627(a)(4)(C).

longer routinely require supplemental financial assurance for decommissioning of met buoys. In most cases, the buoys are authorized and installed pursuant to USACE regulations and USACE would assume responsibility for ensuring that any required removal takes place; in these circumstances, the USACE would be responsible for obtaining any financial assurance necessary.

These changes should allow lessees to deploy met buoys in substantially less time and at a reduced cost because a SAP would no longer be required. Instead, lessees would deploy a met buoy under the authorization of a USACE NWP 5 scientific device permit or the USACE district equivalent. BOEM estimates one buoy would be permitted annually, and this permitting change would save approximately \$1.1 million of compliance costs in each instance.<sup>31</sup> BOEM also anticipates that this change could eliminate the need for lessees to obtain a CAA air quality permit from the USEPA for on-lease met buoys with backup diesel generators because these buoys would fall outside the CAA definition of an "OCS source." BOEM is not including the potential savings for a CAA permit in its economic analysis because the underlying burden arises from another Federal agency's regulatory requirements (appropriately, USEPA could claim any CAA burden reduction).

This approach likely would result in regulatory relief from the SAP requirement for nearly all future development of OCS renewable resources. Most current lessees have proposed conducting site assessments with met buoys. BOEM expects that pattern to continue for the foreseeable future. Off-lease site assessment activities would fall outside BOEM's control, though remain within USACE's, and should they occur within a national marine sanctuary or in the vicinity of a national marine sanctuary, activities may require NMSA permits or consultations.

BOEM proposes several conforming ancillary regulatory changes to accommodate the SAP changes outlined in this section. These changes include merging the preliminary and site assessment periods of the lease (see the analysis of proposed changes to § 585.235 in section VI.C.), eliminating deadlines for SAP submittals, decoupling the requirement to operate

under an SMS from SAP submission (*i.e.*, all site assessment activities must be conducted under an SMS, regardless of whether a SAP is required), and removing references to terminology that relates primarily to buoys (*e.g.*, anchors, chains, mooring) in the SAP regulations.

For several reasons, this approach would not increase environmental impacts and would be subject to the same environmental review and consultations currently performed by BOEM. First, BOEM will prepare environmental analysis under NEPA and will consult under the ESA prior to a lease sale. That environmental analysis will include potential impacts from activities that are expected to occur following lease issuance after the sale (*e.g.*, site characterization and site assessment activities). Second, NWP 5 complies with current Federal environmental laws and governs deployment of other scientific measurement devices that result in no more than minimal individual and cumulative adverse environmental impacts. Lessees must ensure that the placement of met buoys and towers conforms with NWP 5. The USACE general conditions for nationwide permits require interagency consultations if warranted by the location and activities proposed. USACE considers cumulative impacts in the re-issuance of the nationwide permits every 5 years. Third, based on BOEM's experience in approving SAPs to date, BOEM has already documented the environmental impacts of met buoys to be minimal. Fourth, those who are conducting site assessment activities are still required to conduct all such activities under an SMS that accounts for and mitigates risks to personnel and the environment. Fifth, BOEM would not disclaim all oversight of site assessment activities. As noted above, the potential environmental impacts of met towers and facilities with engineered foundations are both more variable and more significant for certain marine resources. Therefore, BOEM would continue to require SAPs for such facilities. Finally, BOEM may consider adding stipulations to future leases relating to site assessment activities not covered by a SAP. BOEM anticipates that such stipulations would ensure BOEM is aware of activities conducted on its lease and that such activities are required to be performed in accordance with any applicable USACE requirements and best industry practices.

BOEM notes that the proposed rule likely would require revisions to BOEM's programmatic agreements with consulting parties under the NHPA.

Most of BOEM's existing agreements anticipate that it would review and approve plans relating to all site assessment activities.

BOEM completed an informal programmatic section 7 consultation under the Endangered Species Act with the National Marine Fisheries Service (NMFS) in 2021. This informal consultation covered leasing, site characterization, and site assessment activities. It is expected to cover most, if not all, USACE NWP 5 permits issued for on-lease met buoys in the three Atlantic Renewable Energy Regions (North Atlantic Planning Area, Mid-Atlantic Planning Area, and South Atlantic Planning Area). This consultation concluded that the activities considered are not likely to adversely affect any ESA-listed species or critical habitat.<sup>32</sup> Activities are considered not likely to adversely affect as long as they are within the scope of what was analyzed in the consultation, meet the stated project design criteria and apply the prescribed conservation measures. BOEM is conducting similar ESA consultations for the Pacific and Gulf of Mexico regions.

#### (b) Off-Lease Meteorological Buoys

The proposed rule would clarify that off-lease site assessment facilities do not require a limited lease. BOEM proposes to accomplish this by amending § 585.104 to add a statement that, for purposes of that section, site assessment activities neither produce, transport, nor support the generation of any energy products.

In so doing, BOEM would cease its existing policy of making case-by-case determinations about whether off-lease site assessment activities require a lease.<sup>33</sup> BOEM does not believe off-lease site assessment activities support the production of energy within the meaning of 43 U.S.C. 1337(p)(1)(C) because the nexus between such activities and the commercial production of energy is too speculative (*e.g.*, the entity conducting site assessment may determine the energy potential is insufficient for commercial operations, may not seek a commercial lease for other reasons, or may not be the winning bidder in a lease auction).<sup>34</sup>

<sup>32</sup> See <https://www.boem.gov/sites/default/files/documents/renewable-energy/OSW-surveys-NLAA-programmatic.pdf>.

<sup>33</sup> See *supra* note 18.

<sup>34</sup> In contrast, site assessment activities conducted on a commercial lease are not subject to the same jurisdictional analysis despite the proposed change to § 585.104. BOEM may determine by regulation which on-lease activities do and do not require a separate BOEM approval. In the proposed rule, BOEM would determine that site assessment activities under a commercial lease involving an

Doc. A/CONF. 13/L.55, T.I.A.S. 5578 and 15 U.S.T. 471. *Any installations which are abandoned or disused must be entirely removed* [emphasis added].

<sup>31</sup> See *infra* part VII.B.2 for overview of this proposed rule's economic analysis.

BOEM believes this change will substantially decrease the time and expense required to obtain authorization to deploy a site assessment facility on the OCS that is not tethered to a commercial renewable energy lease. As a result, BOEM anticipates that more developers, research institutions, and governmental entities may be interested in collecting renewable energy resource data on the OCS—likely through deployment of met buoys. Such increased data collection could, in turn, aid in determining which areas are most suitable for future OCS renewable energy leasing.

This clarification of BOEM's authority over off-lease site assessment activities applies to both met buoys and met towers. Although met towers have greater environmental impacts than met buoys, BOEM does not believe this proposed regulatory change would increase environmental risk. First, USACE would continue to permit facilities associated with off-lease site assessment. USACE has already permitted an off-lease met tower in connection with the Cape Wind project in Nantucket Sound offshore Massachusetts. Second, BOEM believes it is highly unlikely that anyone would undertake the considerable expense of constructing a met tower absent the exclusive development rights afforded by a commercial lease, particularly because met buoys have become commonplace as the more cost-effective site assessment alternative. Finally, this regulatory change would not have an environmental impact because it would not substantially alter BOEM's existing practice. BOEM presently has the authority not to require limited leases for off-lease site assessment activities based on a case-by-case determination that such activities do not support the production of energy.

#### B. Project Design Envelope

The proposed rule would codify the use of project design envelopes (PDE)—*i.e.*, proposing a range of design parameters and construction and operation activities—in COP submissions. The use of PDEs was first introduced by BOEM in draft guidance in 2016 and is now being codified in the regulations.

The proposed rule would add language throughout the proposed subpart G that would clarify the ability of lessees and grant holders to submit plans using a PDE. The PDE is a proven approach to provide lessees and grant holders with flexibility throughout the

engineered foundation require a SAP given the likely environmental impacts.

permitting process while still complying with NEPA and other statutory and regulatory obligations. As detailed in BOEM's draft guidance,<sup>35</sup> the PDE is “a permitting approach that allows a project proponent the option to submit a reasonable range of design parameters within its permit application, allows a permitting agency to then analyze the maximum impacts that could occur from the range of design parameters, and may result in the approval of a project that is constructed within that range.”<sup>36</sup> BOEM recognizes that a PDE should not be overly broad to avoid not defining the project well enough for meaningful analysis. BOEM's NEPA analysis will continue to include reasonable alternatives that meet the purpose and need of the project. As a result, the NEPA analysis would be sufficient to avoid a delay in review by BOEM or other agencies.

Here is an illustrative example:

- Lessee X has determined that jacket and monopile foundations are both technically feasible options for its project. Its ultimate foundation choice could depend on several factors that are not typically known at the time of COP submittal, such as the cost of steel at the time of procurement, contract negotiations with foundation fabricators, and the availability of novel pile-driving technologies.

- Lessee X proposes in its COP that it will use a foundation PDE consisting of three scenarios: all jacket foundations, all monopile foundations, and half each.

- In its environmental analysis, BOEM will assume the maximum design scenario (*i.e.*, the scenario with the greatest impacts) for each affected resource. For benthic habitat, BOEM could analyze 100 percent use of jacket foundations because that scenario disturbs the most seabed.

- BOEM may ultimately approve the full PDE for foundations, meaning Lessee X would have the flexibility to construct its project using either or both foundations. Alternatively, BOEM could find that the environmental impacts of one foundation type are unacceptable and approve the use of only the other foundation type, meaning Lessee X could only construct its project using the approved foundation type.

In its draft PDE guidance, BOEM set out “its support of, and preliminary recommendations for the voluntary use

of the PDE in the submission and review of COPs for offshore wind energy facilities.”<sup>37</sup> In preparing to issue its draft guidance, BOEM contracted a yearlong study of PDE use in the United Kingdom and its potential use in the United States.<sup>38</sup>

BOEM has concluded that use of the PDE would be beneficial to OCS renewable energy development because that approach provides reasonable latitude to make site-specific design and engineering decisions after plan approval without having to reopen the permitting review process.

Though BOEM's existing regulations allow a PDE, BOEM believes that it can clarify the process for lessees and other stakeholders by explicitly integrating PDE principles into its regulatory text—primarily by referencing “ranges” of design parameters or locations. It should be noted, however, that the range of parameters in a PDE could involve non-design attributes, such as installation methods or mitigation measures. BOEM believes these proposed changes (and other related modifications described in the part VI section-by-section analysis of the proposed rule) would not substantively alter its existing regulatory framework, or its required consultations with other agencies, but would be helpful to lessees and the general public.

#### C. Geophysical and Geotechnical Surveys

##### 1. Existing Regulations

BOEM regulations require a lessee's COP to include, among other things, survey data characterizing the seabed and sub-seabed that would be disturbed by the proposed project. BOEM uses this information to inform its environmental analysis of the project, its related consultations (particularly involving historical resources and essential fish habitat), and its review of the project's technical feasibility. These data are derived from surveys that are typically divided into two categories: *geophysical* surveys that use acoustic and magnetic sensing techniques to map and model the composition of the seafloor where ground-disturbing activities will take place, and to identify natural and manmade hazards as well as potential archaeological resources; and *geotechnical* surveys that use boreholes, vibracores, grab samplers, and other

<sup>37</sup> *Id.*

<sup>35</sup> See “Draft Guidance Regarding The Use Of A Project Design Envelope In A Construction And Operations Plan,” (January 12, 2018), U.S. Department of the Interior, Bureau of Ocean Energy Management, Office of Renewable Energy Programs, available at <https://www.boem.gov/guidance>.

<sup>36</sup> *Id.* at 1.

<sup>38</sup> Office of Renewable Energy, Bureau of Ocean Energy Mgmt., Phased Approaches to Offshore Wind Developments and Use of Project Design Envelope, Final Technical Report (2017), <https://www.boem.gov/Phased-Approaches-to-Offshore-Wind-Developments-and-Use-of-Project-Design-Envelope/>.

penetrative methods to determine the actual geological composition of the subsurface and, in certain cases, identify potential archaeological resources.

BOEM's regulations require a commercial lessee to submit a COP with geotechnical survey data that include the results of a testing program used to investigate the stratigraphic and engineering properties of the sediment that may affect foundations or anchoring systems; *in situ* testing, boring, and sampling at each foundation location; and at least one deep boring (with soil sampling and testing) at each edge of the project area and within the project area as needed to determine the vertical and lateral variation in seabed conditions.<sup>39</sup> Thus, lessees are currently obligated to conduct their full suite of geotechnical surveys before COP submittal.

The FDR, which is submitted following COP approval, requires the submittal of a "summary of environmental data used for design" as well as a "summary of the engineering design data,"<sup>40</sup> both of which could include additional geotechnical surveys. Lessees must apply for a regulatory departure under § 585.103 if they wish to defer *in situ* testing, boring, and sampling at each foundation location until the FDR stage.

A lessee's COP also is required to include "[t]he results of the archaeological resource survey with supporting data."<sup>41</sup> BOEM, therefore, requires the results of all archaeological surveys to be submitted with the COP.

## 2. Why the Existing Regulations Should Be Updated

BOEM has learned that its existing COP data submittal regulations lack sufficient flexibility to accommodate both the lessees' needs and BOEM's statutory and regulatory mandate. The amount and type of data that BOEM needs from lessees in order to conduct its environmental and technical reviews and reach a decision on a COP may vary depending on the size and design of the project as well as site conditions in the proposed project area. Lessees may use various techniques to gather this data, depending on the intended use of the data. The surveys are costly (generally in the tens of millions of dollars, depending on the size of the area and the desired resolution); time-consuming (individual surveys can each take several months to complete); and challenging to schedule due to limitations on the availability of survey

vessels and equipment, weather, and seasonal restrictions.

### (a) Existing Survey Requirements

The current regulations at 30 CFR 585.626(a)(1)–(3), (5), and (6) require robust information on shallow hazard, geological survey results, biological survey results, archeological resources, and an overall site investigation before COP submission. The current regulations also require geotechnical surveys and borings of all locations where foundations are expected to be installed in order to inform the engineering properties of the sediment. Frequently, the exact locations of foundations change between the time of COP submission and installation, requiring the lessee to repeat the same survey and boring work at new locations.

The geophysical and geotechnical survey requirements in BOEM's renewable regulations are largely built upon the framework for offshore oil and gas energy facilities, which have a smaller footprint and different geologic data needs than OCS renewable energy projects. The detailed engineering survey data that BOEM's offshore renewable regulations require early in the authorization process do not align with existing renewable industry practices. Requiring geotechnical sampling at each turbine location and engineering-specific geophysical survey data—several years before the turbines are procured and before the final layout is known—is unnecessary for BOEM's review of the COP. Equally important, this data requirement for COP submissions creates major logistical difficulties for lessees, hinders their ability to modify the project design during and after COP review, and is the subject of frequent industry criticism and regulatory departure requests under § 585.103. This information can instead be reviewed with the FDR once siting has been finalized.

Offshore wind projects are complex and have a development timeline that may last as much as 7 years from lease issuance to commencement of construction. During that time, technologies likely will evolve. The collection of geotechnical and, to a lesser extent, geophysical data is more logically performed in stages as the process evolves from planning and permitting to preliminary and final designs, with the appropriate level of survey data provided at each stage. This staged data collection and design process allows lessees to take advantage of the newest technologies and to make project modifications responsive to BOEM and stakeholder concerns, rather

than locking the project into a detailed design years in advance of completion.

The current lack of flexibility is also at odds with the development and use of PDE discussed above in section V.B, entitled "Project Design Envelope." The PDE's benefits cannot be fully realized without additional flexibility regarding the timing of engineering survey data submittal. If a lessee is required to conduct all of its engineering surveys (and potentially its most detailed archaeological surveys) before COP submittal, it may be constrained from adjusting the project design based on the availability of new technologies, stakeholder input, or other emergent factors. Likewise, a lack of flexibility in data submittal requirements could indirectly constrain BOEM's ability to consider NEPA alternatives that might modify the proposed project design. Such design changes might result in additional survey costs and project delays that may, in turn, jeopardize electricity offtake agreements or otherwise render the project nonviable. Revising the geophysical and geotechnical survey timing and data submittal requirements would codify and increase the utility of the PDE.

### (b) European and Industry Practices

Based on BOEM's conversations with various European regulators of offshore wind energy projects, many European governments that have authorized offshore wind development allow for the final engineering-related surveys to occur after project approval given the widespread use of design envelopes, which are discussed in section V.B. Performing geotechnical investigations in phases is a common approach for offshore wind projects in Europe and for most large and complex land-based developments. Experienced offshore wind developers and consultants are accustomed to this approach and have informed BOEM of its advantages.<sup>42</sup>

Moreover, this staged method of data submittal has been recommended by experienced geotechnical consultants in various publications and in geotechnical guidelines published by offshore wind classification societies.

Based on BOEM's experience and stakeholder feedback, the Department has concluded that allowing the submittal of certain geophysical and geotechnical data and analysis in stages would not adversely affect our ability to

<sup>42</sup> See, e.g., Soc'y for Underwater Tech., Guidance Notes for the Planning and Execution of Geophysical and Geotechnical Ground Investigations for Offshore Renewable Energy Developments 12 (Mick Cook ed., 2014), [https://www.sut.org/wp-content/uploads/2014/07/OSIG-Guidance-Notes-2014\\_web.pdf](https://www.sut.org/wp-content/uploads/2014/07/OSIG-Guidance-Notes-2014_web.pdf).

<sup>39</sup> 30 CFR 585.626(a)(4).

<sup>40</sup> 30 CFR 585.701(a)(5)–(6).

<sup>41</sup> 30 CFR 585.626(a)(5).

execute the statutory mandate to provide for environmental protection and safety on the OCS. We have learned that the precise location of each wind turbine may be uncertain at the COP submittal stage and that the geotechnical survey data, in particular, collected primarily for engineering purposes, are more relevant to the facility design and review process, which follows COP approval.

The Department and BOEM acknowledge that the level of data required for fulfilling its statutory mandate may be different than the level of data required to satisfy the mandates of other agencies. Under the proposed rule, the COP must still contain information sufficient to define the baseline geological conditions of the seabed, develop a geologic model,<sup>43</sup> assess geologic hazards, and determine the feasibility of the proposed site for the proposed facility. At the COP review stage, lessees would still be required to provide the data necessary to conduct the required consultations.

The non-geotechnical survey data included in the COP submittal are more than adequate to assess impacts to the human, marine, and coastal environment, to conduct necessary statutory consultations, and to show technical feasibility of all proposed foundation types. BOEM's oil and gas program takes a similar approach. Non-geotechnical survey data are used to assess plans, and geotechnical surveys occur after plan approval. Over the last 10 years, over 2,600 oil and gas plans have been approved; in none of these cases have subsequent geotechnical surveys identified any potential impact that required supplementation of an EIS or reinitiation of consultation. Because of this, we are confident that the proposed change is unlikely to undermine the environmental review done as part of the COP approval process. Even if a geotechnical survey after COP approval caused a change in the approved action or environmental assessment, we would expeditiously analyze the requisite changes and update the environmental assessment and record of decision.

The information from the deferred geotechnical surveys is not necessary to perform the requisite environmental reviews and consultations for COP approval or CZMA consistency reviews. Instead, the detailed information is necessary for engineering specifications associated with the design of the project. Furthermore, to ensure BOEM

has sufficient information for its requisite technical reviews, environmental analysis, and interagency consultations, BOEM conducts a sufficiency review after receipt of a COP and notifies the lessee of any information shortfalls that must be filled before the COP review is complete.

### 3. Proposed Changes

#### (a) COP Data Requirements

The proposed rule would address the concerns with the existing regulations primarily by providing more flexibility (and clarifying existing flexibility) in the COP requirements.<sup>44</sup> For clarity, the proposed rule would reorganize the data requirements by topic. The first proposed topic, "geological and geotechnical," would encompass the types of surveys required in existing § 585.626(a)(1), (2), (4), and (6). The survey and data collection requirements would shift from the largely prescriptive standards in the existing regulation to performance-based standards. These performance-based standards would give lessees the leeway to demonstrate that their selected combination of geotechnical and geophysical surveys provide BOEM the data that it needs at the COP review stage to determine whether the project as designed can be constructed safely in the proposed range of locations—assuming industry standard engineering practices are used at subsequent phases. Lessees could strike their own balance between geotechnical and geophysical surveys at the COP stage, so long as BOEM deems that data sufficient for BOEM's review as well as the required consultations or authorizations of other agencies. BOEM would still ensure that the COP contains information sufficient to complete its environmental review and required consultations, through a COP sufficiency determination. BOEM has issued guidelines elaborating its recommended best practices for such surveys.<sup>45</sup> These guidelines will be revised as needed based on the regulatory text of the final rule. BOEM could recommend, as a best practice, that developers coordinate early with relevant agencies on applicable site characterization plans, before surveys occur.

<sup>44</sup> See 30 CFR 585.626(a).

<sup>45</sup> See Office of Renewable Energy, Bureau of Ocean Energy Mgmt., Guidelines for Providing Geophysical, Geotechnical, and Geohazard Information Pursuant to 30 CFR part 585 (2020), available at <https://www.boem.gov/guidance>. See also Bureau of Ocean Energy Mgmt., Data Gathering Process: Geotechnical Departures for Offshore Wind Energy (2018), <https://www.boem.gov/Data-Gathering-Process/>.

The proposed rule would no longer require that COPs contain the results of *in situ* boring and sampling at each foundation location. Instead, the proposed rule would allow submission of geotechnical data for an engineering assessment of the proposed turbine foundations with a lessee's FDR.

The proposed rule also would grant the Department the flexibility to allow a lessee to submit certain subsea archaeological surveys with the FDR on a case-by-case basis, subject to terms and conditions of COP approval. We recognize that deferring subsea archaeological data submission until after COP submittal could introduce some degree of uncertainty and risk into a project by extending the timeline for BOEM's review and consultations under section 106 of the NHPA and its implementing regulations. This could delay a lessee's clearance to commence construction. This risk may be reduced, however, through the development of programmatic agreements or memoranda of agreement among the section 106 consulting parties that could establish procedures for avoiding or mitigating impacts discovered after COP approval.

BOEM estimates that a geotechnical investigation costs on average \$200,000 per turbine location and assumes that deferring survey work by 2 years would result in time value of money savings to a lessee. BOEM also estimates a 10 percent reduction in the number of geotechnical investigations by adding flexibility to the existing requirement of a core analysis at each individual turbine location.<sup>46</sup>

It is important to consider what these proposed rule changes would not do. First, the proposed rule would not prevent BOEM from obtaining COP data sufficient for an adequate impact analysis of a proposed project under the OCS Lands Act, NEPA, and other statutory authorities. The COP sufficiency review will ensure the necessary data is submitted to complete BOEM's and other agencies' analyses. The COP must still have the information sufficient to define the baseline geological conditions of the seabed and provide sufficient data to develop a geologic model, assess geologic hazards, and determine the feasibility of the proposed site. Changing when lessees must submit data from each foundation-specific boring does not impact the sufficiency review that BOEM uses to ensure that a COP has sufficient detail to support all consultations that accompany BOEM's environmental

<sup>46</sup> See *infra* Part VII.B.2 for overview of this proposed rule's economic analysis.

<sup>43</sup> The geologic model brings together bathymetric data, surficial data imagery, sub-bottom data imagery, and sediment samples.

review under NEPA. The vast majority of the data that would be deferred to the FDR and FIR stage is used solely for engineering purposes. Any deferred data would be subject to terms and conditions of COP approval that would allow the Department to halt or require modifications to further activities if the data is inconsistent with the analysis upon which BOEM based its COP approval. If the COP needs to be modified as a result of information gathered from the deferred surveys, such as if the deferred survey data reveals likely effects that were not considered previously, the Department would require the lessee to revise the COP under the regulations at § 585.634. The Department also retains the authority to halt or require modifications to the deferred surveys themselves, if necessary, through the lease suspension authority at § 585.417(a)(2). The Department believes the flexibility attained by these proposed changes would enhance the Department's (and lessees') ability to respond to environmental and ocean user concerns raised during its environmental reviews by modifying the project design.

Second, the proposed rule would not prevent the Department from obtaining engineering-related survey data sufficient to analyze the safety and feasibility of the final design before the lessee installs facilities, as provided in § 585.701. Such data would instead be reviewed at the FDR and FIR stage rather than the COP stage. Put differently, the Department would be able to obtain the same data under the proposed rule as it obtains now before the commencement of construction. Therefore, the Department anticipates that this element of the proposed rule would have no environmental and safety impacts, and no socioeconomic impacts beyond the potential cost savings to lessees.

#### (b) Limited Leases and Grants

Extending the reasoning articulated above in sections V.B, entitled "Project Design Envelope," and V.C.3(a), entitled "COP Data Requirements," the proposed rule would make similar changes to the GAP requirements for limited leases and grants.

#### 4. Solicitation of Comments Concerning a Potential New Permit Requirement for Conducting Geological and Geophysical Surveys for Renewable Energy Activities

Section 11 of OCSLA (43 U.S.C. 1340) addresses exploration for minerals (which include oil and gas) and subsection (g) requires that any exploration permit "will not be unduly

harmful to aquatic life in the area, result in pollution, create hazardous or unsafe conditions, unreasonably interfere with other uses of the area, or disturb any site, structure, or object of historical or archeological significance." However, geological and geophysical exploration permits for minerals, including oil and gas, are required only for off-lease surveys, *i.e.*, on unleased lands or on lands under lease to a third party.<sup>47</sup> On-lease surveys are governed by separate regulations and require only that the lessee notify BOEM at least 30 days prior to conducting such activities.<sup>48</sup> BOEM reviews such notices to ensure the activities described do not cause undue or serious harm or damage to the human, marine, or coastal environment.

BOEM's existing renewable energy regulations do not expressly govern survey activities. However, subsection 8(p) of OCSLA, which authorizes BOEM to "issue any necessary regulations to carry out this subsection," also requires that activities authorized under this subsection be carried out in a manner that provides for "safety . . . protection of the environment . . . [and] consideration of . . . any other use of the area, including use for a fishery . . ." OCSLA 8(p)(4).

Although BOEM requires a lessee to submit the results of certain surveys to BOEM in order to obtain approval of its COP, those regulations do not require BOEM's approval of a permit for such surveys. Instead, BOEM has provided guidance on conducting such surveys<sup>49</sup> and also includes terms and conditions in renewable energy leases that require lessees to submit survey plans to BOEM for review in advance of their survey activities.<sup>50</sup> BOEM's review of the plans, while not an approval process, does provide BOEM an opportunity to communicate with lessees to ensure the lessees' survey results will meet BOEM's information needs and to ensure certain environmental conditions are met in conducting the surveys.

BOEM is considering whether there is a need for a future rulemaking intended to regulate surveys associated with OCS renewable energy activities. To that

<sup>47</sup> See 30 CFR 551.4.

<sup>48</sup> See 30 CFR 550.207 through 550.210.

<sup>49</sup> Guidelines for Providing Information on Fisheries Social and Economic Conditions for Renewable Energy Development on the Atlantic Outer Continental Shelf Pursuant to 30 CFR part 585 (2020) available at <https://www.boem.gov/sites/default/files/documents/about-boem/Social%20%26amp%3B%20Econ%20Fishing%20Guidelines.pdf>.

<sup>50</sup> Refer to stipulation 3.1.2.1 in Addendum C of commercial leases auctioned by BOEM in recent lease sales (*e.g.*, available at [https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Lease%20OCS-A%200537\\_0.pdf](https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Lease%20OCS-A%200537_0.pdf)).

effect, BOEM is soliciting comments on the following questions:

- What additional protections might be gained through rulemaking that cannot be achieved by way of the lease stipulations?
- Should BOEM establish a permit-based mechanism to regulate how, when (pre-lease, post-lease), and where (on- and off-lease) surveys are conducted? And to what extent, if any, should that permit program differ from the permit requirements of the oil and gas program and marine minerals program?
- Is there another method, other than a permit-based mechanism, that could aid in the confirmation of any damage to fishing gear as well as the identification of responsible parties for any such damage from survey activities?
- To what extent should BOEM require additional public reporting and notice of any anticipated OCS survey activities, beyond the current lease stipulation requirements of two weeks' advance notice to applicable ocean users of lessee geological and geophysical surveys? Is there a greater need for specific advance notice requirements, extending beyond geological and geophysical surveys, to include the location, dates, and times in which other OCS surveys will be conducted?
- To what extent should BOEM identify and track OCS survey activities related to renewable energy program activities?
- How can BOEM improve the current procedures for reporting by and reimbursement of any party that is harmed as a result of the activities of a company engaged in renewable energy survey activities? Can these improvements replace the need to promulgate regulations governing OCS surveys for renewable energy projects?
- Should BOEM require advance coordination of survey activities with other lessees operating on the OCS?
- Are there other policies or requirements that BOEM should consider in order to minimize the adverse interaction between other users of the OCS and those conducting surveys that support renewable energy activities on the OCS?

Please see the **ADDRESSES** caption at the beginning of this notice to send responses to these questions and any other comments that you have. If you have any data or information that could be used to evaluate the extent of this problem, or potential costs or benefits of instituting additional procedures to address it, please provide that information as well. Please see the **FOR FURTHER INFORMATION CONTACT** caption at the beginning of this notice if you

have questions or comments regarding this topic.

#### D. Certified Verification Agent and Engineering Reports

##### 1. Existing Regulations

As discussed above, the current subpart G of BOEM's regulations governs the design, fabrication, and installation of offshore wind facilities following plan approval—as well as the process by which independent third-party CVAs are nominated, selected, and tasked with duties for project engineering review.

##### 2. Why the Existing Regulations Should Be Updated

The existing regulations use terminology to describe the role of the CVA that is not consistent with industry practices. They also are inexplicit regarding the flexibility that lessees or grant holders are afforded in the timing and composition of their FDRs and FIRs, and ambiguous regarding what procurement and fabrication activities lessees or grant holders can carry out before BOEM's review of these reports.

##### 3. Proposed Changes

###### (a) Certified Verification Agent Roles and Flexibility

BOEM and the Bureau of Safety and Environmental Enforcement (BSEE), concurrently review reports for design and construction of the facilities. However, rather than relying solely on agency engineering expertise, the bureaus also require lessees to use a CVA to provide independent third-party review of a project's FDR and FIR. The CVA plays an integral role in BOEM's determination that a proposed OCS renewable energy facility will be designed and constructed safely using best engineering practices in accordance with § 585.700(a)(1). The CVA also is expected to monitor fabrication and installation activities and to submit a final report to BOEM before the start of commercial operations or other approved activities in accordance with § 585.700(a)(2). So that the Department is able to “ensure that any activities . . . are carried out in a manner that provides for safety” as required by § 585.102(a), the Department proposes to add a requirement that the CVA verify the facility's design, taking human safety into appropriate consideration. In addition, the CVA would be required to evaluate the commissioning of any critical safety systems. Critical safety systems would be defined as safety systems and equipment designed to prevent or ameliorate major accidents that could

result in harm to health, safety, or the environment associated with facilities.

The Department proposes to change all “certification” references in the proposed subpart H to “verification.” This modification would align the regulations with industry standards.<sup>51</sup>

The proposed rule also would add flexibility to the CVA nomination process. Currently, a lessee or a grant holder must submit its CVA nominations with its SAP, COP, or GAP.<sup>52</sup> BOEM approves or disapproves CVA nominations as part of its plan review.<sup>53</sup> Multiple lessees have expressed a desire to have approved CVAs in place before COP submittal so the CVA may provide third-party review of design concepts in the COPs. This reasoning also supports CVA review of SAPs and GAPs before submittal. The Department believes that integrating CVA review into the earliest stages of the design and permitting process is consistent with its policy goals of encouraging safety and best engineering practices. We also recognize that a lessee or a grant holder may need to nominate new CVAs as the project progresses (for instance, if a design parameter changes at a late stage) or to request the replacement of an approved CVA if that CVA is ineffective or can no longer perform its duties. As a result, the proposed rule would provide flexibility for the Department, lessees, and grant holders by decoupling the CVA nomination and approval process from plan submittal and approval. The proposed rule also clarifies that a lessee or a grant holder may nominate separate CVAs to review different components of a project.

<sup>51</sup> Panel on Certification of Offshore Structures, National Research Council, *Verification of Fixed Offshore Oil and Gas Platforms 8–9* (1977), <https://www.nap.edu/read/18431/chapter/1> (opining that “verification” is the preferred description of the procedure assuring stakeholders that appropriate environmental and operating factors have been duly considered in the design, construction, and installation of offshore oil and gas platforms); see also Transportation Research Board, Nat'l Academies of Sciences, Engineering, and Medicine, *Structural Integrity of Offshore Wind Turbines, Oversight of Design, Fabrication, and Installation 96–108* (2011) (discussing role of third party oversight and certified verification agents in the offshore wind industry).

<sup>52</sup> For COP requirements, see 30 CFR 585.626(b)(20), 706(a). For SAP and GAP requirements, see 30 CFR 585.610(a)(9) and 585.645(c)(5), respectively. CVA nominations are required in a SAP and a GAP if BOEM determines the facilities proposed in those plans require an FDR and FIR because they are complex and significant. See 30 CFR 585.700(a), 705, 706(a).

<sup>53</sup> 30 CFR 585.706(e).

###### (b) Staged Submittal of the Facility Design Report and Fabrication and Installation Report

The Department recognizes that the construction of an offshore renewable energy facility is complex and that the procurement and installation of components depends on a wide range of project-specific factors that may change over time. These factors include availability of port facilities and installation vessels, weather conditions, seasonal construction restrictions, project financing, and approval of permits and authorizations. Requiring a lessee or a grant holder to submit only one FDR and FIR ignores that time-dependent complexity and could lead to unnecessary inefficiencies and delays. Indeed, lessees have already requested permission to submit separate, staged reports for discrete major project components. If the Department approves such requests, those lessees could begin fabricating and installing certain components while other components are being verified by a CVA. We acknowledge that some major project components may require analysis upfront to ensure safety and adherence to best engineering practices but believes that more flexibility is warranted in the timing of component review.

The Department believes that allowing staged submittal of FDRs and FIRs addresses this complexity and provides appropriate flexibility without compromising its project review. Though BOEM's existing regulations permit staged FDR and FIR submittal, this proposed rule would clarify that authority and would better define the circumstances under which staged submittal would be allowed. Importantly, staged submittals would be allowed only if the lessee or grant holder could explain how the constituent major components would function together in an integrated manner and could demonstrate that a CVA has verified such integration. The Department believes these two qualifications would minimize the risk that a lessee or grant holder would have to modify completed fabrications or installations based on any subsequent Department or CVA objections to later-reviewed components of the project.

###### (c) Definition of “Fabrication,” and Early Fabrication of Facility Components

Because of the long lead times for the procurement or fabrication of some components for offshore wind energy facilities, numerous lessees have expressed interest in the procurement or



fabrication of facility components before submittal of their COPs, FDRs, and FIRs. This “early fabrication of facility components” would take place outside of the OCS (e.g., onshore manufacturing).

The existing regulations provide that a lessee or a grant holder may begin to fabricate and install approved facilities only after BOEM notifies the lessee or grant holder that it has received the FDR and FIR and has no objections.<sup>54</sup> BOEM has previously read this provision conservatively and required lessees to obtain departures before they “begin” any fabrication prior to BOEM’s notification that it has no objection to their FDR and FIR, even if the fabrication, *i.e.*, manufacture, does not occur on the OCS. Lessees have asked BOEM to clarify what constitutes “fabrication” because they want to accelerate timelines by proceeding with procurement or fabrication activities outside of the OCS prior to receiving BOEM’s non-objection to the FDR and FIR or the end of BOEM’s 60-day review of the FDR and FIR without objections.

The Department has determined that the term “fabrication,” as used in the current subpart G, is arguably ambiguous and, therefore, further clarifying this term would be useful for the regulated community. BOEM has granted departures from the requirements of § 585.700(b) on a case-by-case basis,<sup>55</sup> provided that the departure request meets the requirements in BOEM’s regulations and the lessee or grant holder assumes all business risk associated with fabrication activities that occur as a result of the departure. Whenever granting a departure for early fabrication, BOEM reserved the right to object to the fabrication methodologies described in the submitted FDR and FIR before the lessee began installation of facility components on the OCS. The Department has now concluded that the regulation in question prohibits only the fabrication and installation of facility components that take place on the OCS (e.g., assembly, construction, or installation). Therefore, the fabrication of facility components that does not take place on the OCS may be carried out prior to the submittal of an FDR, FIR, or any plans under the regulations, and such activities do not require the prior issuance of a departure. However, the fact that fabrication activities outside the OCS can commence prior to the

submittal of an FDR, FIR, or any plans does not prevent the Department from objecting to the installation of such components on the OCS if their fabrication is inconsistent with accepted industry or engineering standards, the approved SAP, COP, or GAP, or the FDR or FIR, or regulations. To codify this policy, the Department proposes to amend the existing regulations to remove any doubt that only fabrication activities that take place on the OCS are prohibited prior to the Department non-objection of the FDR and FIR or the end of the 60-day review period without objections.

The Department also proposes to include in 585.112 a definition for the term “fabrication,” which would be defined as “cutting, fitting, welding or other assembly of project elements of a custom design conforming to project-specific requirements,” and would exclude from this definition the procurement of discrete parts of the project that are commercially available in standardized form (such as electrical components, magnets, and gears) and type-certified components (such as nacelles and blades).<sup>56</sup>

Consequently, the proposed rule would reduce the number of components that are considered “fabricated” through the definition. The proposed rule would clarify that fabrication activities that do not take place on the OCS can commence before the submittal of the FDR, FIR, or any plans required under regulations. This proposed change would not in any way limit BOEM’s ability to conduct a robust environmental review during the plan approval process; BOEM’s consideration of alternatives and mitigations would be unaffected. The rule would also clarify that all facility components procured or fabricated (regardless of where they were fabricated) would be subject to CVA verification. This requirement would reduce the risk of a lessee or grant holder seeking short-term cost savings to the detriment of safety and accepted engineering practices. The lessee or grant holder assumes any business risk associated with the procurement or fabrication of facility components prior to plan approval or the Department non-objection to the FDR and FIR or the end of the 60-day review period without objections. In order to avoid the business risk of

<sup>56</sup> Component type-certification (for type-certified components) provides independent proof that critical main components of a wind turbine meet relevant international standards and codes for performance and safety. Component type-certification differs from project certification, which assesses the performance of a group of wind turbines on a specific project site.

objections to the fabrication of facility components prior to installation, developers can always opt not to fabricate until their FDR and FIR have gone through the 60-day review period without objections or received a non-objection to the FDR and FIR. Although such procurement and fabrication activities are not prohibited by the regulations, the proposed rule would clarify that the Department reserves the right, during its FDR and FIR reviews, to object to the installation of previously procured or fabricated facility components if said components are inconsistent, or were not fabricated in accordance with, accepted industry or engineering standards, the approved SAP, COP, or GAP, or the FDR or FIR, or BOEM’s regulations.

Clarifying that the regulations do not prohibit all procurement or fabrication activities prior to the submittal of the FDR and FIR provides maximum flexibility to the industry, while still allowing the goals of the regulation to be met (*i.e.*, to prevent the installation of facility components on the OCS if the Department has objections to their fabrication or the installation methodologies proposed in the FIR).

#### *E. The Renewable Energy Leasing Schedule*

##### 1. Existing Regulations

The existing regulations do not address the preparation of a renewable energy leasing schedule. Under the existing regulations, BOEM announces lease sales individually as each is scheduled.

##### 2. Why the Existing Regulations Should Be Updated

BOEM proposes to add a new section to the regulations, entitled “The Renewable Energy Leasing Schedule” to indicate BOEM’s intent to publish a proposed five-year leasing schedule for the OCS renewable energy program. This would provide greater transparency to the leasing process by giving stakeholders as much advance notice as possible of proposed lease sales.

The Secretary provided a preview of such a schedule on October 13, 2021, by announcing plans for BOEM to potentially hold up to 7 new offshore lease sales by 2025 in the Gulf of Maine, New York Bight, Central Atlantic, and Gulf of Mexico, as well as offshore the Carolinas, California, and Oregon. The proposed regulation would require a proposed leasing schedule and periodic updates to the schedule. Through a proposed schedule, BOEM would provide increased certainty and

<sup>54</sup> 30 CFR 585.700(b). BOEM is also “deemed” to have no objections if BOEM does not object within 60 days of receiving the reports.

<sup>55</sup> See BOEM’s record of departure requests at <https://www.boem.gov/departure-request>.

enhanced transparency, and facilitate planning by industry, the States, and other stakeholders. With this change, DOI can lay out an ambitious roadmap to confront climate change, create good-paying jobs, and accelerate the nation's transition to a cleaner energy future.

### 3. Proposed Changes

The proposed rule would include a new section describing the renewable energy leasing schedule. This proposed schedule would include a list of locations under consideration for leasing and a leasing schedule that BOEM intends to follow in announcing its future renewable energy lease sales. According to this proposal, at least once every two years, the Secretary would publish a schedule of proposed lease sales. As a proposed schedule, it would not obligate BOEM to offer all sales on the schedule; BOEM would adjust the schedule as necessary through the scheduled updates. The first published schedule would be issued for the five-year period following the effective date of this rulemaking, and subsequent schedules will cover the five-year period after each update. This schedule would include a general description of the area of each proposed lease sale, the calendar year in which each lease sale is projected to occur, and the reasons for any changes made to the previous schedule. Every time the schedule is updated, BOEM would identify those lease sales that are being considered for the following 5-year period.

The Inflation Reduction Act (IRA), Public Law 117–169, requires that, during the 10-year period beginning on August 16, 2022, BOEM may not issue an OCS wind lease unless an OCS oil and gas lease sale has been held during the 1-year period ending on the date of the issuance of the wind lease and the sum total of acres offered for lease in OCS oil and gas lease sales during that 1-year period is at least 60 million acres. BOEM will comply with the requirements of the IRA.

This Renewable Energy Leasing Schedule would differ substantially from the Five Year Oil and Gas Leasing Program, described in the oil and gas regulations in 30 CFR part 556. Compared to the Five Year Oil and Gas Leasing Program, which is mandated under section 18(a) of the OCS Lands Act, the proposed Renewable Energy Leasing Schedule would be much less complicated and would not constitute a final action enforceable or challengeable administratively or in the courts. The proposed regulations would not have requirements for public meetings, comment periods, or iterative proposals, and would not include a list of factors

that must be considered other than those already enumerated in § 585.102. Any proposed lease sale covered by the schedule would be subject to all applicable regulations, including area identification, coordination with relevant parties, and applicable environmental reviews.

BOEM seeks comment on its proposal to publish a proposed Renewable Energy Leasing Schedule and what information should be provided as part of this schedule. BOEM is soliciting comments specifically on the content and the timing of the schedule updates, as well as generally on how best to provide a schedule to improve transparency of renewable energy development on the OCS.

### F. Lease Issuance Procedures

#### 1. Existing Regulations

During the past 10 years, the existing lease issuance procedures have been criticized for being too prescriptive in some aspects and unclear in others. The existing procedures constrain flexibility by prescribing auction formats, processes, systems, and variables. BOEM has determined that the lease issuance process requires added flexibility, transparency, and clarity and that its regulations should address possible consequences when the provisional winner fails to execute a lease, a lessee relinquishes a lease, or BOEM contracts or cancels a lease.

#### 2. Why the Existing Regulations Should Be Updated

BOEM proposes to revise several aspects of its lease issuance procedures primarily for simplification, clarification, and conformance with existing agency practice.

### 3. Proposed Changes

#### (a) Pre- and Post-Auction Procedures

This proposed rule would reorganize, simplify, and clarify the sections of BOEM's regulations that detail the steps leading to an OCS renewable energy auction. The proposed rule would introduce a new term, "provisional winner," to describe the bidder that BOEM determines has submitted the winning bid at the close of the auction, pending completion of the government's post-auction reviews and the lease award reconsideration process. The provisional winner becomes the winning bidder upon favorable completion of these reviews and appeals. The proposed rule would consolidate the reconsideration and appeal provisions into a single section while retaining separate processes for seeking the review of a decision

selecting a provisional winner and for appealing all other final decisions under this part. The proposed rule would simplify and clarify post-auction procedures by outlining what BOEM and a provisional winner must do between the auction and lease execution. The proposed rule would eliminate the term "request for interest" and replace it with the broader term "request for information." Finally, the proposed rule would change the due date for payment of the first 12 months' rent to 45-calendar days after the winning bidder receives a copy of the executed lease.

#### (b) Auction Processes and Rules

BOEM recognizes that the auction formats and bidding systems described in the existing §§ 585.220 and 585.221 are difficult to understand and overly prescriptive, although they allow for customization of each auction. This proposed rule would simplify and clarify the auction regulations, replacing the currently enumerated auction formats, bid systems, and bid variables with a more flexible process to better accommodate an emerging industry while allowing for auctions to be customized based on circumstances. The proposed rule would meet the fundamental policy objectives to have a process that is objective, fair, reasonable, and competitive; awards leases to the highest bidder; and provides a fair return to the U.S. taxpayer. Consistent with BOEM's existing practice, the PSN would propose the specific format and procedures for an upcoming auction, and the public would have an opportunity to submit comments that would inform BOEM's final decisions regarding format and procedures. BOEM would publish the final auction format and procedures in the FSN. This proposed rule would allow BOEM greater flexibility to tailor each auction to fit the particular circumstances.

#### (c) Multiple Factor Auctions and Bidding Credits

BOEM proposes to continue to implement multiple factor auctions, through the use of bidding credits, to allow the competitive lease award process to take into consideration various priorities, such as advancing a domestic supply chain or requiring workforce development agreements, relating to orderly development of OCS renewable energy resources. The multiple factor auction format ascribes a value, expressed in monetary terms, to the factors or actions demonstrated or committed to by a bidder at a lease auction during the competitive lease

award process. In each round of the auction, a bid may have a non-monetary component represented by the bidding credit as well as a monetary (cash) component.

A multiple factor auction using bidding credits would be expected to proceed along the lines of the following example. We assume there are three qualified bidders in an ascending bid clock auction, which is the same auction format traditionally used for BOEM’s wind energy lease sales. Bidder

A has met the requirements for a bidding credit of 10 percent of the cash component by having obtained a power purchase agreement (PPA); Bidder B has met the requirements for a bidding credit of 20 percent of the cash component by having committed to appropriate workforce or supply chain development agreements; and Bidder C has not earned or made the requisite commitments to earn a credit.

The auction begins with an opening bid of \$100 with subsequent \$10

bidding increments per round. The auction continues for seven rounds. Bidder C submitted an exit bid in Round 6 and is ineligible to continue bidding. The auction concludes when Bidder B bids the asking price in Round 7 and Bidder A submits an exit bid less than the asking price. Bidder B wins the auction with its lower cash bid combined with its commitment to workforce training and supply chain development. The example bidding results are shown in the following table.

TABLE—OFFSHORE WIND AUCTION EXAMPLE

Bidding round	BOEM’s asking price (combined bid)	Bidder A (10 percent credit)	Bidder B (20 percent credit)	Bidder C (no credit)
1	\$100	\$90.90 cash + \$9.10 credit	\$83.30 cash + \$16.70 credit	\$100.00.
2	\$110	\$100 cash + \$10 credit	\$91.67 cash + \$18.33 credit	\$110.00.
3	\$120	\$109.09 cash + \$10.91 credit	\$100 cash + \$20 credit	\$120.00.
4	\$130	\$118.18 cash + \$11.82 credit	\$108.33 cash + \$21.67 credit	\$130.00.
5	\$140	\$127.27 cash + \$12.73 credit	\$116.67 cash + \$23.33 credit	\$140.00.
6	\$150	\$136.36 cash + \$13.64 credit	\$125 cash + \$25 credit	\$145.00 (exit bid).
7	\$160	Exit bid of \$140 cash + \$14 credit = \$154.00.	\$133.33 cash + \$26.67 credit = \$160.00 (winner).	[ineligible to bid].

Before the auction, BOEM will determine each bidder’s eligibility for bidding credits in accordance with the specifications of the FSN; however, such eligibility may be established either for actions that the bidder has already undertaken or for actions which it has committed to undertake in the future, provided that BOEM has agreed to the terms by which such a commitment will be made. Eligibility for bidding credits would be tied to specific actions defined in the FSN that facilitate OCS renewable energy development by increasing the likelihood or pace of development—for instance, a PPA—or by advancing other public policy goals reflected in the OCS Lands Act. The FSN would contain the rules governing the eligibility of parties to obtain bidding credits, as well as the application process, use, and value of bidding credits in a specific auction. As it has done in the past, BOEM would consider the enforceability of commitments made by bidders during the design of the auction credits to be offered in specific lease sales. In the past, this was not much of a concern because BOEM mostly offered credits for commitments and achievements previously made. This proposed rule would clarify that a bidder may be eligible for bidding credits based on actions the bidder has already undertaken or for commitments to future actions. However, in proposed 30 CFR 585.225, this rule would also provide that, in the event that a lessee

does not meet the commitments it made to obtain any bidding credits, the lessee would be required to repay the value of the bidding credits that it received, adjusted for inflation. BOEM would also reserve the right to impose civil penalties pursuant to the provisions of subpart N of 30 CFR 550 for failure to comply with the terms or provisions of a lease, easement, or right-of-way.

According to the provisions of this proposed rule, a multiple factor auction may take one or more non-monetary factors into consideration, including: (1) power purchase agreements; (2) eligibility for, or applicability of, renewable energy credits or subsidies; (3) development agreements by a potential lessee that facilitate shared transmission solutions and grid interconnection; (4) technical merit, timeliness, financing and economics, environmental considerations, public benefits, or compatibility with State and local needs; (5) agreements or commitments by the developer that would facilitate OCS renewable energy development or other OCS Lands Act goals; or (6) any other factor or criteria to further development of offshore renewable energy in a sustainable and environmentally sound manner, as identified by BOEM in the PSN and FSN.

(d) Solicitation of Comments

BOEM seeks comments on the use of bidding credits and multiple factor auctions as a method of advancing important priorities, such as promoting

workforce development or supply chain enhancement, consistent with the goals of the OCS Lands Act. It is BOEM’s goal to ensure that there is adequate flexibility to the leasing process to achieve public policy goals and any comments or suggestions as to how BOEM could best achieve this objective would be welcome. Specifically, BOEM is interested in obtaining comments on how bidding credits or factors might be tailored to mitigate possible adverse, project-related impacts. For example, BOEM is interested in receiving comment on what impacts a project could have on underserved communities and how bidding credits or multiple factor auctions can be used to promote mechanisms such as community benefit agreements that could address those impacts and provide benefits to the underserved communities. Comments on alternative means to achieve public policy goals, such as through lease stipulations, are also sought.

(e) Improper or Inappropriate Bidder Communications

The proposed rule would explicitly prohibit a bidder from disclosing its auction strategies and economic valuations of a lease area to other bidders in a particular auction in any manner that might prevent the United States from obtaining a fair return on a prospective lease. Such practices have been prohibited in recent FSNs.

This proposal would outline the rules applicable to all auctions and the

processes BOEM would use to disqualify a bidder that no longer meets qualification requirements or who engages in specified improper conduct. The proposed rule would specify how a disqualified bidder might seek to be re-qualified as a bidder.

#### (f) Provisional Winner Obligations

This proposed rule would define the term “provisional winner” and would outline consequences if a provisional winner fails to sign the lease agreement, provide the requisite amount of financial assurance, or tender the outstanding bid balance. The proposed rule would provide a list of actions that BOEM is authorized to take if a provisional winner fails to fulfill its obligations. In addition, because the proposed rule would allow a provisional winner to become a lessee before it has completed all obligations for which it obtained bidding credits, an additional provision has been added to proposed § 585.225, specifying that a lessee that has obtained bidding credits for prospective performance obligations that were not fulfilled at the time of the lease award, are subject to repayment in the event that those performance obligations are not ultimately met prior to a specified deadline or event. BOEM would also reserve the right to impose civil penalties pursuant to the provisions of subpart N of 30 CFR 550 for failure to comply with the terms or provisions of a lease, easement, or right-of-way.

#### (g) Re-Offering Leases at Auction or When a Lease Area Is Relinquished, Contracted or Cancelled

The proposed rule would provide clear authority for BOEM to offer a lease to the next highest bidder if a provisional winner of a lease auction fails to fulfill its obligations before lease execution or is otherwise unable to execute a lease. Similarly, if a lessee relinquishes its lease or BOEM contracts or cancels a lease in whole or in part, BOEM may re-offer the area previously covered by the lease.

### G. Risk Management and Financial Assurance

#### 1. Existing Regulations

As discussed above, under the current subpart E of part 585, BOEM requires lessees and grant holders to provide financial assurance, in the form of a bond or other instrument, in an amount sufficient to guarantee compliance with terms and conditions of their leases and grants.

#### 2. Why the Existing Regulations Should Be Updated

The existing financial assurance regulations lack flexibility and clarity in several key areas, as explained below.

#### 3. Proposed Changes

This proposed rule would revise BOEM’s risk management and financial assurance requirements in the proposed subpart F. The revisions are intended to facilitate OCS renewable energy development while continuing to protect the U.S. taxpayer against risks of default. The proposed rule would accomplish both goals through four key changes. Other minor proposed changes are addressed in section VI.F. BOEM also seeks comment on additional potential changes that would better align financial assurances to risk discussed in subsection 3(e) below.

##### (a) Elimination of COP Approval Financial Assurance Requirement

The proposed rule would eliminate the supplemental financial assurance currently required before COP approval.<sup>57</sup> This requirement was intended to protect the U.S. taxpayer against liability from defaulted lease obligations that accrue after COP approval.<sup>58</sup> However, decommissioning liabilities do not accrue from COP approval; such liabilities accrue only with the commencement of approved activities on the OCS.<sup>59</sup> BOEM’s regulations require—and this proposed rule would continue to require—supplemental financial assurance before OCS installation starts in order to cover those liabilities, *i.e.*, anticipated decommissioning costs. Therefore, BOEM proposes to eliminate as unnecessary the requirement for supplemental financial assurance before COP approval. In the unforeseen event that a COP approval does, by itself, cause the accrual of new obligations, BOEM retains the authority to assess supplemental financial assurance on a case-by-case basis under § 585.517.<sup>60</sup>

<sup>57</sup> 30 CFR 585.516(a)(3).

<sup>58</sup> See Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf Final Rule, 74 FR 19637 (Apr. 29, 2009), available at <https://www.boem.gov/Renewable-Energy-Program/FinalRenewableEnergyRule-pdf.aspx>.

<sup>59</sup> Under both the existing regulations and the proposed rule, OCS installation of approved facilities may begin only after the lessee addressed all CVA and BOEM concerns raised during their FDR and FIR reviews to their satisfaction.

<sup>60</sup> Where a permit under the National Marine Sanctuaries Act may be required, NOAA’s Office of National Marine Sanctuaries may require certain financial assurances for infrastructure removal activities potentially required under the permit.

##### (b) Revision of Lease-Specific Financial Assurance Amount

The proposed rule would simplify the requirements for financial assurance during the early stages of a commercial lease. Currently, before BOEM will execute a commercial lease, the lessee is required to provide lease-specific financial assurance in the amount of \$100,000 to guarantee compliance with the lease terms and conditions. BOEM recognizes, however, that annual rental payment is the only financial obligation accrued at lease execution and before installation activities on the OCS are authorized. BOEM currently assesses financial assurance for 12 months of rent when it makes its first request for supplemental financial assurance—typically during SAP review.<sup>61</sup> This practice leaves BOEM under-bonded for the preliminary term of a lease if annual rent exceeds \$100,000, which it generally does.

BOEM, therefore, proposes to replace the \$100,000 lease-specific financial assurance with financial assurance in the amount of 12 months’ rent, due before lease execution. This amendment would ensure that BOEM and U.S. taxpayers are adequately bonded throughout the early stages of the lease. Combined with the proposed elimination of financial assurance for met buoy decommissioning, this amendment would simplify financial assurance by eliminating the need for supplemental financial assurance in addition to 12 months’ rent before installation of BOEM-approved facilities on the OCS. The amendment is not expected to have a financial impact on lessees.<sup>62</sup>

Additionally, BOEM’s regulations allow periodic adjustments to the \$100,000 lease-specific financial assurance based on the Consumer Price Index-All Urban Consumers or equivalent index. With the proposed replacement of the \$100,000 lease-specific financial assurance, BOEM proposes to eliminate these adjustment provisions as obsolete. BOEM seeks comments on the extent to which additional modifications or enhancements to the financial assurance might be appropriate.

Extending the reasoning in this section, the proposed rule also would change the financial assurance requirement prior to issuance of limited leases and grants from \$300,000 to an amount equal to 12 months’ rent.

<sup>61</sup> 30 CFR 585.516(a)(2).

<sup>62</sup> As discussed in section V.A above, BOEM proposes to eliminate SAPs for met buoys, which have become the predominate facilities for OCS site assessment activities.

## (c) Additional Authorized Financial Assurance Instruments

The proposed rule would provide greater flexibility regarding the financial assurance instruments that BOEM would accept. While BOEM's regulations list types of acceptable financial assurance instruments, BOEM's regulations permit it to accept other instruments that meet the general requirements for financial assurance in 30 CFR 585.525. Several lessees have expressed an interest in using letters of credit, which are accepted as financial assurance across a range of industries. The proposed rule explicitly would allow letters of credit as permissible financial assurance instruments and would set forth evaluation criteria for their use. The proposed rule would add catch-all provisions clarifying that BOEM may accept instruments not explicitly listed as well as combinations of different instruments; however, these instruments would need to meet BOEM's general requirements for financial assurance as noted above. These changes would provide greater flexibility to a lessee and a grant holder, but still protect the United States against default.

The proposed rule also would provide lessees and grant holders with greater flexibility when using a third-party guaranty by allowing guarantors to cap their liability. BOEM's existing regulations require a third-party guaranty to cover the full amount of all lease and grant obligations. The proposed rule would grant BOEM the discretion to approve a third-party guaranty for a specific amount. This modification would provide lessees and grant holders with the flexibility to use a third-party guaranty up to a certain dollar amount and to satisfy the remainder of their financial assurance obligations through other acceptable instruments. Given that BOEM would retain the ability to approve all proposed financial assurance instruments and that the criteria for such instruments would remain unchanged, BOEM believes these changes would not increase the risk to U.S. taxpayers.

## (d) Staged Funding of Decommissioning Accounts

The proposed rule would allow staged funding of decommissioning accounts during the operations period of a lease or grant to satisfy financial assurance requirements for decommissioning. BOEM's existing regulations require full funding of a decommissioning account for each renewable energy facility, such as a wind turbine generator, before its

installation on the OCS. This places a significant upfront capital burden on a lessee or a grant holder.

BOEM strives to develop a financial assurance framework for the renewable energy sector that accomplishes the same goal of protecting the taxpayer as does the financial assurance framework governing the oil and gas sector. BOEM also recognizes that there are key differences between the renewable energy and oil and gas sector that necessitate different approaches. Notably, offshore renewable energy is projected to maintain consistent levels of power production over the life of a project, as opposed to production decline curves associated with oil and gas production from offshore wells. In addition, the risk that predicted levels of oil and gas reserves may be overstated is also not a concern with offshore renewable energy projects. Additionally, renewable energy projects often have legally binding PPAs, which ensure an ongoing revenue source over a significant time horizon and eliminate another major risk factor faced by the oil and gas sector: commodity price volatility. This relatively consistent production, combined with PPAs that often guarantee a market for power at predictable prices over 15 to 20 years, allows BOEM to receive revenue and make profitability projections with a much greater degree of certainty than for conventional energy assets.

BOEM's proposal to set a scheduled and staged implementation of a decommissioning trust account or other financial assurance funding mechanism is also appropriate given that the funding schedule is established at the beginning of the operations period, significantly before decommissioning is scheduled to occur, as opposed to after the assets have been operating for years and may be approaching or past scheduled end-of-life. The proposed rule would allow BOEM to approve a schedule for funding decommissioning accounts during a lease's or grant's operations period on a case-by-case basis.<sup>63</sup> In all instances, the decommissioning account would be required to be fully funded by the time a lessee or grant holder is obligated to decommission the applicable facility. This proposed change would align BOEM's financial assurance regulations with common European practices.

BOEM believes the risk of this proposed change to U.S. taxpayers is negligible. First, the proposed rule would not commit BOEM to allowing

<sup>63</sup> The operations period for a commercial lease is defined at § 585.235(a)(4); for a limited lease, § 585.236(a)(2); and for a grant, § 585.303(b).

staged funding of a decommissioning account in all instances. If BOEM believes that a particular project poses a high financial risk, BOEM could require full funding of the decommissioning account before OCS installation. Second, the European industry has a strong history of solvency that BOEM believes would extend to the U.S. industry because the lessees and projects share many of the same characteristics. Third, BOEM anticipates that even if a lessee became insolvent during its commercial operations period, it would likely be able to transfer a functioning OCS renewable energy facility to a solvent entity because the revenues would be expected to exceed operating costs.

## (e) Other Financial Assurance Provisions

BOEM is considering additional changes to its existing financial assurance framework. In December 2015, the Government Accountability Office highlighted risks in BOEM's financial assurance procedures applicable to the offshore oil and gas industry and recommended that BOEM complete its planned financial assurance revisions "including the use of alternative measures of financial strength."<sup>64</sup> Subsequently, BOEM is considering a new rulemaking to revise the financial assurance regulations for its offshore oil and gas program while continuing to protect U.S. taxpayers against defaulted obligations incurred by lessees and grant holders.<sup>65</sup>

The oil and gas rulemaking initiative could consider reliance on credit ratings with a specific regulatory credit rating threshold for BOEM's evaluation of the financial strength and reliability of a lessee, grant holder, or third-party guarantor. In all cases, BOEM could retain the discretion to require supplemental financial assurance in situations where it is warranted.

Similarly, in its renewable energy program, BOEM is considering use of a minimum credit threshold rating to help determine the necessity for financial assurance. BOEM is not proposing regulatory text implementing this concept and is not specifying a credit rating threshold in this rulemaking. BOEM does seek comments on the merits of this concept for potential inclusion in the final rule for the renewable energy program. Regulatory

<sup>64</sup> Government Accountability Office, GAO-16-40, Offshore Oil and Gas Resources, Action Needed to Better Protect Against Billions of Dollars in Federal Exposure to Decommissioning Liabilities 34 (2015), <https://www.gao.gov/products/GAO-16-40>.

<sup>65</sup> Risk Management, Financial Assurance and Loss Prevention, 85 FR 65904 (Oct. 16, 2020).

text implementing this proposal likely would result in BOEM replacing many of the factors that currently guide BOEM's determination of a lessee's or grant holder's financial strength in the existing § 585.527, or adding provisions outlining additional methods for determining financial strength.

#### (i) Credit Ratings

Currently, BOEM requires a commercial lessee to provide supplemental financial assurance before installing facilities included in the approved COP.<sup>66</sup> Under existing regulations, BOEM may allow a lessee or grant holder to use its financial strength and reliability to cover its financial assurance based on an evaluation of audited financial statements; business stability; reliability; and a record of compliance with laws, regulations, and contracts.<sup>67</sup> Based on a similar evaluation of a guarantor, BOEM also may allow a lessee or grant holder to use a third-party guarantee to meet its financial assurance requirements.<sup>68</sup>

These factors primarily assess past performance as a proxy for future financial strength and reliability. In dynamic electricity markets, however, such backward-looking factors may lead to inaccurate and inconsistent assessments of financial strength and reliability.

A forward-looking assessment would be more reliable because the financial situation of a lessee, grant holder, or third-party guarantor can worsen quickly despite its past performance. Credit ratings provide such forward-looking assessments by taking into account relevant factors, such as cash flow, debt-to-income ratios, and debt-to-funds from operation.

BOEM seeks comment on whether it should alter its assessment of financial strength and reliability by replacing the use of several current factors with a credit rating from a nationally recognized statistical rating organization (NRSRO), as identified by the U.S. Securities and Exchange Commission under the Credit Rating Agency Reform Act of 2006 and its implementing regulations,<sup>69</sup> or a proxy credit rating determined by BOEM using audited financial statements. Based on BOEM's

experience in the oil and gas industry, BOEM has concluded credit ratings are the most reliable predictor of future ability to meet obligations.<sup>70</sup> The use of credit ratings would align BOEM's assessment with widely accepted risk evaluation methods within the banking and financial industry.

BOEM believes that an NRSRO credit rating greater than or equal to investment grade from Standard & Poor's Ratings Service (S&P) or from Moody's Investor Service would be a sufficient indicator of future reliability to allow a lessee or grant holder to use its financial strength to meet its requisite financial assurances. BOEM also proposes to use the same credit rating criteria to evaluate the financial strength and reliability of a lessee's or grant holder's proposed third-party guarantor. If a lessee, grant holder, or guarantor lacks an NRSRO credit rating, it would be allowed to submit audited financial statements—which generally include an income statement, balance sheet, statement of cash flows, and auditor's certificate—prepared in accordance with generally accepted accounting principles. Based on these audited financial statements, BOEM then would determine a proxy credit rating using the S&P Credit Analytics credit model or a similar widely accepted credit rating model. BOEM has concluded that such a model, used in conjunction with audited financial statements, can generate a proxy credit rating comparable to that of an NRSRO.

#### (ii) Joint and Several Liability

Currently, co-lessees and co-grant holders are jointly and severally liable for lease or grant obligations accruing during their tenancy, including decommissioning.<sup>71</sup> When a lease or grant is assigned, the assignor remains liable for unmet obligations that accrued before BOEM's approval of the assignment.<sup>72</sup> The assignee is liable for obligations that accrued before and after BOEM's approval of the assignment.<sup>73</sup> Moreover, the assignee is required to provide requisite financial assurance.<sup>74</sup> This joint and several liability significantly reduces the risk of non-performance if any liable party has adequate financial strength and reliability.

BOEM seeks comment on whether it should explicitly rely on the financial strength and reliability of these other

liable parties, including any current or predecessor lessees and grant holders, when determining the need for, and amount of, financial assurance necessary to cover all accrued lease or grant obligations.

#### H. Safety Management Systems

An SMS is a combination of policies, procedures, and control mechanisms designed to meet an organization's safety objectives in a disciplined and continually improving manner. BOEM regulations require a lessee or a grant holder to develop an SMS for COP-approved renewable energy facilities and for SAP- and GAP-approved facilities that BOEM deems complex and significant. The SMS must be functional when a lessee or grant holder begins its approved activities and throughout the project.

##### 1. Existing Regulations

BOEM's existing SMS regulations are brief and general, having been promulgated in 2009 when construction and operation activities were years in the future. The regulations require a lessee or a grant holder to submit a general description of safety measures and capabilities, emergency procedures, and testing protocols. Multiple Federal statutes authorize various safety oversight activities by different agencies for facilities on the OCS, including renewable energy facilities. BOEM recognizes that duplicative enforcement of similar statutes by multiple agencies is likely to be confusing and cause unneeded cost and delay. Consequently, BOEM and BSEE have coordinated with the Occupational Safety and Health Administration (OSHA) and the United States Coast Guard (USCG)—the Federal agencies primarily responsible for OCS facility safety management—to assure coordination and consistency with the safety management responsibility of these agencies for OCS facilities. BOEM's SMS requirements will become the primary tool to ensure human and environmental safety with respect to renewable energy development on the OCS. This rule is intended to clarify the expectations of the SMS for the regulated community. It is also designed to clarify the expected content of an SMS and support the assessment by other Federal regulators that an SMS performance-based approach to risk management will establish a reasonable regulatory framework.

##### 2. Why the Existing Regulations Should Be Updated

With construction and operation activities expected to commence soon, OCS wind lessees and contractors have

<sup>66</sup> 30 CFR 585.516(a)(4). BOEM may adjust the amount of the supplemental financial assurance as cumulative obligations increase or decrease during the lease. 30 CFR 585.517(c). On a grant or limited lease, BOEM may require supplemental financial assurance as activities progress and obligations accrue. 30 CFR 585.521(a).

<sup>67</sup> 30 CFR 585.527(a).

<sup>68</sup> 30 CFR 585.528(b).

<sup>69</sup> See 17 CFR parts 240 and 249.

<sup>70</sup> Credit ratings are part of current reliability criteria discussed in existing § 585.527(a)(3).

<sup>71</sup> 30 CFR 585.406(a).

<sup>72</sup> 30 CFR 585.410.

<sup>73</sup> 30 CFR 585.411(b).

<sup>74</sup> 30 CFR 585.408(b)(8).

informally asked BOEM to clarify its expectations regarding SMS standards. The proposed rule would address those inquiries, incentivize SMS certification from a recognized accreditation organization, add two safety reporting requirements, and clarify that lessees and grant holders would be required to have and use an SMS for all OCS activities undertaken pursuant to a lease, from site assessment through decommissioning.

Additionally, the proposed changes would reflect the recent DOI policy statement clarifying that 30 CFR part 585 contains the primary workplace health and safety regulations for OCS renewable energy operations.<sup>75</sup>

### 3. Proposed Changes

The Department proposes a performance-based approach that would promote flexibility in determining the best way to ensure personnel safety on and near OCS renewable energy facilities during activities covered by the SMS. The proposed SMS changes are consistent with industry's safety management best practices. The proposed amendments would allow a lessee or grant holder to adopt U.S. and international workplace health and safety standards as its SMS framework.

Under the proposed rule, upon SMS receipt, the Department would engage with the lessee or grant holder to understand the risks the safety system was designed to mitigate and how the system would function. The proposed rule would provide transparency regarding the types of information that the Department considers necessary in a satisfactory SMS and would clarify that the Department expects the lessee or grant holder to design, implement, and maintain the SMS according to widely accepted standard practices. This clarification would help prospective OCS renewable energy developers understand the Department's SMS expectations.

The proposed rule would provide incentives for a lessee or grant holder to obtain certification of its SMS from a recognized safety and environmental management system CAB. A lessee or grant holder whose SMS has been certified would be eligible for streamlined oversight in recognition of the increased rigor in the development and implementation of its SMS. While such certifications would not be required and cannot guarantee streamlined oversight in all instances, BOEM anticipates that most lessees and

grant holders would pursue certification as a best practice.

The proposed rule would add two reporting requirements. One report would require an annual summary of how the SMS performed, normalized to work hours and energy generation. This report would allow the Department to verify SMS functionality and track continual improvements.<sup>76</sup> The second would be a triannual report summarizing the results of the most recent SMS audit, the corrective actions implemented, and a description of any changes made to the SMS since the prior report. Data from these reports could be used to generate annual industry-wide comparisons of safety performance.

Finally, the proposed rule would provide that a lessee must have a functional SMS before beginning any activity on the OCS pursuant to a lease, and must use its SMS for all such activities, including site assessment work. This would clarify the Department's expectations regarding the stages at which an SMS must be functional and used, including prior to the SAP, COP, or GAP.

#### I. Inspections

##### 1. Existing Regulations

Existing regulations state that BOEM will inspect facilities and vessels engaged in renewable energy activities to verify compliance with applicable terms, conditions, laws and regulations, and to determine whether safety equipment has been properly installed and operated. The existing regulations that require the lessee to conduct self-inspections are limited to inspections of structures, mooring systems, and monitoring of corrosion protection.

##### 2. Why the Existing Regulations Should Be Updated

OCS Lands Act section 1834(c) requires the Department to promulgate onsite inspection, at least once a year, of each facility on the outer Continental Shelf. As currently written, BOEM's regulations require BOEM to perform a scheduled on-site inspection of all renewable energy facilities on the OCS and inspect all safety equipment designed to prevent or ameliorate fires, spills, or other major accidents.

To ensure that the OCS Lands Act mandate of an annual onsite inspection is met, the Department proposes to update its regulations to require the

lessee conduct annual onsite self-inspections. The lessee would also be required to maintain records of its self-inspections and to provide these records to the Department upon request. This would make the lessee accountable for ensuring safety and protection of the environment. In addition, the Department would retain the ability to conduct inspections at any time.

This update would allow for DOI to focus resources on conducting inspections, both scheduled and unscheduled, based on designated criteria, such as operational risk severity and risk probability, industry trends, incident data, analytical data, safety management system implementation and audits, and other observations.

This proposal would also reduce logistical and human resource burdens on the operators by allowing them to schedule the annual self-inspections with maximum efficiency by incorporating the inspections into scheduled onsite activities.

### 3. Proposed Changes

#### (a) BOEM Inspection Requirement

The proposed rule would revise BOEM's requirement "to conduct" an inspection on OCS facilities or any vessels engaged in renewable activities to state that BOEM "may conduct" an inspection on an OCS facility or any vessel engaged in renewable activities.

#### (b) Self-Inspection Requirements

The proposed rule would require that, once a facility has commenced commercial operations, the lessee would conduct an onsite inspection of its facility at least annually, including all safety equipment designed to prevent or ameliorate fires, spillages, or other major accidents, to satisfy the annual onsite inspection requirement of the OCS Lands Act. The proposed rule would also require the lessee to maintain records of the facility inspections, summarize the results of those inspections and provide the records and the summary of the results to BOEM upon request.

#### J. Other Proposed Changes

The Department proposes other regulatory changes that fall outside the eight categories previously discussed. The most significant of these proposed changes are summarized here. Other changes correct technical errors or clarify inconsistencies arising from this proposed rule. All these proposed changes and their rationales are discussed further in section VI.

<sup>75</sup> Notification of policy statement, 84 FR 55861 (Oct. 18, 2019).

<sup>76</sup> This report also would close a known reporting gap between BOEM and OSHA, which requires annual reporting of workplace injury and illness data.

### 1. Lease Structure

The proposed rule would change the default lease terms in § 585.235 by merging the existing preliminary and site assessment terms into one preliminary period; establishing new lease periods for COP review and for design and construction that can vary in length based on the duration of the COP review and the design and construction process; and converting the existing 25-year operations term that commences at COP approval into a 30-year operations period commencing at the commercial operations date. These proposed changes recognize most lessees will not submit SAPs, account for the time required for permit review and construction, and provide certainty to a lessee regarding the operations period of its renewable energy project.

### 2. Lease Segregation and Consolidation

BOEM has received requests from lessees to segregate single leases into multiple leases, held by different subsidiaries, as well as to consolidate multiple adjacent leases into a single lease. BOEM regulations allow such segregations and consolidations, and the proposed rule would clarify the existing regulations by establishing specific procedures.

### 3. Civil Penalties

BOEM's renewable energy regulations do not explicitly provide for assessing immediate civil penalties for violations that constitute(d) a threat of serious, irreparable, or immediate harm or damage to life, property, or the marine, coastal, or human environment, without notice and an opportunity to correct. However, the authority for doing so is set forth in the OCS Lands Act. This proposed rule would amend the Department's regulations to ensure that its civil penalty regulations are coextensive with its statutory authority.

### 4. Standardize Annual Rental Rates for Grants

The proposed rule would standardize the annual rental rate for most grants. Under the proposed rule, BOEM would apply a \$5 per acre annual rental rate for both ROWs and RUEs.

### 5. Technical Corrections and Clarifications

Finally, the proposed rule would make numerous minor technical changes. These technical revisions maintain consistency with proposed changes elsewhere in the regulations, clarify ambiguities, correct technical errors, and improve organization. Examples of proposed changes in this category include:

- Clarifying that under 30 CFR 585.103(a)(1), regulatory departures may be granted when necessary to facilitate programmatic activities before, during and after lease termination.
- Replacing reference to the Immigration and Naturalization Service, which no longer exists, with “appropriate Federal immigration authority.”
- Eliminating the paper copy submission requirement for plans, applications, reports, and notices to modernize procedures and to promote responsible stewardship of resources.
- Replacing “BOEM” with “ONRR” in certain provisions to reflect that ONRR is the correct payee for all lease and grant payments.
- Revising the cross-reference to BSEE's 30 CFR part 254 regulations in BOEM's oil spill response plan requirement for COPs, because the majority of 30 CFR part 254 does not apply to offshore renewable energy.
- Modifying the air quality provisions to reflect Congress' 2011 amendments to the CAA.

#### K. Potential Revisions to Regulations Governing Research Activities

BOEM requests public comments on whether the lease process for research activities in existing § 585.238 warrants amendment. This proposed rule does not contain changes to this section, but BOEM is interested in receiving comments on the following: whether it should create a specific regulatory framework for research leases and planning; whether it should expand the criteria for who can hold research leases; whether the DNCI requirement can or should be relaxed for research activities; and whether any other aspects of this section deter OCS renewable energy research. Note that for one of the two leases issued under this section to date, BOEM used its discretion to require the submittal of a Research Activities Plan containing information substantially the same as what is required to be included in a COP.<sup>77</sup>

#### L. Potential Revisions to Regulations Governing Transmission

BOEM recognizes a need to minimize impacts to the environment and natural and cultural resources and maximize the utility of land-based points of interconnection. BOEM is continuing efforts to explore a coordinated approach to transmission, which could include the shared use of cable corridors

or other shared transmission solutions, such as regional transmission systems, meshed systems, and the development of an offshore grid. Accordingly, BOEM seeks comment on the types of regulatory changes that would be appropriate to better accommodate these options and to minimize impacts to environmental, natural, and cultural resources. For example, should 30 CFR 585.200(b) be modified to allow BOEM to encourage or require use of such options where they are available and allow for full enjoyment of the lease? What approaches or options should BOEM consider advancing in 30 CFR 585.200(b) to facilitate interconnection for lessees, while minimize impacts to important resources?

### VI. Section-by-Section Analysis of Proposed Rule

#### A. 30 CFR Part 585, Subpart A—General Provisions

§ 585.102 What are BOEM's responsibilities under this part?

Section 585.102(a) specifies that BOEM will authorize renewable energy activities in accordance with OCS Lands Act subsection 8(p)(4), as enumerated in § 585.102(a)(1) through (12). BOEM is amending this regulation to clarify that none of the enumerated requirements is intended to outweigh or supplant any other. The purpose of this change is to clarify that BOEM takes all of these relevant factors into consideration in planning its renewable energy program and that no one factor or consideration, by itself, should outweigh the other relevant considerations.

§ 585.103 When may BOEM prescribe or approve departures from the regulations in this part?

Section 585.103 was promulgated to allow BOEM to maintain programmatic flexibility while adapting to a new and changing industry by approving departures from regulatory requirements under certain limited circumstances.<sup>78</sup>

The proposed rule would modify § 585.103(a) introductory text and (a)(1) to specify that BOEM may prescribe or approve a departure from the regulations when BOEM deems the departure necessary because the applicable provision(s) as applied to a specific circumstance are impractical or unduly burdensome and the departure is necessary to achieve the intended objectives of the renewable energy program. In this way BOEM would maintain flexibility to adapt the regulations to the unique circumstances of this new and evolving industry while

<sup>77</sup> See letter from Bureau of Ocean Energy Mgmt. to John Warren, Dir., Va. Dep't Mines, Minerals & Energy (Mar. 23, 2016), <https://www.boem.gov/Approval-of-VOWTAP-Research-Activities-Plan/>.

<sup>78</sup> See supra note 51, at 19653.



retaining the consistency and integrity of the regulations as a whole.

The existing departure provisions of this section are limited in scope to those regulatory provisions that apply to existing lease and grant holders. However, BOEM has applied departures not only to activities “on a lease or grant,” but also to activities that occur before lease issuance (e.g., BOEM’s planning and lease sale processes) and after lease termination (e.g., decommissioning, release of financial assurance). The proposed changes would allow for such departures.

Minor updates to the provisions paragraphs (a)(2) through (4) were made for consistency with the new language in § 585.103(a). No changes are proposed to § 585.103(b) which lists the requirements that an approved departure and its rationale must be consistent with subsection 8(p) of the OCS Lands Act, protect the environment and public health and safety, not impair the rights of third parties, and be documented in writing.

**§ 585.104** Do I need a BOEM lease or other authorization to produce or support the production of electricity or other energy product from a renewable energy resource on the OCS?

Section 585.104 traces the statutory language of the OCS Lands Act in establishing that a lease, ROW, or RUE issued under this part is required in order to construct, operate, or maintain facilities that “produce or support production, transportation, or transmission of energy from sources other than oil and gas.”<sup>79</sup> The proposed rule would clarify that for purposes of this section, site assessment activities are not considered to produce, transport, or support the generation of any energy products; and, therefore, such activities do not, by themselves, require a lease, easement or ROW. As discussed above in section V.A of this preamble, this revision is intended to clarify that an entity does not require a lease from BOEM to deploy a met buoy or tower for site assessment activities that are not located on an existing commercial lease. Under the proposed rule, BOEM would not require a separate lease for the deployment of such facilities.<sup>80</sup> The USACE would be the lead Federal permitting agency for such facilities under its existing legal authority, though other agencies may also have permitting or consultation

requirements, such as NOAA under the NMSA (for any off-lease site assessment activities that may occur within a national marine sanctuary or in the vicinity of a national marine sanctuary).

**§ 585.105** What are my responsibilities under this part?

BOEM is proposing a minor modification to strengthen the requirement for lessees to comply with all applicable laws, regulations, other requirements, the terms of the lease or grant under this part, reports, notices, approved plans, and any conditions imposed by BOEM. This would expand, strengthen, and clarify the language found in current § 585.105(d), requiring compliance only with the “terms, conditions, and provisions of all reports and notices submitted to BOEM, and of all plans, revisions, and other BOEM approvals, as provided in this part.”

**§ 585.106** Who can acquire or hold a lease or grant under this part?

BOEM proposes several changes to its qualification requirements.

First, the proposed rule would replace the word “hold” with “acquire or hold” throughout this section to clarify that the qualification requirements of § 585.106 are intended to apply both to the acquisition and retention of both OCS lease and grant interests. BOEM does not require automatic forfeiture of a party’s existing lease and grant interests if the lessee or grant holder no longer meets the criteria in this section; rather, the cancellation provisions at § 585.437 would be the appropriate vehicle for revoking a lease.

Second, the proposed rule would correct § 585.106(a) to list the citizenship qualifications in the disjunctive and not the conjunctive by substituting “or” for “and” in § 585.106(a)(6).

Third, the proposed rule would add criteria that may disqualify a party from acquiring a lease or grant interest under this part and, consequently, from participation in the lease and grant issuance processes. The proposed rule would prevent a party that has been disqualified from acquiring a lease or grant interest (because it either lacks the basic regulatory qualifications or has engaged in certain enumerated misconduct) from participating in any lease or grant issuance processes under this part. This provision closes a loophole by prohibiting a party disqualified from acquiring a lease or grant interest from entering into commercial agreements to participate in the lease or grant issuance processes on behalf of a third party. This provision also would clarify BOEM’s authority to

disqualify a party from an auction, which is not explicitly set forth in the existing regulations. These proposed provisions are intended primarily to deter current and potential lessees and grant holders from engaging in conduct that is illegal or detrimental to BOEM’s renewable energy program and to the fair conduct of its auctions.

A party under consideration for disqualification would receive written notice from BOEM of the basis for the disqualification and would be provided an opportunity to be heard before BOEM issues a final, appealable decision. BOEM also may instruct that party regarding what remedial actions, if any, would restore its qualification. Until such remedial actions are completed to BOEM’s satisfaction or until qualification is otherwise restored, a disqualified party would be ineligible to acquire a lease or grant under this part or to otherwise participate in BOEM’s competitive and noncompetitive lease or grant issuance processes.

**§ 585.107** How do I show that I am qualified to be a lessee or grant holder?

BOEM proposes a technical correction to paragraph (b) to reflect that the Immigration and Naturalization Service no longer exists and to avoid the need for future technical corrections in the event of another change in the name of the relevant Federal immigration authority.

**§ 585.110** How do I submit plans, applications, reports, or notices required by this part?

BOEM proposes to eliminate its paper copy requirement and rely primarily on electronic submissions. The paper requirement has proven unwieldy for voluminous plan submittals that contain multiple appendices and may be subject to multiple revisions before they are finalized.

BOEM proposes to reserve the authority to require paper copies of certain documents (such as maps and charts) if necessary.<sup>81</sup> The proposed rule also would eliminate the specific BOEM mailing address to avoid the need for future technical corrections if BOEM’s mailing address changes again. Instead, the mailing addresses for BOEM submissions would be listed for the appropriate contacts on BOEM’s website.

**§ 585.112** Definitions

The proposed rule would add a new definition for “bidding credits.” Bidding

<sup>79</sup> 43 U.S.C. 1337(p)(1)(C).

<sup>80</sup> BOEM would nonetheless require a commercial lessee, that seeks to install a met tower, to submit a SAP in addition to the USACE permit, given the potential impacts that might be caused by such towers.

<sup>81</sup> BOEM proposes to retain the paper copy requirement for assignment applications given the importance of having an original signed version. See discussion *infra* VLE § 585.408.

credits are defined as the value assigned by BOEM, expressed in monetary terms, to the factors or actions demonstrated, or committed to, by a bidder at a BOEM lease auction during the competitive lease award process. The regulations further specify that the types and values of any bidding credits awarded to any given bidder will be set forth in the FSN.

The proposed rule would modify the definition of “commercial activities” to state that such activities are conducted “under” leases and grants. This modification would maintain consistency with the proposed revisions to § 585.104 by clarifying that site assessment activities that are not conducted on a commercial lease (and thus do not require a lease) are excluded from the definition of “commercial activities.”

The proposed rule would modify the definition of “commercial operations” to state that the term means the generation of electricity or other energy product for commercial use, sale, and distribution on a commercial lease, but does not mean either generation needed to prepare a final FIR or generation for testing purposes, provided the electricity generated for such testing is not sold on a commercial basis.

The proposed rule would add a new definition for “Critical Safety System” to mean safety systems and equipment designed to prevent or ameliorate major accidents that could result in harm to health, safety, or the environment associated with the lessee’s or grant holder’s facilities. This modification would clarify new requirements in §§ 585.705, 585.707, 585.708, 585.710, 585.712, and 585.637 for the CVA to verify the commissioning of critical safety systems.

The proposed rule would add a definition for the term “engineered foundation,” which would mean any structure installed on the seabed using a fixed-bottom foundation constructed according to a professional engineering design (based on an assessment of sedimentary, meteorological, or oceanographic conditions). Comments are solicited on the appropriateness of the definition of this term, as used in the proposed rule.

The proposed rule would also add a definition for the term “fabrication” which would mean the cutting, fitting, welding, or other assembly of project elements of a custom design conforming to project-specific requirements. Fabrication does not include the procurement of discrete parts of the project that are commercially available in standardized form and type-certified components.

The proposed rule would also add definitions for the terms “lease area” and “provisional winner” to provide clarity in the regulatory text. Lease area is an OCS area identified by BOEM for potential development of renewable energy resources. The provisional winner is the bidder that BOEM determines at the conclusion of the auction to have submitted the highest bid. The provisional winner would become the winning bidder upon favorable completion of the government’s post-auction reviews.

The proposed rule would also add a new definition of “multiple factor auction,” which would be defined to mean an auction that involves the use of bidding credits to incentivize goals or actions that support public policy objectives or maximize public benefits through the competitive leasing auction process. In all multiple factor auctions, BOEM would add the monetary value of the bidding credits to the value of the cash bid to determine the highest bidder.

The proposed rule also would define “receipt” of a document as having been deemed to take place, in the absence of documentation to the contrary, (a) 5-business days after the document was given to a mail or delivery service with the proper address and postage; or (b) on the date the document was sent electronically. This proposed definition borrows from the Interior Board of Land Appeals regulation on service of documents at 43 CFR 4.401(c)(7), but acknowledges that most documents will be transmitted instantaneously through electronic means. In the absence of documentation evincing actual receipt, the presumption of constructive receipt in this definition would be overcome by evidence demonstrating that a document was either not received or received in more or less time than the default timeframes set forth. The definition of “receipt” would apply to variants of that word, including variants of “receive,” and would apply only where those terms are used in the regulations to describe the receipt of a document when the timing of receipt triggers a regulatory time period or consequence.

Finally, BOEM proposes a technical correction to the definition of “site assessment activities” to avoid possible confusion with site characterization activities.

§ 585.113 How will data and information obtained by BOEM under this part be disclosed to the public?

BOEM proposes a technical change, substituting the word “operations” for “generation” in paragraph (b)(1), so that

BOEM’s review of the data and information will be done “3 years after the initiation of commercial operations . . .,” to provide greater consistency with the remainder of BOEM’s offshore renewable regulations.

§ 585.114 Paperwork Reduction Act Statements—Information Collection

BOEM proposes to update the table in this section to align with proposed regulations.

§ 585.116 Requests for Information

The existing regulations reference two public information requests that share the same acronym: requests for interest (RFI) under §§ 585.210 and 585.231, and requests for information (RFI) under § 585.116. The proposed rule would combine all such notices in a revised § 585.116 and call them requests for information. The request for interest is an optional step in the leasing process that assists BOEM in collecting information in advance of initiating a new leasing process. BOEM used the request for interest in this way several times, especially early in the program. However, more recently, the practice has been to initiate the leasing process with the next, mandatory step in the leasing process, publishing a Call. The proposed rule suggests eliminating the request for interest as a step in the leasing process. In the event that BOEM would like to start the leasing process with a solicitation of information from the public, the more general request for information under § 585.116 is available to serve that need.

§ 585.118 What are my appeal rights?

BOEM’s existing renewable energy regulations discuss appeal rights in two sections—§§ 585.118 and 585.225. Section 585.118 describes appeals of BOEM final decisions made under part 585. Section 585.225 provides that a bidder may request the Director to reconsider its bid rejection. To simplify and clarify the administrative review provisions, the proposed rule would combine these two sections by locating all procedures for review of BOEM renewable energy final decisions or orders in a revised § 585.118. This revised section would maintain the existing distinction between requesting reconsideration of rejected bids and appeals of other final decisions made under part 585, but will now characterize challenges to decisions selecting provisional winners as appeals to the Director, rather than requests for reconsideration.

The proposed section would provide appeal rights to any adversely affected bidder of a provisional winner selection

decision. Currently, § 585.225(b) limits requests for reconsideration to those with rejected bids. The proposed section would also provide provisional winners an opportunity to appeal if they believe there have been any errors or omissions in the selection decision, such as miscalculated or unapplied bidding credits.

This proposed section would specify that BOEM must receive written appeals of a decision selecting the provisional winner within 15-business days after a bidder receives notice of the decision. This is consistent with the existing regulations at § 585.225(b) and clarifies the existing language at § 585.118(c)(1). This section would adopt the rules found in the appeal procedures at 30 CFR 590.3 of this chapter for determining when a selection decision is received.

Finally, the proposed section would clarify two points regarding an appeal of a decision selecting the provisional winner. First, the provisional winner would have an opportunity to be heard before the BOEM Director reverses a selection decision. Second, the Director's decision would not be appealable administratively to the Interior Board of Land Appeals.

#### *B. 30 CFR Part 585, Subpart B—The Renewable Energy Leasing Schedule*

##### § 585.150 What Is the Renewable Energy Leasing Schedule?

BOEM is proposing to add a new subpart and section to the regulations that would define a proposed leasing schedule for the renewable energy program. BOEM determined that a new subpart is appropriate given the nature of this change and the potentially significant benefit to stakeholders. This proposed schedule would include a list of locations under consideration for leasing and a schedule that BOEM would follow in holding its future renewable energy lease sales. According to this proposal, at least once every 2 years, the Secretary would publish this schedule of proposed lease sales. The first published schedule would be issued for the 5-year period following the effective date of this rulemaking and subsequent schedules will cover the 5-year period after the update. This schedule would include a general description of the area of each proposed lease sale, the calendar year in which each lease sale will occur, and the reasons for any changes made to the previous schedule. BOEM is soliciting comments from stakeholders regarding this provision. Any proposed leasing would be subject to all applicable regulations, including area

identification, coordination with relevant parties, and applicable environmental reviews.

#### *C. 30 CFR Part 585, Subpart C—Issuance of OCS Renewable Energy Leases*

##### General Lease Information

Subpart B, Issuance of OCS Renewable Energy Leases, is being redesignated as subpart C to accommodate the addition of a new subpart B, as noted above. The individual section numbers in subpart C and in subsequent subparts have not been changed.

##### § 585.202 What types of leases will BOEM issue?

BOEM proposes a technical revision to this section to make it consistent with subsection 8(p) of the OCS Lands Act and the proposed revisions to § 585.104, as well as to add a reference to leases issued for research activities under § 585.238.

##### § 585.203 With whom will BOEM consult before issuance of leases?

BOEM proposes to make a technical correction to the penultimate sentence of this section by removing the word “including” and replacing it with “include.”

##### Competitive Lease Award Process—Pre-Auction Provisions

##### § 585.210 What are the steps in BOEM's competitive lease award process?

Proposed § 585.210 would provide an overview of the competitive leasing process and effectively would merge existing §§ 585.210 and 585.211. The proposed rule would replace the request for interest in the existing § 585.210 with a request for information in the revised § 585.116. The revised § 585.210 would provide an overview of the entire competitive leasing process by including two steps that are not currently mentioned in this section of the existing regulations: the auction and lease award.

##### § 585.211 What is the Call?

Proposed § 585.211 would consolidate the existing §§ 585.211(a), 585.213, and 585.214, which describe the information requested by the Call, the information a respondent should include in its response if it wishes to nominate one or more areas for a commercial renewable energy lease within the preliminarily identified leasing areas, and BOEM's handling and processing of the information received. The primary purpose of this proposed change is

reorganization; no substantive changes would be made to BOEM's existing regulations and practice. BOEM proposes to remove the reference to withholding privileged and confidential information as redundant of the protections already described in § 585.113.

##### § 585.212 What is area identification?

Proposed § 585.212 would provide more clarity regarding BOEM's area identification process, thus expanding the description of this step in the existing § 585.211(b). This section would make no substantive change to the existing process.

This section would clarify that BOEM balances potential OCS renewable energy development with competing uses and environmental concerns during area identification and attempts to resolve foreseeable issues. Consistent with the existing regulations and practice, BOEM would determine during area identification whether specific OCS areas are suitable for further consideration for renewable energy development with appropriate mitigation.

BOEM would consider any factors that it determines relevant during this process. These factors may include, but would not be limited to, other uses in and around the area, applicable environmental analysis, formal and informal stakeholder comments, industry nominations, and the area's feasibility for development. Consideration of the area's feasibility for development could include, but would not be limited to, analysis of the area's size and other relevant physical conditions, potential electrical generation capacity, pertinent technical data, and applicable electricity market and offtake information. For example, BOEM may incorporate a high-level assessment of an area's characteristics that would be relevant to potential development, such as bathymetry, distance to shore, and wind resources, and may consider an adjacent State's offshore wind energy offtake or incentive programs.

BOEM would retain the flexibility to modify the selection of parcels offered for leasing after area identification and before the auction. Also consistent with existing regulations, BOEM would use the area identification process to inform its NEPA review and associated interagency consultations to evaluate the potential effects of activities that are expected to take place after lease issuance on the human, marine, and coastal environments and on other environmental requirements. For example, the National Marine

Sanctuaries Act may apply to any actions that may injure sanctuary resources or that may require permits for placement of equipment or disturbance of covered submerged lands. In any case where a NMSA permit may be required, NOAA may require certain financial assurances for infrastructure removal activities potentially required under permit. BOEM may develop lease stipulations or other measures as part of its NEPA review to mitigate potential adverse impacts and may hold public hearings regarding its environmental analyses after potential lease areas have been identified.

**§ 585.213** What information is included in the PSN?

The analyses of the proposed sections on the PSN and the FSN, §§ 585.213 and 585.214 respectively, emphasize the close interrelationship between the notices, and enhance understanding.

The PSN and FSN are closely related but distinct notices published in the **Federal Register** that detail the auction procedures and lease provisions relevant to a particular lease sale. Currently, the PSN proposes procedures and provisions and invites public comment on them; the FSN establishes the final procedures and provisions. BOEM uses the public comments received in response to the PSN to inform its decisions regarding the final procedures and provisions in the FSN.

Proposed §§ 585.213 and 585.214 would replace § 585.216 of the existing regulations. These proposed sections would not change substantially the nature, scope, or content of the PSN and FSN from BOEM's existing regulations and practice. However, the proposed sections would clarify BOEM's existing authority to set a maximum number of lease areas that an individual party may bid on or acquire in an auction. The proposed rule would separate the PSN and FSN regulations into individual sections because, although the notices are closely related, each notice represents a distinct step in the leasing process. The PSN and FSN would continue to serve as the primary sources of information for prospective bidders on the lease areas, auction procedures, and lease provisions. Also, proposed § 585.223 would outline supplemental auction information that may be contained in the PSN and FSN.

**§ 585.215** What may BOEM do to assess whether competitive interest for a lease area still exists before the auction?

BOEM's existing regulation at § 585.212 explains the process BOEM

follows if it has reason to believe competitive interest no longer exists before the FSN is issued. Proposed § 585.215 would maintain essentially the same process for determining whether competitive interest remains and then acting on that determination. This section would clarify, however, that BOEM may engage this process any time before the auction when it has reason to believe competitive interest is absent. The competitive lease issuance process is the "default" under the OCS Lands Act,<sup>82</sup> so BOEM may proceed with an auction regardless of the result of its competitive interest inquiry under this section.

**§ 585.216** How are bidding credits awarded and used?

Proposed § 585.216 would allow the provisional winner's bid to include the value of bidding credits awarded if the provisional winner has made certain demonstrable commitments that facilitate OCS renewable energy development and that reflect a developmental advantage, or advance public policy—for instance, a power purchase agreement. The PSN and FSN would prescribe the use of bidding credits in a particular auction, including eligibility requirements, application procedures, and the types and values of available credits. BOEM would retain discretion not to offer bidding credits in a given auction.

A bidder would be awarded bidding credits before the auction under the FSN if it timely submits a bidding credit application with the requisite commitments and meets eligibility requirements. Depending on the FSN provisions, a bidder might be eligible for multiple bidding credits if the bidder meets the criteria for each credit. The FSN could provide for bidding credits that are stackable or non-stackable. Stackable credits are those where the total value of a bidder's bidding credits would be the sum of all the credits for which the bidder was eligible. Alternatively, the FSN may limit the bidding credits to non-stackable credits, where the total value of a bidder's bidding credits would be limited to the value of the largest bidding credit for which the bidder was eligible. Stackable credits would incentivize bidders to meet the criteria for as many of the available bidding credits as they can. Alternatively, using non-stackable credits would limit the total value of the non-monetary component of the bid. Bidding credits may be denominated as either a fixed dollar amount or a

percentage of the cash bid, as specified in the FSN.

The FSN would specify the procedures, timing, and eligibility requirements for bidding credits. BOEM would inform bidders before the auction of the value of each bidding credit for which they are eligible. A provisional winner who received bidding credits would pay its bonus as the amount of the cash component of its winning bid less the bid deposit, as prescribed in the FSN. The regulation text would further specify that qualification to obtain bidding credits must be done in advance of any lease auction, in accordance with the specifications of the FSN; however, such qualifications may be obtained either for actions that the bidder has already undertaken or for actions which it has committed to undertake in the future, provided that BOEM has agreed to the terms by which such a commitment will be made. If a bidder receives a bidding credit for a commitment to future action, acceptance of the lease would constitute an obligation to undertake those actions, and failure to do so would constitute noncompliance with the lease.

BOEM is soliciting comments on whether the regulations should codify its past practice of imposing a cap on the value of bidding credits that any bidder can earn, measured as either an absolute dollar amount or as a percentage of the bid amount. Bidding credit limits in past auctions ranged from 10 to 25 percent of the high bid. If implemented, this cap would be intended to ensure that BOEM obtains a fair return on the prospective lease.

BOEM is also requesting comment on what factors in proposed § 585.216(b) should qualify for credits, particularly the policy-based factors described in § 585.216(b)(5), and how such factors could best be quantified for the purpose of calculating their value as part of the auction process.

**Competitive Lease Award Process**

**§ 585.220** How will BOEM award leases competitively?

BOEM proposes to continue to implement multiple factor auctions, through the use of bidding credits, to allow the competitive lease award process to take into consideration various priority actions, such as advancing a domestic supply chain and providing workforce development agreements, consistent with the goals of the OCS Lands Act. As noted previously, bidding credits represent a monetary value assigned by BOEM to the actions or factors demonstrated or committed to by a bidder at a BOEM

<sup>82</sup> 43 U.S.C. 1337(p)(3).

lease auction during the competitive lease award process. The value of the bidding credits would be added to the value of the cash bid to determine who is the highest bidder.

The existing regulations at §§ 585.220 through 585.222 set forth options that BOEM can use for auction formats, bidding systems, and bid acceptance criteria for both commercial and limited leases. As discussed in section V.E above, entitled “Lease Issuance Procedures,” these regulations are overly prescriptive and require clarification and modification to provide BOEM with flexibility to adopt new and innovative auction processes and procedures. Proposed § 585.220 would replace these sections with a simplified and flexible approach that would allow BOEM to use any auction process, including multiple factor, and any procedure that is objective, fair, reasonable, and competitive; awards a lease based upon the highest total bid; and provides a fair return to the United States. This section also would clarify that the specific process for each auction would be noticed in the PSN and, subject to revisions, finalized in the FSN.

BOEM is soliciting comments on the various alternatives that could be used to incorporate incentives and preferences into the competitive leasing process.

**§ 585.221** What general provisions apply to all auctions?

This is a newly proposed section that would set forth the provisions and rules applicable to all auctions. This proposed section would codify the existing practice whereby BOEM conducts an auction if it determines after the Call that competitive interest exists for renewable energy development on parcels of the OCS and decides to issue leases within those areas. Proposed § 585.221 would codify the use of the FSN to prescribe the detailed process for any auction.

Proposed § 585.221(d) would add details to outline the circumstances under which BOEM may delay, suspend, cancel, and restart an auction due to a natural or man-made disaster, technical malfunction, security breach, unlawful bidding activity, administrative necessity, or any other reason that BOEM determines may adversely affect the fair and efficient conduct of the auction. The proposed § 585.221(d) would also add a provision that BOEM may restart the auction at whatever point it deems appropriate, reasonable, fair, and efficient for all participants; or, alternatively, BOEM may cancel the auction in its entirety.

**§ 585.222** What other auction rules must bidders follow?

Proposed § 585.222 would establish a set of procedures and rules of conduct for bidders. This section would be consistent with BOEM’s existing practices and would include requirements that bidders submit bid deposits in accordance with § 585.501, and meet §§ 585.106 and 585.107 qualification requirements. If the awarded lease is executed by an agent acting on behalf of the bidder, the bidder must submit, along with the executed lease, written evidence that the agent is authorized to act on behalf of the bidder, as is already required under existing § 585.224(g). Notably, this section would explicitly prohibit bidders from disclosing their auction strategies and economic valuations of the lease area to other bidders listed in the FSN in such a way as to adversely affect the ability of the United States to obtain a fair return from the auction. This prohibition is aimed at deterring pre-auction communications among bidders regarding their preferred lease areas or the maximum amount they are willing to bid, which could constitute an explicit or tacit agreement that has the effect of reducing competition for a particular lease. Such communications between bidders may undermine an auction’s competitiveness and adversely affect the ability of the United States to obtain a fair return from the auction.

This proposed provision would not impede commercial speech by bidders regarding their participation in the auction. For example, public announcements regarding a bidder’s intent to participate in an upcoming OCS renewable energy auction would not be prohibited by the proposed rule. BOEM nonetheless seeks comment on whether the proposed language constitutes an appropriate and effective means of preventing anti-competitive bidder behavior and on whether there are alternative means of achieving this goal.

**§ 585.223** What supplemental information will BOEM provide in a PSN and FSN?

Proposed § 585.223 would contain a non-exhaustive list of supplemental auction details likely to be contained in a PSN and FSN. Although this section lacks an analogue in the existing regulations, the supplemental details listed in this section generally are consistent with the information that BOEM has provided in recent FSNs. This section would clarify the concept of the next highest bidder and would describe the process to determine the

next best bid if the provisional winner fails to meet its obligations or is otherwise unable to acquire the lease. The next best bidder criteria would be detailed in the PSN and FSN.

**Competitive Lease Award Process—  
Post-Auction Provisions**

**§ 585.224** What will BOEM do after the auction?

Proposed § 585.224 would outline the steps that BOEM would take following the end of an auction. This section would make explicit existing practices that are consistent with the OCS Lands Act and that have proven effective in BOEM’s auctions thus far. Proposed § 585.224 would retain BOEM’s existing authority in §§ 585.222(a)(2) and 585.224(f) to reject and accept bids and to withdraw lease areas between auction completion and lease execution. Finally, if an auction results in unsold lease areas, proposed § 585.224 would clarify that BOEM has the discretion to re-auction those unsold areas after the auction by restarting the competitive leasing process at any reasonable and appropriate step in that process.

**§ 585.225** What happens if BOEM accepts a bid?

Proposed § 585.225 would set forth the steps BOEM and the provisional winner would take after the auction. This section would function similarly to the existing regulations at § 585.224(a), (b), (c), and (e), but contains several new proposed provisions. First, this proposed section would provide that BOEM will refund without interest any portion of the provisional winner’s bid deposit that exceeds the amount due from the winning bid. Second, this proposed section would permit BOEM to extend the 10-business-day deadline for the completion of the provisional winner’s obligations to allow greater flexibility in addressing unforeseen situations, such as a Federal Government shutdown or pandemic. This proposed section would require payment of the first 12 months’ rent within 45-calendar days after the provisional winner receives the executed lease from BOEM as opposed to 45-calendar days after receiving the three unexecuted lease copies as provided under the existing regulations. Finally, under this proposed section, the provisional winner would become the winning bidder when BOEM executes the lease after any properly filed appeals under proposed § 585.118(c) have been resolved. The effective date of the lease would continue to be governed by § 585.237.

§ 585.226 What happens if the provisional winner fails to meet its obligations?

The existing regulations at § 585.224(d) state that a winning bidder will forfeit its bid deposit if it fails to execute and return the lease within 10-business days or otherwise fails to comply with applicable regulations or terms of the FSN. While no winning bidder has failed to meet its post-auction obligations thus far, BOEM recognizes the potential for such a situation and seeks to provide flexibility in its response to such a possibility.

Proposed § 585.226 would specify that, if BOEM determines that a provisional winner has failed to meet its obligations under § 585.225(b) or § 585.316, or has otherwise failed to comply with applicable laws, regulations, BOEM may require forfeiture of the bid deposit. In the event the bid deposit exceeds the winning bid, BOEM would limit the required forfeiture amount to the lower value, that of the winning bid.

Proposed § 585.226 would also set forth the additional actions BOEM could take if a provisional winner fails to meet its obligations. These possible actions would include refusal to award other leases won by the provisional winner in the auction and referral to DOI's Administrative Remedies Division for suspension or debarment review pursuant to 2 CFR part 180 as implemented at 2 CFR part 1400. This section also would specify that if the provisional winner fails to meet its obligations or is otherwise unable to execute a lease, BOEM could select a new provisional winner by either repeating the auction, selecting the next best bid, or using other criteria specified in the FSN.

#### Noncompetitive Lease Award Process

§ 585.231 Will BOEM issue leases noncompetitively?

BOEM proposes several modifications, both significant and minor, to its noncompetitive leasing process. First, this proposed rule would clarify paragraph (a) to re-affirm that BOEM will only use the noncompetitive process if it “determines after public notice of a proposed lease, easement, or right-of-way that there is no competitive interest.”<sup>83</sup>

Second, in the event that a company submits a request for BOEM to issue a lease and submits the required acquisition fee, BOEM may issue a request for information in the **Federal Register** to determine whether any other

companies also have an interest in that area. In the event that BOEM issues such a request for information and no responses are received, BOEM may issue a lease noncompetitively. The proposed rule would revise paragraph (b) to clarify that BOEM has discretion to determine whether an unsolicited lease request should be the subject of a request for information. BOEM occasionally receives unsolicited requests for areas that it may deem inappropriate for leasing without seeking public input (e.g., previously leased areas or areas that straddle a USCG traffic separation scheme). In the event that BOEM elects not to issue a request for information in response to the unsolicited lease request, BOEM would not issue a lease noncompetitively and will refund the acquisition fee. BOEM occasionally receives unsolicited requests for areas that it may deem inappropriate for leasing without seeking public input (e.g., previously leased areas or areas that straddle a USCG traffic separation scheme).

Third, the proposed rule would add a timeline and sunset provision to BOEM's noncompetitive leasing processes. The existing regulations establish neither an expiration date for a DNCI nor deadlines for the noncompetitive leasing process. If BOEM were to leave the regulations in the current form, this could allow a company to obtain a noncompetitive lease in situations where there may potentially be other interested lessees in the future (due to changes in circumstances). Accordingly, proposed paragraphs (d) and (e) would create the following milestones for the noncompetitive leasing process:

- After publication of the DNCI, BOEM would prepare and provide the beneficiary with a written estimate of the fees for conducting an environmental review of lease issuance.
- The beneficiary has 90-calendar days from receipt of the fee estimate to pay the fee.
- The DNCI would expire within 2 years of publication, unless BOEM determines, on a case-by-case basis, that this timeframe should be extended.

BOEM specifically seeks comment on the reasonableness of its proposed schedule and timeframes for a DNCI.

Fourth, the proposed rule in paragraph (d)(3) would clarify that BOEM would conduct an environmental review of a noncompetitive lease request that it determined had no competitive interest and which BOEM intends to process. Fifth, the proposed rule would specify that BOEM will make a decision whether to issue a

noncompetitive lease after the completion of its environmental review and other reviews required by Federal law (e.g., CZMA). BOEM, in § 585.231(f), clarifies that for noncompetitive leases, CZMA concurrences would be processed pursuant to 15 CFR part 930 subpart D. Based on current experience, BOEM expects this to be a rare occurrence.

Finally, the proposed rule would make several miscellaneous technical corrections and clarifications to this section. The proposed rule would revise the existing section heading to more accurately reflect the scope of this section. The proposed rule would replace the “request for interest” referenced in § 585.231(b) with a request for information consistent with the proposed revisions to § 585.116. The proposed rule would make administrative changes to § 585.231(c)(1) and (g)(1)(ii) to reflect updated cross-references in the proposed rule. This proposed rule also would revise the payment due date for the first 12 months' rent on a lease consistent with proposed changes to §§ 585.225 and 585.503. The remainder of the noncompetitive lease issuance process would remain substantially the same as in the existing regulations.

§ 585.232 May I acquire a lease noncompetitively after responding to a request for information or a Call for Information and Nominations?

The proposed rule would revise the existing section heading of § 585.232 to reflect the change in nomenclature in proposed § 585.116 from “request for interest” to “request for information.” It would also revise paragraph (c) to incorporate changes to the cross-referenced provisions associated with the proposed rule.

#### Commercial and Limited Lease Periods

§ 585.235 What are the lease periods for a commercial lease?

BOEM proposes to overhaul the organization and duration of its commercial leases as well as the triggers that move a lease from one period of a lease to another. These changes are responsive to industry comments, reflect BOEM's experience administering its leasing program, and arise from other aspects of this proposed rulemaking—particularly the elimination of the SAP for met buoys.

Under the existing regulations, BOEM's commercial leases comprise three “terms”:

- A preliminary term of 12 months, starting at lease execution and typically ending with the submission of a SAP.

<sup>83</sup> 43 U.S.C. 1337(p)(3).

- A site assessment term of 5 years, starting at SAP approval and ending with the submission of a COP.

- An operations term of 25 years, typically starting at COP approval.

BOEM automatically tolls the preliminary and site assessment terms during its review of submitted plans; a lessee may request additional time extensions if it does not timely file a plan.

The proposed rule would make numerous changes to the text and structure of § 585.235(a). First, BOEM proposes to rename its lease “terms” as lease “periods” to more appropriately describe the progression of its commercial leases. This change in nomenclature is intended to more accurately distinguish between the lease term (which is the entire duration of the lease) and its constituent parts.

Next, BOEM proposes to merge the preliminary and site assessment terms into one 5-year preliminary period that commences at the lease effective date and ends either with the submittal of a COP to BOEM for its review or 5 years after the lease effective date. This change flows directly from BOEM’s proposal to eliminate the SAP requirement for met buoys.<sup>84</sup> Given that most lessees are not expected to submit a SAP if the proposed rule is finalized, BOEM believes it would no longer make sense for a lease to contain a deadline for SAP submittal—much less to use that deadline to trigger a new phase of the lease. (As discussed in the section-by-section analysis of § 585.601 in section VI.G. below, BOEM also proposes to remove all deadlines for SAP submittal.)

The proposed rule also would create two new lease periods between the submission of the COP and the commencement of operations: the *COP review period*, which starts at COP submittal and ends upon BOEM’s decision on whether to approve or disapprove the COP, or approve the COP with modifications; and the *design and construction period*, which starts at COP approval and ends at the commercial operations start date or at the expiration of the period set forth in the approved COP as modified. BOEM does not propose a fixed length for the COP review period in order to preserve regulatory flexibility and to allow for harmonization with recent government-wide permit review streamlining initiatives (e.g., FAST-41).<sup>85</sup> The approved COP will include a timeline

for the design and construction period, subject to modification as mutually agreed to by BOEM and the lessee.

BOEM also proposes to set a 1-year time limit on a lessee after its initial COP submission to resolve issues identified by BOEM and to finalize its COP in order to incentivize lessees to submit properly completed COPs that are ready for BOEM review and to encourage lessees to make COP revisions diligently in response to BOEM comments.

BOEM seeks public comment regarding the need and means to set specific regulatory timelines while preserving sufficient flexibility within the *COP review period* and the *design and construction period*.

Lastly, BOEM proposes that the operations period commence at the commercial operations start date and remain in effect for 30 years. Presently, the 25-year operations term includes the time required for a lessee to prepare and BOEM to review its FDR and FIR plus the time required to construct the project—both of which significantly subtract from the time available for commercial operations. BOEM believes that its proposed revision would create certainty and facilitate project financing by providing a fixed period of time in the lease dedicated to commercial operations. BOEM also proposes to extend the operations period to 30 years based on industry comments that this timeframe better reflects the design life of an offshore wind facility.

BOEM recognizes that if this rule is finalized as proposed, existing lessees may request modification of their leases to conform to the new lease periods. BOEM intends to address these requests on a case-by-case basis but understands that these new lease periods might be advantageous to current lessees and that there are administrative benefits to standardizing lease terms. BOEM seeks comment on whether the final rule should contain a provision setting forth a process by which existing lessees can request lease amendments to conform their leases to the structure proposed in the amended § 585.235 and, potentially, to other regulatory changes in this proposed rule.

In addition to revamping the structure of its commercial leases, BOEM proposes several provisions aimed at granting a lessee more flexibility throughout the development process. First, BOEM proposes expanding the criteria in § 585.235(b) for granting extensions of lease periods. Currently, the only enumerated basis for extending the preliminary term or the site assessment term is if a lessee submits a plan late. BOEM proposes to clarify that

it has discretion to extend any lease period for good cause. Second, BOEM proposes a new § 585.235(c) clarifying that a lessee may propose an alternative lease period schedule if it chooses to develop its lease in phases. Numerous lessees have expressed interest in phased development of their leases, but the existing regulations do not explicitly set forth a process for modifying the default lease schedule if a lessee intends to defer development on portions of its lease area. Third and relatedly, BOEM proposes a new § 585.235(d) providing that a lessee may seek modification of the default lease schedule in its application to segregate its lease or consolidate two adjacent leases. As discussed in the section-by-section analyses of §§ 585.410 and 585.413 in section VI.E. below, BOEM previously has approved lease segregation and consolidation requests and anticipates more such requests in the future. However, the existing regulations do not explicitly address the effects these actions might have on lease schedules.

§ 585.236 If I have a limited lease, how long will my lease remain in effect?

BOEM proposes to substitute the word “period” for “term” to ensure consistency with its proposed changes to § 585.235. Additionally, because limited leases may allow a wide range of activities, the proposed rule would replace the existing 5-year operations term with an operations period of a duration determined by BOEM prior to auction (if the lease is issued competitively) or negotiated with the applicant (if the lease is issued noncompetitively). In either case, the length of the term will depend on the intended use of the lease. The existing regulations specify that extensions of the preliminary term if the GAP for the limited lease was not submitted in a timely manner and was submitted late without specifying any reason. BOEM proposes to allow extensions of a limited lease’s preliminary period only if the requested extension can be justified for “good cause,” consistent with its proposed changes to § 585.235. BOEM also proposes to allow extensions of a limited lease’s operations period if the requested extension can be justified for “good cause.”

#### *D. 30 CFR Part 585, Subpart D—Rights-of-Way Grants and Right-of-Use and Easement Grants for Renewable Energy Activities*

Subpart C, Rights-of-Way Grants and Right-of-Use and Easement Grants for Renewable Energy Activities, is being redesignated as subpart D to accommodate the addition of a new

<sup>84</sup> See *supra* section V.A, entitled “Site Assessment Facilities,” for complete discussion.

<sup>85</sup> Fixing America’s Surface Transportation Act Title 41, 42 U.S.C. 4370m *et seq.*

subpart B, as noted in section VI.B above.

#### ROW Grants and RUE Grants

§ 585.301 What do ROW grants and RUE grants include?

BOEM proposes to remove the prescribed width of ROWs, in order to implement the PDE approach discussed above in sections V.B, entitled “Project Design Envelope,” and V.C., entitled “Geophysical and Geotechnical Surveys,” and to maintain consistency with BOEM’s proposed revisions to § 585.628(g) for project easements. BOEM also proposes a technical change to clarify that a subsea cable ROW may need to accommodate multiple associated facilities.

§ 585.302 What are the general requirements for ROW grant and RUE grant holders?

BOEM proposes a technical correction to update the cross references in this section, reflecting that an applicant must meet the qualifications set forth in §§ 585.106 and 585.107 in order to acquire a ROW or RUE.

§ 585.303 How long will my ROW grant or RUE grant remain in effect?

BOEM proposes to substitute the word “period” for “term” to ensure consistency with its proposed changes to § 585.235. By renaming the preliminary term of a ROW and RUE as the preliminary period, BOEM intends to more accurately distinguish between the entire term of a ROW and RUE and its constituent parts. As with proposed § 585.235, BOEM also anticipates that this proposed revision would clarify whether and when a grant holder has control of its ROW or RUE. BOEM also proposes to provide the same flexibility for the operations period of its grants as it has with the operations period for its limited leases in proposed § 585.236(a)(2), both in terms of start date and duration. Finally, BOEM proposes to allow extensions of either grant period, consistent with its proposed changes to § 585.235. The existing regulations specify that the GAP must be submitted no later than the end of the preliminary period in order for the grant to remain in effect. BOEM proposes that the preliminary period may be extended if the requested extension can be justified for “good cause.”

Current regulations specify that the ROW grant or RUE grant will remain in effect for as long as it is being used for the purpose for which it was granted. This proposed rule would modify that provision by introducing an operations period as set by BOEM (if the grant is

issued competitively) or negotiated by the parties (if the grant is issued noncompetitively). The duration of the operations period will depend on the intended use of the grant. BOEM also proposes to allow extensions of a ROW grant or RUE grant operations period if the requested extension can be justified for “good cause” as determined by BOEM.

#### Obtaining ROW Grants and RUE Grants

§ 585.305 How do I request a ROW grant or RUE grant?

BOEM proposes to eliminate the paper copy requirement, consistent with its proposed changes to § 585.110.

§ 585.306 What action will BOEM take on my request?

Proposed § 585.306 would add the two provisions to paragraph (b) from the existing § 585.309 and would remove the existing § 585.309. This consolidation would simplify and clarify this subpart. The remaining proposed changes are editorial in nature.

§ 585.309 When will BOEM issue a noncompetitive ROW grant or RUE grant?

This section would be removed by the proposed rule as redundant (see analysis of § 585.306).

§ 585.310 What is the effective date of a ROW grant or RUE grant?

This section would be re-numbered in the proposed rule as § 585.309. The substance of this section would remain unchanged.

§ 585.316 What payments are required for ROW grants or RUE grants?

BOEM proposes a technical correction to reflect that ONRR is the appropriate payee.

#### *E. 30 CFR Part 585, Subpart E—Lease and Grant Administration*

Subpart D, Lease and Grant Administration, is being redesignated as subpart E to accommodate the addition of a new subpart B, as noted in section VI.B above.

#### Noncompliance and Cessation Orders

§ 585.400 What happens if I fail to comply with this part?

BOEM proposes to amend this section to ensure that its civil penalty authority for OCS renewable energy activities addresses a more complete range of violations and is coextensive with the authority that Congress granted it in the OCS Lands Act. Section 24 of the OCS Lands Act authorizes the Secretary to assess civil penalties for failure to

remedy the violation of a regulation, lease, or permit condition, as well as for a violation that threatens “serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property . . . or the marine, coastal, or human environment.”<sup>86</sup>

Section 585.400(f) currently states that BOEM may assess civil penalties “as authorized by section 24 of the OCS Lands Act, if you fail to comply with any provision of this part or any term of a lease, grant, or order issued under the authority of this part, after notice of such failure and expiration of any reasonable period allowed for corrective action.” This section also states that “[c]ivil penalties will be determined and assessed in accordance with the procedures set forth in 30 CFR part 550, subpart N.” Located in BOEM’s OCS minerals regulations, subpart N permits BOEM to assess civil penalties on “[v]iolations that you do not correct within the period BOEM grants” and “[v]iolations of the oil spill financial responsibility requirements at 30 CFR part 553.”<sup>87</sup>

BOEM’s existing renewable energy regulations do not explicitly authorize assessment of civil penalties for the full range of violations envisioned under the OCS Lands Act, such as those for which notice of the violation and an opportunity to correct is not required. BSEE’s OCS oil, gas, and sulfur regulations, on the other hand, allow immediate civil penalties for violations that “constitute, or constituted, a threat of serious, irreparable, or immediate harm or damage to life . . . , property, any mineral deposit, or the marine, coastal, or human environment” or that “cause serious, irreparable, or immediate harm” to the same.<sup>88</sup> BOEM is proposing to add a new paragraph (f)(2) to cover these situations and to allow BOEM to take appropriate action by assessing civil penalties in the event that a lessee or operator commits such failures.

#### Designation of Operator

§ 585.405 How do I designate an operator?

BOEM proposes technical edits to this section to maintain consistency with proposed changes in the organization of §§ 585.626 and 585.645.

<sup>86</sup> 43 U.S.C. 1350(b).

<sup>87</sup> 30 CFR 550.1404.

<sup>88</sup> 30 CFR 250.1404(b)–(c).



### Lease or Grant Assignment, Segregation, and Consolidation

§ 585.408 May I assign my lease or grant interest?

BOEM proposes to eliminate specific elements of the regulatory requirements for an assignment application in paragraph (b) that are already provided in the form that is currently on the BOEM website for leases (Form BOEM–0003) and grants (Form BOEM–0002). BOEM proposes to retain the paper copy requirement for assignment applications. The proposed rule would also clarify that paragraph (e) refers to business mergers and not to lease consolidations that are discussed in proposed § 585.413.

### Lease or Grant Assignment

The proposed rule would add a new section 585.410 to explain when an assignment would result in a segregated lease. Sections 585.410 and 585.411 would be renumbered to §§ 585.411 and 585.412, respectively.

§ 585.410 When will my assignment result in a segregated lease?

BOEM's existing regulations authorize approval of requests to segregate its leases into multiple smaller leases under § 585.408(a), which allows lessees to "assign all or part of your lease or grant interest . . . subject to BOEM approval under this subpart." BOEM previously has approved lease segregation and anticipates receiving more requests as some lessees may decide to develop their leases in a phased fashion. Accordingly, BOEM proposes to clarify the process for segregating leases by adopting language from the lease segregation provision in its OCS mineral resources regulations at 30 CFR 556.702.

§ 585.411 How does an assignment affect the assignor's liability?

This section is re-numbered to reflect addition of the proposed § 585.410 regarding lease segregation.

§ 585.412 How does an assignment affect the assignee's liability?

This section is re-numbered to reflect addition of the proposed § 585.410 regarding lease segregation. The proposed rule would correct the extent of an assignee's regulatory liability by replacing "subchapter" with "part" in the first sentence of paragraph (b).

§ 585.413 How do I consolidate leases or grants?

BOEM proposes to add procedures for consolidating two or more adjacent leases or grants. BOEM currently has the

authority to approve lease consolidations by mutual agreement under the terms of its existing leases (and has already done so once), but no regulatory provision directly addresses such requests. Proposed § 585.413 would codify BOEM's existing practices in the regulations by establishing a procedure for requesting and approving consolidations of leases and grants. BOEM notes that adjacent leases or grants may have different terms and be at differing stages of development.

BOEM proposes to harmonize such differences as explained below. If the time remaining in the relevant lease periods differs between the leases or grants to be consolidated, BOEM will default to the shorter remaining periods in the new lease or grant. The lessee or grant holder may request an extension pursuant to the proposed § 585.235(b). If other terms and conditions differ between the leases or grants to be consolidated, BOEM will default to the most recently issued terms and conditions contained in the leases or grants to be consolidated. The lessee or grant holder may request modifications to such terms and conditions. BOEM will consider and, in its discretion, approve such requests on a case-by-case basis for good cause. BOEM also proposes to assess the need to modify existing financial assurances before approving a proposed consolidation and to terminate any lease or grant that has been consolidated fully into a new lease.

### Lease or Grant Suspension

§ 585.415 What is a lease or grant suspension?

BOEM proposes to change the word "term" to "period" in light of its proposed changes to § 585.235. This change would not alter the substance of this section.

§ 585.416 How do I request a lease or grant suspension?

BOEM proposes several technical corrections and clarifications to this section. First, BOEM has reorganized the contents of a suspension application for clarity and added a catch-all category to provide BOEM with additional flexibility. Second, BOEM proposes to add a new paragraph (b) to be consistent with its proposed revisions to § 585.235(b). Other proposed changes are for editorial clarity.

§ 585.417 When may BOEM order a suspension?

BOEM proposes to eliminate the paper copy requirement for this

regulation, consistent with its proposed changes to § 585.110.

§ 585.420 What effect does a suspension order have on my payments?

BOEM proposes technical edits to this section to combine paragraphs (b) and (c), and would modify the requirement that directed suspensions would always be accompanied by a fee suspension. As a result, all payment suspensions would be at the discretion of BOEM. BOEM also proposes to clarify that regardless of whether a lease or grant suspension is approved or ordered, BOEM has discretion to "waive or defer" (rather than "suspend") payments while the lease or grant is suspended. BOEM believes that more flexibility is needed than its existing regulations provide regarding its treatment of such payments, given the wide range of potential justifications for a suspension.

### Lease or Grant Renewal

§ 585.425 May I obtain a renewal of my lease or grant before it terminates?

BOEM proposes a technical change to conform to its proposed changes to § 585.235 by changing the word "term" to "period" wherever it appears.

§ 585.426 When must I submit my request for renewal?

BOEM proposes a technical change to conform to its proposed changes to § 585.235 by changing the word "term" to "period" wherever it appears.

§ 585.427 How long is a renewal?

BOEM proposes technical changes to conform to its proposed changes to § 585.235 by changing the word "term" to "period" wherever it appears.

§ 585.429 What criteria will BOEM consider in deciding whether to renew a lease or grant?

BOEM proposes adding a catch-all provision to the list of criteria in this section that it will use in determining whether to renew a lease or grant. BOEM's discretion to consider relevant factors that may not be enumerated is particularly important, given the difficulty of foreseeing what issues may arise in the future when BOEM begins to receive lease renewal requests.

### Lease or Grant Termination

§ 585.432 When does my lease or grant terminate?

BOEM proposes technical changes to conform to its proposed changes to § 585.235 by changing the word "term" to "period" wherever it appears.

### Lease or Grant Relinquishment, Contraction, or Cancellation

BOEM proposes to consolidate the three undesignated subheaders in the existing regulations into one, for clarity and efficiency. The existing separate undesignated subheaders denote lease or grant relinquishment, lease or grant contraction, and lease or grant cancellation.

**§ 585.435** How can I relinquish a lease or a grant or parts of a lease or grant?

The proposed rule would make a lease or grant relinquishment effective on the date BOEM receives a properly completed relinquishment form. Under the existing § 585.435(a), a lease or grant relinquishment is effective on the date BOEM approves a relinquishment application. This change would conform with BOEM's approach to mineral resource lease relinquishments in 30 CFR 556.1101, under which a relinquishment takes effect as soon as the lessee or grant holder files the necessary information with BOEM in a form available on BOEM's website. Relinquishment would no longer require BOEM approval. As in the existing regulations, relinquishment of a lease or grant would have no impact on a lessee's or grant holder's obligations accrued under those instruments before relinquishment. After BOEM receives the properly completed relinquishment form, ONRR will bill the lessee or grant holder the amount due on any outstanding obligations that accrued under the relinquished lease or grant.

**§ 585.438** What happens to leases or grants (or portions thereof) that have been relinquished, contracted, or cancelled?

The existing regulations do not provide a process by which BOEM can reissue a lease or grant for an area (or portions thereof) previously covered by a lease or grant that has been relinquished under § 585.435, contracted under § 585.436, or cancelled under § 585.437. Proposed § 585.438 would allow BOEM to restart the competitive leasing process at any point it deems reasonable after a lease or grant (or portion thereof) is relinquished, contracted, or cancelled. In such situations under the proposed rule, BOEM would be obligated to engage in additional environmental analysis and consultation, if necessary, due to elapsed time or changed conditions. The proposed rule also would allow BOEM to reoffer the lease or grant to the next best bidder if a competitively issued lease or grant (or portion thereof) is relinquished or cancelled within 6

months of the auction. BOEM believes that within 6 months, the next best bid may still be deemed sufficient to constitute fair return under 43 U.S.C. 1337(p)(2)(A).

### *F. 30 CFR Part 585, Subpart F— Payments and Financial Assurance Requirements*

Subpart E, Payments and Financial Assurance Requirements, is being redesignated as subpart F to accommodate the addition of a new subpart B, as noted in section VI.B above.

#### Payments

**§ 585.500** How do I make payments under this part?

The proposed rule would replace the due date in paragraph (c)(1) for the bonus balance payment on a competitively issued lease from “[l]ease issuance” to “[w]ithin 10-business days of receiving the unsigned lease” and would add the section reference. The proposed rule also would replace the word “issuance” with “execution” in the “Due date” column of (c)(3) and (c)(8). These changes would provide clarity and would give a lessee or a grant holder more time to make the required payments. The proposed rule also would substitute the word “period” for “term” in paragraphs (a) and (c) to ensure consistency with proposed changes to § 585.235. The proposed rule also would replace the annual ROW rent of \$70 per mile with an annual rent of \$5 per acre as determined by proposed § 585.301(a). This change would provide BOEM consistency in pricing OCS usage for RUEs and ROWs. See further discussion below in the section-by-section analysis of § 585.508. Finally, the proposed rule would eliminate the word “statute” in the phrase “statute mile” in the “Amount” column of (c)(8) because “miles” is defined as nautical miles in § 585.112.

**§ 585.501** What deposits must I submit for a competitively issued lease, ROW grant, or RUE grant?

Existing § 585.501 describes the deposit a bidder must submit to participate in specific types of auctions for a lease, RUE, or ROW. Proposed § 585.501 would eliminate provisions specifying deposits by auction type and would provide BOEM with discretion to establish bid deposit requirements in the FSN. This proposal would ensure consistency with proposed § 585.220.

**§ 585.503** What are the rent and operating fee requirements for a commercial lease?

Proposed § 585.503 would revise the payment due date for the first 12 months' rent on a commercial lease. The winning bidder would have to pay the rent no later than 45-calendar days after receiving a copy of the executed lease from BOEM. The existing regulations state that the rent payment is due no later than 45-calendar days after BOEM sends the unsigned copies of the lease to the provisional winner. This proposed section effectively would give lessees slightly more time to pay the first 12 months' rent.

BOEM also proposes several technical corrections to conform to the definition of “commercial operations” in § 585.112 and BOEM's proposed changes to § 585.235 as well as to provide more specificity regarding the regulations that govern payments to ONRR.

**§ 585.504** How are my payments affected if I develop my lease in phases?

BOEM proposes a technical change to provide a more specific citation to the regulations that govern payments to ONRR.

**§ 585.505** What are the rent and operating fee requirements for a limited lease?

BOEM proposes technical changes to provide a more specific citation to the regulations that govern payments to ONRR and to conform to the proposed nomenclature change from “term” to “period” in § 585.235.

**§ 585.506** What operating fees must I pay on a commercial lease?

BOEM proposes to amend the introductory paragraph to clarify that operating fees are triggered at the start of commercial operations as defined in § 585.112, rather than at the start of energy generation. Under the current regulations, generation of electricity during testing would be subject to operating fees. This rule would exempt electricity generated for testing purposed from operating fees. BOEM typically does not consider energy generated during testing periods, prior to final project verification under § 585.708(a)(5), to constitute commercial operations. BOEM also proposes technical changes to provide a more specific citation to the regulations that govern payments to ONRR; to conform to the definition of “commercial operations” in § 585.112; to identify ONRR as the correct payee for operating fees; and to define “DOE.”

§ 585.507 What rent payments must I pay on a project easement?

BOEM proposes technical changes to provide a more specific citation to the regulations that govern payments to ONRR and to conform to proposed changes to §§ 585.235 and 585.628(g).

§ 585.508 What rent payments must I pay on ROW grants or RUE grants associated with renewable energy projects?

BOEM proposes technical changes to provide a more specific citation to the regulations that govern payments to ONRR; to remove the word “nautical” as redundant given the definition of “miles” in § 585.112; and to make minor editorial adjustments that enhance readability. BOEM also proposes to simplify ROW rental payments to reflect that, under the proposed rule, ROW corridors would have sufficient width to accommodate all planned grant activities. BOEM believes that most grant holders would prefer an initially wider corridor that would encompass all areas of actual seabed disturbance, rather than the existing regulations limiting corridors to a 200-foot width with a subsequent determination of the “affected area” outside that corridor. Grant holders would be able to relinquish unused portions of the right-of-way corridor after construction, as set forth in proposed § 585.301, and would be relieved of their obligation to pay rent subsequently for those relinquished areas.

To promote consistency in BOEM’s valuation of OCS rental pricing across RUEs and ROWs, the proposed rule also would replace the annual ROW rent of \$70 per mile with an annual rent of \$5 per acre as determined by the proposed § 585.301(a). This change would streamline BOEM’s existing rental fee calculations and ensure consistent valuation of all OCS acreage for grants. Under existing regulations, a ROW grant holder pays an annual rent of about \$2.89 per acre and a RUE grant holder, \$5 per acre.<sup>89</sup> BOEM has determined that no compelling reason supports this differential between RUE and ROW annual rental rates.

§ 585.509 Who is responsible for submitting lease or grant payments to ONRR?

The proposed rule makes a technical correction to the section heading by

<sup>89</sup> An annual ROW rent of \$2.89 per acre for a one-mile, 200-foot-wide corridor is derived as follows: A 1-mile, 200-foot-wide corridor has an area equivalent to 1,056,000 square feet or 24.24 acres (43,560 square feet per acre); \$70 divided by 24.24 acres is \$2.89 per acre.

replacing “BOEM” with “ONRR” as the correct payee.

§ 585.510 May BOEM defer, reduce, or waive my lease or grant payments?

BOEM proposes to change the regulations to allow that BOEM may grant requests for deferral of rental and operating fee payments, in addition to reductions or waivers. BOEM seeks to avoid confusion by explicitly including this authority in the proposed rule. BOEM also proposes a technical change to conform to BOEM’s proposed changes to § 585.235.

§ 585.515 What financial assurance must I provide when I obtain my commercial lease?

This section is removed in the proposed rule as explained in the analysis of § 585.516.

Financial Assurance Requirements for Commercial Leases

§ 585.516 What are the financial assurance requirements for each stage of my commercial lease?

The proposed rule would amend several key aspects of this section. As discussed in section V.G.3(b) above, entitled “Revision of Lease-Specific Financial Assurance Amount,” BOEM proposes to replace the existing \$100,000 lease-specific bond required before BOEM will execute a commercial lease or approve an assignment of an existing commercial lease with a bond or other authorized financial assurance in the amount of 12 months’ rent to ensure BOEM and the U.S. taxpayers are not under-bonded during the preliminary term of a lease if annual rent exceeds \$100,000, which it often does. BOEM proposes to remove the existing § 585.515 as surplusage in light of this proposed change, as that section relates to a “flat-fee” bond that would no longer be required. Section 585.515 currently subjects the minimum base bond to adjustment every 5 years based on changes to the Consumer Price Index—All Urban Consumers, but such adjustment is no longer necessary if the initial bond is tied to the annual rent for the lease. Under the proposed rule, § 585.515 would be reserved.

Second, BOEM proposes to amend the timing of the SAP decommissioning bond in paragraph (a)(2) so that it is due before the installation of SAP facilities, rather than at the time of SAP approval. This change is proposed in recognition of the fact that liability for SAP facilities does not accrue until installation.

Third, BOEM proposes to eliminate the bond or other financial assurance that is presently due before COP approval, for the reasons set forth in

section V.G.3(a) above, entitled “Elimination of COP Approval Financial Assurance Requirement.”

Fourth, BOEM proposes several revisions to the decommissioning financial assurance requirement. Most importantly, the proposed rule would establish that a lessee may propose—and BOEM may approve or disapprove—incremental funding of a financial assurance instrument that satisfies this requirement. This proposal would allow BOEM to approve the incremental provision of financial assurance during the operation of the facility for the reasons set forth in section V.G.3(d) above, entitled “Staged Funding of Decommissioning Accounts.” The proposed rule would provide more flexibility than BOEM’s existing regulatory authority, which allows decommissioning financial assurance to be provided “in accordance with the number of facilities installed or being installed.”<sup>90</sup>

The remaining proposed changes to this section are intended for clarification and organizational purposes. For instance, BOEM proposes to adopt the term “supplemental” to describe all financial assurance for obligations other than the first 12 months’ rent. BOEM also would remove language in paragraph (b) regarding a lessee’s ability to increase its financial assurance. The text is redundant of § 585.517 requirements that a lessee must provide financial assurance to cover all lease obligations and that BOEM may require additional financial assurance at any time during the lease after providing a lessee notice and an opportunity to be heard. BOEM also proposes to change the timing for providing supplemental financial assurance for marine hydrokinetic projects in paragraph (c) in recognition that obtaining a Federal Energy Regulatory Commission (FERC) license, like the approval of a COP, may not itself result in the accrual of obligations. The additional flexibility regarding the timing of financial assurance will assist BOEM in coordinating with FERC.

§ 585.517 How will BOEM determine the amounts of the supplemental financial assurance requirements associated with commercial leases?

This section describes BOEM’s general requirements for assessing supplemental financial assurance. BOEM proposes several technical revisions to streamline the processes set forth in this section and to maintain consistency with other proposed changes. First, the proposed rule would

<sup>90</sup> 30 CFR 585.516(a)(4).

simplify terminology by renaming as “supplemental financial assurance” every type of financial assurance required after the initial financial assurance is provided. BOEM also proposes to combine paragraphs (a) and (b). Under the new paragraph (a), BOEM proposes to clarify that the obligation to maintain supplemental financial assurance for 12 months of rent applies only to the extent the rent is not covered in the initial financial assurance provided under § 585.516(a)(1). This language would ensure that BOEM does not require a lessee to provide more financial assurance than necessary to secure the rent obligation. Additionally, BOEM proposes to eliminate most of the existing paragraph (c)(2) as duplicative of the proposed paragraph (a); BOEM would simply cross-reference to the list of obligations that must be bonded in proposed paragraph (a).

**§ 585.520** What financial assurance must I provide when I obtain my limited lease, ROW grant, or RUE grant?

BOEM proposes to adopt an approach to calculate the initial financial assurance for limited leases, ROWs, and RUEs that is analogous to the proposed approach for commercial leases in § 585.516. Instead of the existing fixed dollar amount (\$300,000), the proposed rule would require financial assurance in an amount equal to 12 months’ rent before BOEM will execute the limited lease, ROW, or RUE. The rationale for this proposed change is that unpaid rental payments are the only liability that a limited lessee<sup>91</sup> or grant holder accrues at that stage of development. As with the proposed elimination of § 585.515, inflationary (or deflationary) adjustments would be obsolete if the minimum bond is based only on rental obligations. BOEM believes this rule change will decrease the initial cost burden on limited lessees and grant holders in most instances because 12 months of rent for these areas is likely to be less than \$300,000. At all times, financial assurance would still be required to be sufficient to cover a limited lessee’s obligations pursuant to § 585.521.

**§ 585.521** Do my financial assurance requirements change as activities progress on my limited lease or grant?

BOEM proposes revisions to better align limited lease and grant financial assurance requirements with those proposed for a commercial lease. Proposed language in paragraph (a) clarifies that BOEM may increase or

decrease the amount of a limited lessee’s or a grant holder’s financial assurance depending on the estimated costs to meet its accrued obligations. The proposed rule would clarify that the amount of financial assurance provided must be no less than the amount required to meet a limited lessee’s or a grant holder’s obligations. Additionally, BOEM would revise this section to clarify that payments are due to the “United States” rather than the “Government.” This section includes new language providing for notice and opportunity to object if BOEM proposes to adjust the financial assurance requirements on a limited lease or grant. The proposed rule would allow a limited lessee or a grant holder to request reduction of its financial assurance requirement if the amount assured continues to be greater than the sum of the accrued obligations. Under the proposed rule, BOEM would have sole discretion to approve such a request. BOEM proposes to substitute “supplemental financial assurance” for “decommissioning bond” consistent with the proposed terminology changes discussed in the § 585.516 analysis. Finally, the proposed rule would add a provision to the effect that a limited lessee or a grant holder may fund its financial assurance incrementally. In its discretion, BOEM would approve or disapprove such a request and the schedule for providing the financial assurance. The added provision for incremental funding of the financial assurance is intended to reduce the costs associated with building and developing the lease or grant in situations where the amount of financial assurance provided would be delayed until it became necessary.

BOEM would require financial assurance prior to the net present value of the project turning negative when factoring in decommissioning costs. This calculation would change based upon actual operating efficiency of the project (both at start-up and throughout its lifecycle) and realized prices obtained through the PPA based upon the local market. BOEM would require an annual re-evaluation of the financial condition of the project and would adjust the timing of required financial assurance accordingly.

**Requirements for Financial Assurance Instruments**

**§ 585.526** What instruments other than a surety bond may I use to meet the financial assurance requirement?

BOEM proposes to revise this section to clarify that a lessee and a grant holder have choices in proposing alternative

instruments to satisfy their financial assurance obligations. As discussed in section V.G.3(c) above, entitled “Additional Authorized Financial Assurance Instruments,” BOEM reads the existing section as allowing a lessee and a grant holder to propose financial assurance instruments that are not specifically enumerated in the regulations. The proposed rule would explicitly authorize BOEM to approve non-listed instruments or combinations of instruments. Responding to recent requests by several lessees, the proposed rule specifically would identify letters of credit as acceptable financial assurance instruments but would condition their use. The proposed conditions for letters of credit would include a minimum credit rating, a minimum term of 1 year, automatic renewal in the absence of a notice of cancellation to BOEM, and a venue provision requiring adjudication of any dispute in U.S. district court. These conditions would ensure that letters of credit provide protection to the U.S. taxpayer to the same extent as a surety bond. Additionally, the proposed rule would remove the provision in paragraph (a)(2) stating that cash financial assurance is to be deposited and maintained in the U.S. Treasury by BOEM.

**§ 585.528** May I use a third-party guaranty to meet the financial assurance requirement for lease or grant activities?

The proposed rule would grant BOEM the authority to allow a third-party guarantor to cap its liability on a guaranty provided to meet lessee and grant holder financial assurance obligations. As discussed in section V.G.3(c) above, entitled “Additional Authorized Financial Assurance Instruments,” BOEM’s existing regulations require a third-party guaranty to cover all obligations. BOEM believes that lessees and grant holders would benefit if a third-party guarantor could cap its liability. BOEM proposes to allow this increased flexibility by adding language in paragraph (a) stating that a third-party guaranty may be “in an amount determined by BOEM” and by stating in paragraph (c)(5) that a guarantor must either take corrective action or provide, within 7-calendar days or other agreed upon time period, sufficient funds “up to the value of the guaranty” to enable BOEM to remedy the violation. BOEM also proposes to clarify that a guarantor must satisfy only the legal and financial aspects of §§ 585.106 and 585.107; because a guarantor only provides financial assurance, it does not need to be technically qualified. Additionally,

<sup>91</sup> Throughout section VI, the term “limited lessee” means a holder of a limited lease.

BOEM proposes a technical correction to remove the term “operating rights owner,” a legal status that exists in the offshore oil and gas regulatory framework but not in the legal framework for OCS renewable energy.

§ 585.529 Can I use a lease- or grant-specific decommissioning account to meet the financial assurance requirements related to decommissioning?

As discussed further in section V.G.3(d) above, entitled “Staged Funding of Decommissioning Accounts,” BOEM proposes to allow a lessee or grant holder to fund a decommissioning account in stages over the term of a lease or grant. This authority would be set forth in a revised paragraph (a)(2) stating that a lessee or grant holder “must fund the account in the amount determined by and according to the funding schedule approved by BOEM” and in a new paragraph (a)(3) stating that a decommissioning account “may be funded in whole or in part during the operations period of a lease or grant.” A proposed funding schedule would be subject to BOEM’s approval (and potential modification) after BOEM conducts the appropriate risk analysis.

#### Changes in Financial Assurance

§ 585.532 What happens if my surety wants to terminate the period of liability of my financial assurance?

In the section heading and paragraph (a), BOEM proposes to substitute the term “financial assurance” for “bond” because financial assurance is inclusive of all types of security—including, but not limited to, surety bonds—that BOEM allows under this subpart. To be responsive to the question posed in the section heading, BOEM also proposes to remove “a” and add “your” before “financial assurance” in paragraph (a).

BOEM also proposes to revise paragraph (b) by introducing a time constraint for when your surety must submit to BOEM its request to terminate the period of liability under its financial assurance and notify you of that request. The time constraint proposed in this rule is no less than 90 days before the proposed termination date. BOEM requests comment on whether the 90-day time frame is appropriate. BOEM also proposes to remove the clause “or have not met all obligations of your lease or grant,” and to add the words “on your lease or grant” to recognize that the surety continues to be responsible for obligations and liabilities that accrued during the period of liability and before the date on which

BOEM terminated the period of liability. Therefore, the lessee or grant holder must provide replacement financial assurance only if it intends to continue activities on its lease or grant.

§ 585.533 How does my surety obtain cancellation of my financial assurance?

BOEM proposes to substitute the term “financial assurance” for “bond” in the section heading for the reasons set forth in the analysis of § 585.532 and to use “cancel” throughout this section to avoid confusion arising from the use of “release.” In addition, BOEM proposes to revise this section by replacing the “only if” conditional at the end of the existing paragraph (a), which limits the cancellation of a financial assurance whose period of liability has terminated to two situations, with a timing clause stating when cancellation would occur and by adding two additional situations when cancellation would be appropriate. The first added situation would cover the circumstance when the period of liability is terminated for financial assurance, but the provider of replacement financial assurance does not agree to assume the liabilities of the terminated period of liability. In such a situation, the proposed rule would provide that the financial assurance would be cancelled 7 years after the termination of the period of liability. The second situation would cover the circumstance when the financial assurance obligations are the subject of an appeal or judicial litigation. In such a situation, the proposed rule would provide that the financial assurance would be cancelled upon completion of the appeals process or judicial litigation.

BOEM also proposes to streamline this section by removing surplusage in the existing paragraph (b) that is redundant with the requirements and procedures set forth in proposed § 585.534.

§ 585.534 When may BOEM cancel my financial assurance?

BOEM proposes significant organizational and substantive revisions to this section. First, BOEM proposes to substitute “financial assurance” for “bond” and “pledged security” for the reasons set forth in the analysis of § 585.532 and to use “cancel” throughout this section to avoid confusion arising from the use of “release.”

Second, the proposed rule would amend the first column of the chart (which would be part of a new paragraph (a)) to collapse the distinction between different types of financial assurance for commercial leases, supplemental or decommissioning

obligations, limited leases, and grants. BOEM has concluded that the cancellation of financial assurance for different types of leases and grants should be subject to the same regulatory requirements.

Third, the proposed rule would remove the existing second column of the chart referring to the “period of liability” associated with BOEM’s financial assurance cancellation; this column is unnecessary because the final column contains all needed information regarding when BOEM may cancel lessees’ and grant holders’ financial assurance. Termination of the period of liability is addressed adequately in § 585.532.

Fourth, BOEM would revise the first sentence of the third column in the existing paragraph (a) to provide that financial assurance will not be cancelled until 7 years after all operations and activities under the lease or grant cease, including decommissioning and site clearance, or a longer period as necessary to complete any appeals or judicial litigation related to a surety’s financial assurance obligation. This change recognizes the statutes of limitations on claims after all operations and activities cease under the lease or grant, including decommissioning and site clearance. BOEM also proposes to introduce more flexibility to cancel financial assurance under certain circumstances not covered under existing regulations. For example, the proposed rule would give BOEM additional flexibility to cancel financial assurance before the termination of a lease or grant when the assurance is no longer needed, the operations for which the supplemental financial assurance was provided ceased prior to accrual of any decommissioning obligation, or BOEM determines that the assurance was erroneously assessed. BOEM proposes this change in response to requests from lessees to depart from BOEM’s existing requirement that lessees hold financial assurance for 7 years after a lease ends. BOEM believes the proposed language would provide needed flexibility to release a lessee’s or a grant holder’s financial assurance whenever BOEM determines that it is no longer needed.

Finally, BOEM proposes to further protect the U.S. taxpayer against certain risks by adapting language from the equivalent oil and gas regulations at 30 CFR 556.906(e). The proposed rule would allow BOEM to require reinstatement of a financial assurance instrument as if no cancellation occurred if an obligor’s payment under a lease or grant is rescinded due to insolvency or bankruptcy, or if the

responsible party represents to BOEM that it has discharged its obligations under the lease or grant, and the representation was materially false when the bond was cancelled.

§ 585.535 Why might BOEM call for forfeiture of my financial assurance?

For the reasons set forth in the section-by-section analysis of § 585.532 above, BOEM proposes a technical correction to substitute the phrase “financial assurance” for the word “bond.”

Revenue Sharing With States

§ 585.541 What is a qualified project for revenue sharing purposes?

BOEM proposes a technical correction to remove the word “nautical” as redundant given the definition of “miles” in § 585.112.

§ 585.542 What makes a State eligible for payment of revenues?

BOEM proposes a technical correction to remove the word “nautical” as redundant given the definition of “miles” in § 585.112.

*G. 30 CFR Part 585, Subpart G—Plans and Information Requirements*

Subpart F, Plans and Information Requirements, is being redesignated as subpart G to accommodate the addition of a new subpart B, as noted in section VI.B above.

§ 585.600 What plans and information must I submit to BOEM before I conduct activities on my lease or grant?

The existing regulations require lessees to submit a SAP for BOEM approval before conducting any site assessment activities on their commercial leases. Under proposed § 585.600(a)(1), SAPs would be required only for site assessment activities involving an engineered foundation. This change is intended to exempt floating site assessment facilities, such as met buoys, from the SAP requirement, and is being proposed for the reasons set forth in section V.A. above, entitled “Site Assessment Facilities.” Changes to these regulatory provisions would not affect the applicability of other agencies’ statutory and regulatory requirements. The term “engineered foundation” would be defined in this section to include met towers or other structures that are installed using a fixed-bottom foundation requiring professional engineering design and assessment of sediment, meteorological, and

oceanographic condition.<sup>92</sup> A lessee planning to install an industry-standard met buoy using a gravity anchor for site assessment would not require a SAP. If a lessee is uncertain whether its proposed site assessment facility had an engineered foundation that would trigger SAP requirements, it would be encouraged to consult with BOEM at the earliest opportunity. BOEM seeks public comment on whether the definition of “engineered foundation” is appropriate (and, if not, what that definition should be) or whether a different term should be used to determine whether a facility requires a SAP.

BOEM also proposes to add language that would allow it the discretion to waive certain information or analysis requirements in a proposed plan if the applicant can demonstrate that, among other things, the information or analysis is known to BOEM, the relevant resource is not present or affected, or the information is not needed or required by a State’s coastal management program. The language in this provision is modeled on BOEM’s oil and gas regulations at 30 CFR 550.201(c) and would grant BOEM more flexibility to tailor its plan requirements to unique elements of a specific proposal without needing to issue regulatory departures under § 585.103.

§ 585.601 When must I submit my plans to BOEM?

The existing regulation requires submittal of any SAPs either before or within 12 months after the date of lease or grant issuance. BOEM sees no persuasive reason for this requirement and removing it could give useful flexibility to lessees and grant holders without any notable downside. Some lessees have chosen to file a COP prior to a SAP, and there may be other instances where additional data collection methods that would require a SAP are undertaken after the filing of the COP. Additionally, BOEM expects that the requirement would have little application if SAPs are no longer required for met buoys as proposed, because nearly all SAPs submitted to date have been for met buoys. BOEM, therefore, proposes to allow a lessee or grant holder to submit a SAP anytime during the life of its lease or grant, but would continue to require a lessee or grant holder to submit a SAP before conducting any activities that require a SAP.

BOEM also proposes revising the timing for COP submittal to be consistent with proposed changes to the

lease periods in § 585.235. Under the proposed rule, a COP is due within 5 years of the lease effective date. BOEM proposes to clarify that the 12-month period for GAP submittal starts at the effective date of the limited lease or grant consistent with the existing § 585.236 and the proposed § 585.303(a). The remaining proposed changes to this section are edits for clarity.

§ 585.602 What records must I maintain?

The proposed rule would expand the recordkeeping requirements, which currently only refer to data and information related to plan compliance. Under the proposed rule, lessees and grant holders would also be required to retain records relating to lease or grant compliance, including SMS requirement. This change is proposed to ensure a fuller compliance record is available to monitor trends and to ensure safety and SMS effectiveness.

Site Assessment Plan and Information Requirements for Commercial Leases

§ 585.605 What is a Site Assessment Plan (SAP)?

BOEM proposes revising § 585.605(a) to be consistent with its proposed changes to § 585.600(a)(1) and to delete text that it views as duplicative of the requirements set forth in proposed §§ 585.606 through 585.613 (describing the SAP submittal and review process). BOEM’s proposed changes to the renumbered paragraphs (b) and (c) are editorial in nature and intended to clarify the existing text.

§ 585.606 What must I demonstrate in my SAP?

BOEM proposes to delete the requirement that a lessee demonstrate that its site assessment activities will collect the necessary information and data required for a COP as covered in § 585.626. BOEM has determined that this requirement is unnecessary because it is not BOEM’s responsibility to ascertain at this stage if site assessment data will be sufficient to meet the needs of the COP review; rather, BOEM intends to focus its review on the potential environmental impacts of the site assessment facility itself. Other edits in this section are technical corrections or are intended to further clarify the text.

§ 585.607 How do I submit my SAP?

BOEM proposes to eliminate the paper copy requirement, consistent with its proposed changes to § 585.110.

<sup>92</sup> See *supra* note 28 for additional discussion of engineered foundations.

## Contents of the Site Assessment Plan

## § 585.610 What must I include in my SAP?

BOEM proposes to clarify and streamline the data requirements for SAP submission. Most of these proposed changes are driven by proposed changes to the COP requirements (as discussed in section V.C. above, entitled “Geophysical and Geotechnical Surveys”); BOEM proposes making similar changes across the corresponding SAP and GAP regulations for purposes of consistency. A more detailed description of the rationale for these proposed revisions can be found in section V.C. and the analysis of proposed § 585.626.

First, the proposed rule would add language in paragraph (a) intended to clarify that a lessee may use a PDE in its SAP (see section V.B). The introductory language in proposed paragraph (a)<sup>93</sup> would clarify that project specific information may be provided as a range of parameters. While BOEM is not specifying in this proposed rule what that range should be, BOEM’s requirement cannot be met without providing both a minimum and a maximum value. For example, a lessee would not satisfy this requirement by saying, for example, that at least 200 turbines would be installed. For example, a lessee could propose two types of met tower foundations in its SAP, but would need to describe which foundation type is expected to have the greatest impact on each affected resource. Paragraph (a)(5) would include language clarifying that a lessee can propose a range of potential locations for its site assessment facility as well as an indicative layout (*i.e.*, a less detailed design) as an alternative to a location plat. Paragraph (a)(6) would clarify that only preliminary design information is required. Such drawings would be submitted with the FDR under § 585.701 if the project is deemed complex and significant under § 585.613(a).

Second, BOEM proposes to eliminate the existing requirement in paragraph (a)(9) that a CVA nomination (if necessary under § 585.613(a)) be included with the SAP; instead, a lessee would be able to nominate a CVA before or after SAP submittal under proposed § 585.706. As described further in

section V.D.3(a) above, entitled “Certified Verification Agent Roles and Flexibility,” the intent of delinking the CVA nomination from the SAP, COP, or GAP is to allow a lessee or grant holder to obtain the benefits of CVA review at the earliest feasible opportunity. In lieu of a CVA nomination, a lessee would need only to describe its project verification strategy for proposed activities that would require a SAP. For a SAP, this would include an analysis of whether a lessee believes the project should be considered complex or significant, thereby triggering the design, fabrication, and installation requirements in proposed subpart H. Under the proposed rule, in the event that a lessee or a grant holder under proposed § 585.645(c)(4) recommends that its project be designated complex or significant, the lessee or grant holder would include a general description of its strategy for complying with the requirements of the proposed subpart H.

Third, BOEM proposes clarifying and technical edits to several other informational requirements in paragraph (a), including adopting language from the existing COP informational requirements (§ 585.626) regarding decommissioning; documents incorporated by reference; and lists of Federal, State, and local permits.

Fourth, the proposed rule would rewrite the SAP data requirements in paragraph (b) to mirror its proposed changes to the COP and GAP regulations. The reasons for these changes are described in more detail in section V.C. above, entitled “Geophysical and Geotechnical Surveys,” and in the description of proposed § 585.626(b). Note that the detail and thoroughness of these data requirements would be commensurate with the scope and complexity of the proposed activities. Under proposed § 585.600(b), lessees could seek waivers of certain data requirements by providing their rationale for why that data is unnecessary.

Finally, BOEM proposes deleting the existing paragraph (c), which concerns the simultaneous submittal of a SAP and either a COP or (for a marine hydrokinetic project) FERC license application. BOEM believes that paragraph (c) is unnecessary because such simultaneous submittals still would be permitted under other provisions of this subpart in the proposed rule and because much of this paragraph is repetitive of proposed § 585.601(b).

§ 585.611 What information and certifications must I submit with my SAP to assist BOEM in complying with NEPA and other applicable laws?

BOEM proposes clarifications to the following informational requirements in this section. These proposed clarifications are consistent with BOEM’s present expectations for SAP submittals and, therefore, should not create additional burdens on lessees:

- Water quality information would explicitly include impacts from vessel discharges, as is already required under the Clean Water Act.
- Archaeological resources information would explicitly include information on all types of historic properties, as is already required under the NHPA.
- Coastal and marine uses information would explicitly include assessments of fisheries and navigational safety risk. Lessees would be required to submit the latter assessment to the USCG.

Additionally, in the section heading and regulatory text, the more appropriate phrase “applicable laws” would replace “relevant laws.” The remaining proposed changes to this section are edits for improved organization, clarity, or consistency, including moving most of the language from the existing paragraph (b) into a new paragraph (c).

§ 585.612 How will my SAP be processed for Federal consistency under the Coastal Zone Management Act?

BOEM proposes to modify paragraph (a) to add that the submittal to BOEM must conform with the requirements of § 585.110. BOEM proposes to clarify in paragraph (b) that lessees need to submit a consistency certification for their SAPs under 15 CFR part 930, subpart E, only if BOEM has not previously submitted a consistency determination to that State under 15 CFR part 930, subpart C, that covered the proposed site assessment activities, as opposed to always providing the submittal as described in the current regulations. The existing regulations require lessees to submit a consistency certification in all cases.

BOEM, in consultation with NOAA, finds that implementation of the OCS renewable energy program thus far shows that there are three potential CZMA Federal consistency reviews under BOEM’s actions: (1) when BOEM conducts a lease sale and awards a lease, ROW, or RUE and provides a State or States with a CZMA consistency determination under 15 CFR part 930, subpart C; (2) when an applicant

<sup>93</sup> For clarity, BOEM proposes standardizing the presentation of the required content for a SAP, COP, and GAP so that paragraph (a) outlines the general informational requirements and paragraph (b) outlines the survey and investigations data requirements. The equivalent COP and GAP sections would be re-arranged under the proposed rule consistent with this approach.

submits a CZMA consistency certification to BOEM for a COP, if required by 15 CFR part 930, subpart E; and (3) when the activity is located outside a geographic location described in the State's coastal management program pursuant to 15 CFR 930.52, and an applicant, on its own accord, submits a consistency certification to a State or States through BOEM under 15 CFR part 930, subpart E. For the lease sales held so far, States have reviewed associated SAP or GAP activities through the review of BOEM's consistency determination under 15 CFR part 930, subpart C. BOEM and NOAA expect that this will continue and that it should be the rare case where a separate CZMA consistency review is required for a SAP or GAP.

**§ 585.613** How will BOEM process my SAP?

BOEM proposes to harmonize the existing language in paragraph (e)(2) with the equivalent provision in § 585.628(f)(2) regarding actions lessees may take in the event of COP disapproval. BOEM also proposes to clarify that SAP resubmission must occur within a reasonable time and proposes to make analogous changes to the equivalent COP and GAP requirements in §§ 585.628 and 585.648.

Activities Under an Approved SAP

**§ 585.614** When may I begin conducting activities under my approved SAP?

BOEM proposes a minor edit to paragraph (b) by adding the word "description" after Safety Management System to clarify that it is a description of the Safety Management System that must be submitted, in conformance with the requirements outlined in § 585.810.

**§ 585.617** What activities require a revision to my SAP, and when will BOEM approve the revision?

The proposed changes include the addition of a new paragraph (b) to clarify that revisions to a lessee's SAP may trigger a reassessment of the significance and complexity of the proposed activities. The proposed revisions under paragraph (d) would eliminate unnecessary verbiage in the list of changes or modifications that could trigger the revision of an approved SAP by merging the substance of existing paragraphs (c)(4), (5), and (6) into revised paragraphs (d)(2) and (3). BOEM also proposes to align this section with the PDE concept as described in section V.B. above, entitled "Project Design Envelope," and to ensure consistency with the proposed § 585.610(a)(5). The proposed rule

would make minor editorial changes to improve clarity and readability.

**§ 585.618** What must I do upon completion of approved site assessment activities?

BOEM proposes technical edits in paragraph (a) to ensure consistency with proposed changes to § 585.235 eliminating the site assessment term of a commercial lease. The proposed paragraph (a) would apply only if site assessment facilities are installed before COP submittal.

Paragraph (e) of the existing regulation states that "you must initiate the decommissioning process [for your site assessment activities] . . . upon termination of your lease." However, the proposed subpart J of the regulations contemplates that lessees will initiate the decommissioning process by submitting a decommissioning application as much as 2 years before the lease expires. BOEM proposes to revise this section for clarity and consistency with §§ 585.905 and 585.906.

Construction and Operations Plan for Commercial Leases

**§ 585.621** What must I demonstrate in my COP?

The proposed changes are technical edits to ensure consistency with certain proposed changes to § 585.606 for SAPs.

**§ 585.622** How do I submit my COP?

BOEM proposes to eliminate the paper copy requirement, consistent with its proposed changes to § 585.110.

Contents of the Construction and Operations Plan

**§ 585.626** What must I include in my COP?

BOEM proposes to clarify and streamline the data requirements for COP submission in several key respects.

First, the proposed rule would add language in paragraph (a) intended to clarify that a lessee may use a PDE in its COP, as further discussed above in section V.B, entitled "Project Design Envelope," section V.C., entitled "Geophysical and Geotechnical Surveys," and the analysis of § 585.610.

Second, BOEM proposes replacing the existing obligation in paragraph (a)(18) to submit a CVA nomination with the COP with a requirement to submit a "project verification strategy" describing the lessee's plan for complying with the CVA regulations at §§ 585.705 through 585.714. As discussed further in section V.D.3(a) above, entitled "Certified Verification Agent Roles and Flexibility," this

proposed amendment is intended to provide lessees with the flexibility to nominate (and for BOEM to approve) a CVA either before or after COP submittal.

Third, the proposed rule would make both clarifying and substantive changes to the data submittal requirements in this section. Most of the proposed changes relate to nomenclature and organization and are intended to more precisely reflect BOEM's expectations for a lessee's COP surveys. For instance, BOEM proposes to merge the existing "shallow hazards," "geological," "geotechnical," and "site investigation" survey requirements in paragraphs (a)(1), (2), (4), and (6) into "geological and geotechnical" survey requirements set forth in a new § 585.626(b)(1). BOEM believes this change would clarify any stakeholder confusion and would reduce redundancy. The shallow hazards survey is part of both geological and geotechnical surveys (and thus does not actually constitute an independent survey), geological and geotechnical surveys have overlapping purposes, and the "site investigation" is effectively an amalgam of the above-described surveys.

BOEM intends the proposed geological and geophysical survey provisions in § 585.626(b)(1) to replace the existing prescriptive requirements with performance-based standards focused on the sufficiency of information regarding geological site conditions that BOEM needs in order to adequately review a COP. In particular, BOEM proposes to eliminate the requirements in the existing § 585.626(a)(1) regarding shallow hazard surveys as well as the requirements in the existing § 585.626(a)(4) that lessees submit "[t]he results of adequate *in situ* testing, boring, and sampling at each foundation location" and "[t]he results of a minimum of one deep boring (with soil sampling and testing) at each edge of the project area." Instead, BOEM proposes to require geophysical data sufficient to "define the geological conditions of the site's seabed that could impact, or be impacted by, the proposed project" and geotechnical data sufficient to "ground truth the geophysical surveys; support development of a geological model; assess potential geological hazards that could impact the proposed project; and provide geotechnical data for preliminary design of the facility, including type and approximate dimensions of the foundation."

BOEM believes that these new standards will provide it with flexibility to tailor its data requirements to site- and project-specific conditions without



needing to issue regulatory departures under § 585.103. To ensure BOEM will continue to have sufficient information to conduct an environmental analysis and the necessary interagency consultations, BOEM will continue performing a sufficiency review after receipt of a COP and notifying the lessee of any additional outstanding information requirements prior to completing the COP review. More importantly, the elimination of the *in situ* boring requirement will address the concerns raised by lessees and described in detail in section V.C. As discussed in section V.C., the proposed rule would not reduce the quality of geotechnical data that BOEM will review before the start of construction. Geophysical surveys would still need to identify all relevant shallow hazards, and the results of certain detailed geotechnical surveys to inform engineering decisions would now need to be submitted with the FDR as set forth in proposed § 585.701.

BOEM also proposes to add flexibility to the timing for when the required archaeological surveys as currently set forth in § 585.626(a)(5) are submitted. Under the existing regulations, a lessee must submit archaeological survey data at the same time it submits a COP. BOEM proposes to allow a lessee to submit the results of certain detailed subsea archaeological surveys with the FDR under the proposed § 585.701(a)(11). BOEM would allow the deferral of these surveys on a case-by-case basis. As discussed further in section V.C., the purpose of this proposed amendment is to facilitate additional flexibility in finalizing project design, recognizing that the flexibility could result in a lessee assuming additional permitting and business risk. As in its proposed changes to § 585.610, BOEM also proposes to clarify that required reports under paragraph (b)(3) of this section include information on all historic properties listed or eligible for listing on the National Register of Historic Places in accordance with the NHPA and its implementing regulations.

The proposed rule also would add § 585.626(b)(4), clarifying BOEM's need for desktop data on oceanographic and meteorological conditions sufficient to "support preliminary design of the facility and support the analysis of wake effects, sediment mobility and scour, and navigational risks." The existing § 585.627(a)(1) requires the submittal of similar data on conditions that could create hazards for a project. BOEM believes obtaining more generalized meteorological and oceanographic information to better inform modeling,

design, and environmental reviews is also necessary and appropriate. BOEM proposes only clarifying edits to the existing biological survey requirements in this section. BOEM proposes analogous changes, where appropriate, in the equivalent regulations for SAPs and GAPs in §§ 585.610 and 585.645 respectively.

The remaining proposed changes to this paragraph are edits for organization and clarity.

§ 585.627 What information and certifications must I submit with my COP to assist BOEM in complying with NEPA and other applicable laws?

BOEM proposes clarifications to the informational requirements in paragraph (a) consistent with the proposed changes to § 585.611(a).

BOEM also proposes to clarify the wording of the consistency certification required in paragraph (b)(1) by revising the language to provide that the applicant must certify that the proposed activities described in detail in the applicant's plan comply with "the enforceable policies of the applicable States' approved coastal management programs (as opposed to "the State(s) approved coastal management program(s)") and will be conducted in a manner that is consistent with such programs." This change limits BOEM's interest to the enforceable policies of the applicable States' programs, not to the CZMA as a whole.

BOEM also proposes a technical correction to paragraph (c). That provision requires a lessee to submit an oil spill response plan (OSRP) with its COP "as required by 30 CFR part 254." Because the cross-referenced regulations apply only to OCS oil and gas activities, BOEM proposes to require that a lessee submit an OSRP "in compliance with 33 U.S.C. 1321, including information identified in 30 CFR part 254 that is applicable to your activities." This statutory provision is not limited to oil and gas activities, and grants BOEM and its lessees more flexibility to craft OSRPs that are commensurate with the estimated worst-case discharge from a renewable energy facility. The regulation clarifies that the OSRP must include information identified in 30 CFR part 254 that is applicable to the lessee's activities. BOEM, in consultation with BSEE, intends to issue guidance regarding the recommended contents of an OCS renewable energy OSRP.

Additionally, in the section heading and regulatory text, the more appropriate phrase "applicable laws" would replace "relevant laws." The proposed rule would eliminate the

paper copy requirement consistent with BOEM's proposed changes to § 585.110 and would make minor editorial changes to improve clarity and readability.

§ 585.628 How will BOEM process my COP?

BOEM proposes to add a provision to paragraph (c) stating that, after all information requirements for the COP are met and after the appropriate environmental assessment or draft environmental impact statement, if required, has been published, the lessee or grant holder would be required to submit its COP consistency certification and associated data and information under 15 CFR part 930, subpart E to the applicable State CZMA agencies through BOEM. BOEM has determined that submitting the COP to the States for Federal consistency review prior to the publication of a draft NEPA analysis would be premature because the States would not have all the relevant information at their disposal to make a State's consistency decision.

In practical terms, this would change the date on which a COP is considered an "active application" under 15 CFR 930.51(f). Therefore, the CZMA review period (or the start of the 30-day time period for a State to submit an unlisted activity review request to NOAA under 15 CFR 930.54) would start on the date BOEM issues the notice of availability for the draft NEPA analysis instead of the date BOEM issues the notice of intent to publish a draft NEPA analysis. For CZMA regulatory purposes, this change would make the draft NEPA analysis "necessary data and information" under 15 CFR 930.58.

BOEM proposes several changes to the project easement requirements in paragraph (g). Section 585.112 of the existing regulations defines a "project easement" to mean "an easement to which, upon approval of your COP or GAP, you are entitled as part of the lease for the purpose of installing, gathering, transmission, and distribution cables, pipelines, and appurtenances on the OCS as necessary for the full enjoyment of the lease." Section 585.628(g) provides that if BOEM approves your project easement, it will issue an addendum to your lease specifying the terms of the project easement. Under the existing regulations at § 585.628(g), a project easement may include off-lease areas that contain the sites on which cable, pipeline, or associated facilities are located and "do not exceed 200 feet (61 meters) in width, unless safety and environmental factors during construction and maintenance of the associated cables or pipelines require a

greater width[.]” However, though a lessee will have gathered sufficient data to know the general route (or routes) of its cables by the COP-approval stage, the precise cable route may not be known until a lessee has conducted detailed surveys of hazards, such as unexploded ordnance, following COP approval. A lessee occasionally may discover potential hazards while conducting installation activities that may necessitate a deviation from the proposed route. Consequently, a 200-foot-wide easement may be too narrow at the COP-approval stage to accommodate a reasonable degree of uncertainty regarding the final export cable route and could result in time-consuming amendments to the project easement before or after cable installation.

In order to provide flexibility to the lessee and minimize the need for subsequent project easement amendments, BOEM proposes to amend paragraph (g) to allow BOEM to issue project easements of “sufficient off-lease area to accommodate potential changes at the design and installation phases of the project for locating cables, pipelines, and other appurtenances necessary for your project.” Although a larger easement would result in greater rental fees under § 585.507, a lessee may relinquish any unused portions of the easement after construction is completed. BOEM believes that this approach will allow a lessee to right-size the width of its project easements on a case-by-case basis, depending on site conditions and a lessee’s particular needs. This revision would be consistent with the PDE strategy described in section V.B. above because it maximizes a lessee’s ability to make design choices later in the development process without revising its COP or reopening the permit review process. BOEM would still require that a COP include sufficient survey data for whatever project easement areas are requested. The proposed rule also would not affect the quantity and quality of data that BOEM presently requires before the lessee may commence installation of the export cable.

BOEM also proposes a technical correction to paragraph (g) that would make project easements subject to the same conditions as ROWs and RUEs under § 585.302(b): that the United States can grant rights in the area to other lessees or grant holders that do not unreasonably interfere with operations on the easement. Among other reasons, these provisions are critical to ensure that nearby existing or future offshore wind lessees are not definitively

foreclosed from using the same general cable routes established by an earlier lessee. In the long run, cable routes shared by multiple projects could result in lower environmental impacts, streamlined permitting, and economic efficiencies.

Other remaining proposed changes to this section are edits for clarification, better organization, and consistency with changes to the equivalent SAP and GAP regulations.

#### Activities Under an Approved COP

§ 585.634 What activities require a revision to my COP, and when will BOEM approve the revision?

The proposed revisions under paragraph (c) maintain consistency with proposed changes to § 585.617 for SAPs by eliminating unnecessary verbiage in the list of changes or modifications that could trigger the revision of an approved COP and by merging the substance of existing paragraphs (c)(4), (5), and (6) into revised paragraphs (c)(2) and (3). BOEM also proposes to incorporate in paragraph (c)(3) the PDE concept for a “range” of facility locations for the reasons set forth above in sections V.B, entitled “Project Design Envelope,” and V.C, entitled “Geophysical and Geotechnical Surveys,” and to ensure consistency with proposed § 585.626(a). By incorporating the PDE, BOEM believes it can be less prescriptive regarding the threshold that would trigger a COP revision and can allow that threshold to be proportionate to the magnitude of the proposed project changes. BOEM seeks comments on what threshold should trigger COP revision regarding changes in position or layout of bottom disturbances. The remaining proposed revisions to this section are edits for clarity.

§ 585.637 When may I commence commercial operations on my commercial lease?

Paragraph (a) of the existing section provides that commercial operations may commence 30-calendar days after “the CVA or project engineer has submitted to BOEM the final Fabrication and Installation Report for the fabrication and installation review, as provided in § 585.708.” However, § 585.708(a)(5)(ii) allows the lessee to commence commercial operations 30-calendar days after BOEM receives the CVA verification report unless BOEM raises objections with the lessee during that time. The proposed rule would remedy this inconsistency by moving the existing § 585.708(a)(5)(ii) provision into section 585.637 and would change

“certification” to “verification” to maintain consistency with other provisions of the proposed rule. The proposed rule also would clarify that commercial operations may commence 30-calendar days after BOEM deems submitted—rather than receives—the final project verification report as described in the proposed §§ 585.704 and 585.708(a)(5) provided that BOEM has not notified you within that time frame of any objections to the verification report and that BOEM has confirmed receipt of critical safety systems commissioning records, as described in § 585.708(a)(6). This proposed change is designed to ensure that BOEM is in possession of complete and accurate submissions prior to the commencement of its limited review period. Finally, to improve organization, the proposed rule would move the existing § 585.713 requirement to notify BOEM within 10-business days of starting commercial operations into section 585.637.

BOEM is aware that electricity may be generated and distributed during testing activities conducted by a Lessee prior to submitting the proposed reports in this section (required as a prerequisite to beginning commercial operations). Under the existing regulations, electricity generation and distribution meets the definition of commercial operations, at § 585.112. BOEM has proposed an edit to the definition of commercial operations whereby the generation of electricity needed for the preparation of the final FIR, or the generation of electricity for testing purposes, would be excluded from the definition of commercial operations provided that such electricity is not sold on a commercial basis.

BOEM is soliciting comment on the proposed revisions to the provisions of § 585.637 for required submissions prior to commencing commercial operations, and on the revisions to the definitions of commercial activities and commercial operations in § 585.112.

§ 585.638 What must I do upon completion of my commercial operations as approved in my COP or FERC license?

The existing regulation, under paragraph (a), states that you must “initiate the decommissioning process” upon completion of your approved COP activities. However, the proposed subpart J of the regulations contemplates that lessees would initiate the decommissioning process by submitting a decommissioning application as much as 2 years before the lease expires. BOEM proposes to revise this section for clarity and

consistency with §§ 585.905 and 585.906.

General Activities Plan Requirements for Limited Leases, ROW Grants, and RUE Grants

§ 585.640 What is a General Activities Plan (GAP)?

The proposed rule would eliminate the second sentence in paragraph (b) because it is redundant with the requirements found in the existing and proposed § 585.303(a) regarding the due date for GAP submission.

§ 585.641 What must I demonstrate in my GAP?

The proposed changes include technical edits to ensure consistency with proposed changes to existing provisions of §§ 585.606 and 585.621, as appropriate.

§ 585.642 How do I submit my GAP?

BOEM proposes to eliminate the paper copy requirement for this regulation, consistent with its proposed changes to § 585.110.

Contents of the General Activities Plan

§ 585.645 What must I include in my GAP?

BOEM proposes changes to this section consistent with its proposed revisions to § 585.610 for SAPs and § 585.626 for COPs, as appropriate.

§ 585.646 What information and certifications must I submit with my GAP to assist BOEM in complying with NEPA and other applicable laws?

BOEM proposes clarifications to the informational requirements in paragraph (b) of this section similar to those proposed for SAPs in § 585.611 and COPs in § 585.627, as appropriate. As in those sections, these clarifications are consistent with BOEM's present expectations for GAP submittals and, therefore, should not create additional burdens on lessees.

Additionally, in the section heading and regulatory text, the more appropriate phrase "applicable laws" would replace "relevant laws."

§ 585.647 How will my GAP be processed for Federal consistency under the Coastal Zone Management Act?

BOEM is proposing minor changes to provide clarity and consistency with other proposed changes.

§ 585.648 How will BOEM process my GAP?

BOEM proposes minor editorial changes to this section to improve clarity, eliminate redundancy, enhance readability, and provide consistency

with proposed changes to the equivalent SAP and COP regulations.

Activities Under an Approved Gap

§ 585.652 How long do I have to conduct activities under an approved GAP?

BOEM proposes a technical revision to paragraph (a) to maintain consistency with its proposed modifications to the limited lease periods in § 585.236.

§ 585.655 What activities require a revision to my GAP, and when will BOEM approve the revision?

BOEM proposes clarifications and technical edits to the provisions regarding GAP revisions in paragraphs (a) and (c) that are analogous to the ones BOEM proposes in § 585.617 for SAP revisions and § 585.634 for COP revisions.

§ 585.657 What must I do upon completion of approved activities under my GAP?

BOEM proposes a clarification analogous to proposed changes to the corresponding SAP and COP requirements in §§ 585.618(e) and 585.638 respectively.

Cable and Pipeline Deviations

§ 585.659 What requirements must I include in my SAP, COP, or GAP regarding air quality?

BOEM proposes a technical correction to reflect Congress' 2011 CAA amendment expanding BOEM's air quality jurisdiction to offshore of the North Slope Borough of Alaska.<sup>94</sup>

*H. 30 CFR Part 585, Subpart H—Facility Design, Fabrication, and Installation*

Subpart G, Facility Design, Fabrication, and Installation, is being redesignated as subpart H to accommodate the addition of a new subpart B, as noted in section VI.B above.

Reports

§ 585.700 What reports must I submit to BOEM before installing facilities described in my approved SAP, COP, or GAP?

BOEM proposes to amend this section first to clarify that BOEM has the authority to allow lessees to submit their FDRs and FIRs for BOEM's review by stage or component. As discussed in section V.D.3(b) above, entitled "Staged Submittal of the Facility Design Report and Fabrication and Installation Report," this proposed change is intended to affirm that lessees and grant

holders have flexibility in certain circumstances to commence fabrication or construction of project components while other aspects are still under review. Under the proposed rule, a lessee's or a grant holder's ability to avail itself of this flexibility would be contingent on providing an adequate explanation to BOEM that all components will function together in an integrated manner in accordance with its project design basis—which identifies all requirements, assumptions, and methodologies essential for the project design—as verified by the project CVA. If multiple FDRs and FIRs were submitted, each component report would have its own 60-day period for BOEM to review and respond with objections once BOEM deems the report submitted, consistent with the new § 585.704. BOEM proposes to clarify that FDRs and FIRs may be submitted before or after SAP, COP, or GAP approval, though BOEM's 60-day review period will not start until the report is deemed submitted and the plan is approved. BOEM believes this proposed change is necessary to ensure that its limited period for review and objection does not begin until it has determined that the submission is complete, accurate, and ready for consideration. The changes described above are achieved by the inclusion of new paragraphs (b) and (c), and revised language to existing paragraphs (b) and (c), which BOEM proposes to redesignate as paragraphs (d) and (f).

Second, as discussed in section V.D.3 above, entitled "Definition of 'Fabrication' and Early Fabrication of Facility Components," BOEM is also revising this section to address industry concerns with long lead times associated with the procurement and fabrication of facility components. To address these concerns, BOEM is proposing revisions to the language in paragraph (b) of the existing regulations (redesignated as paragraph (d)), and to add a new paragraph (e). Paragraph (d) clarifies that fabrication and installation activities on the OCS may only commence once a lessee or grant holder has received BOEM's non-objection to the FDR and FIR or if no objections were made by the end of BOEM's 60-day review. Proposed new paragraph (e) would clarify that (i) procurement of discrete parts of the project that are commercially available in standardized form and type-certified components, or fabrication activities that do not take place on the OCS, may commence prior to the submittal of the FDR and FIR or any plans required under BOEM's regulations; and (ii) any procurement or

<sup>94</sup> 42 U.S.C. 7627.

fabrication of facility components prior to BOEM's non-objection to the FDR and FIR, or the end of BOEM's 60-day review without objections, is subject to verification by the CVA and to possible objection by BOEM prior to the installation of said components on the OCS.

In addition to the foregoing, BOEM also proposes to add in § 585.112 a definition for the term "fabrication," since the existing regulations do not define "fabrication." The proposed rule would define fabrication as the "cutting, fitting, welding, or other assembly of project elements of a custom design conforming to project-specific requirements," while excluding from this definition "the procurement of discrete parts of the project that are commercially available in standardized form and type-certified components."

Finally, BOEM proposes to revise existing paragraph (c), which is proposed to be redesignated as paragraph (f), to clarify that it has 60 calendar days to object to an FDR or FIR or to request additional information. BOEM believes this proposed change is necessary to emphasize that additional time may be needed for its review if key information is missing from a report.

These proposed changes would bring BOEM's regulations in line with industry practices and would allow orderly and efficient BOEM and CVA supervision of a project's technical development without sacrificing safety. These proposed changes also would afford greater flexibility to lessees and grant holders to begin certain procurement and fabrication (*e.g.*, manufacturing) activities at an earlier stage.

#### § 585.701 What must I include in my Facility Design Report?

BOEM proposes several modifications to the FDR submission requirements. The proposed rule would replace the requirements for floating turbines in the existing paragraph (b) with a reworded requirement in proposed paragraph (a)(6), partly for organizational purposes and partly as a technical correction because USCG regulations regarding structural integrity and stability do not apply to floating offshore wind facilities. To maintain consistency with its proposed changes to § 585.626, BOEM proposes that the FDR include the results of any detailed geotechnical surveys that were deferred as a result of proposed § 585.626(b)(1)(iii). Similarly, BOEM proposes that the FDR include the results of any archaeological surveys that were deferred on a case-by-case basis under proposed § 585.626(b)(3). To maintain consistency with the FIR and

to provide flexibility, BOEM is adding a requirement in new paragraph (a)(12) for the lessee to include design standards in the FDR. This would allow the lessee to propose design standards specific to their project instead of BOEM incorporating standards by reference into the regulations. Also, BOEM is proposing a new requirement in paragraph (a)(13) for the lessee to include information on critical safety systems, including a risk assessment that identifies the critical safety systems and a description of the identified critical safety systems. This information is necessary for the CVA to verify the commissioning of critical safety systems, as required by proposed § 585.705. The proposed rule would require the CVA to verify that the facility has been designed to provide for safety. By allowing the lessee to conduct a risk assessment to identify critical safety systems for the individual project, BOEM is providing increased flexibility for the types of equipment that can be used, especially considering the rapid pace of technology development. Finally, for regulatory flexibility, BOEM proposes a catch-all category to cover necessary project-specific information that may not be contained within the listed categories. BOEM also proposes to eliminate the third column of the table in paragraph (a) as superfluous given BOEM's proposed elimination of the paper copy requirement and to replace that column's content with a new paragraph (b) consistent with the proposed § 585.110.

The remaining proposed changes are technical corrections and include: removal of the word "proposed" from the project easement requirement in paragraph (a)(2)(iii) because the project easement would be approved already at the time of BOEM's FDR review; substitution of "verification" for "certification" in the description of the CVA's duties, as discussed in section V.D.1; addition to the CVA verification statement that the facility has been designed to provide for safety, in keeping with other proposed changes; and removal of the trade secrets provision as redundant of § 585.113.

#### § 585.702 What must I include in my Fabrication and Installation Report?

BOEM proposes several modifications to the FIR submission requirements. The proposed rule would add a requirement in new paragraph (a)(6) that lessees and grant holders submit any certificates documenting that they are adhering to a recognized quality assurance standard. This regulatory change would conform with industry practice and would allow alternate means of compliance on a

case-by-case basis. BOEM also proposes to clarify that any environmental information contained in a previously submitted corresponding plan may be incorporated by reference in an FIR to the extent that information satisfies the requirements of proposed paragraphs (a)(7)(i) through (iv). BOEM is also proposing to add a requirement in paragraph (a)(8) for the submittal of commissioning procedures for critical safety systems. This information is necessary for the CVA to verify the commissioning of critical safety systems, as required by proposed § 585.705. The proposed rule would clarify that commissioning procedures include original equipment manufacturer or other procedures for commissioning of critical safety systems. BOEM also proposes to eliminate the third column of the table in paragraph (a) as superfluous given BOEM's proposed elimination of the paper copy requirement and to replace that column's content with a new paragraph (b) consistent with the proposed § 585.110. The proposed paragraph (c) would provide clarity and added flexibility regarding project easement information submittals and requests. Finally, as with its proposed changes to the FDR requirements in § 585.701, BOEM proposes a catch-all category for necessary project-specific information that may not be covered by the listed categories.

The remaining proposed changes are largely the same as the technical corrections to § 585.701.

#### § 585.703 What reports must I submit for project modifications and repairs?

BOEM proposes to eliminate language in paragraph (a) indicating that major repairs or modifications must be "certified," consistent with the proposed changes to §§ 585.701 and 585.702. To promote safety, BOEM also proposes that any major modification or repair report contain a CVA verification statement analogous to the one required for FDRs in § 585.701 and for FIRs in § 585.702. BOEM is also proposing to clarify the definition of a "major repair" in paragraph (a)(1) to include substantial repairs to critical safety systems and the definition of a "major modification" in paragraph (a)(2) to include a substantial alteration of a critical safety system. It is essential that BOEM is made aware of major repairs and modifications to these systems and that the repairs and modifications are done in accordance with an accepted engineering practice. The remaining proposed changes are similar to technical corrections to § 585.701.

§ 585.704 After receiving the FDR, FIR, or project verification reports, what will BOEM do?

Over the past few years, BOEM has received numerous incomplete COPs and other documents that it could not properly evaluate. This has created many issues between the lessees and BOEM with respect to the status of the applications. In order to address this, BOEM is proposing to make a determination as to the completeness of the application before its review period begins. The proposed rule would provide that BOEM will have 20-calendar days to make this determination. Under the proposed rule, once BOEM makes a determination that any given report is sufficiently accurate and complete, it would deem it submitted, which would begin the applicable period of time for BOEM to review and object, as necessary.

This procedure is similar to the practice described in § 550.231 for exploration plans under the oil and gas program, which BOEM has implemented successfully for many years. BOEM is proposing to add this regulation to clarify that the reports (e.g., FDR, FIR, and project verification reports) must be deemed submitted before the 60-calendar day or 30-calendar day review “clock” begins.

#### Certified Verification Agent

§ 585.705 When must I use a Certified Verification Agent (CVA)?

The proposed rule explicitly would allow the use of multiple CVAs on a project. This change would enable a lessee or grant holder to assign the expertise of specific CVAs to the corresponding project component. This change is further discussed in the analysis of § 585.706.

BOEM proposes several modifications, clarifications, and technical corrections to this section. First, the proposed rule would add a requirement for the CVA to ensure critical safety systems are commissioned in accordance with the procedures identified in the FDR, FIR, and the project modification and repair reports and for the CVA to provide BOEM with immediate reports of incidents that affect the commissioning of critical safety systems. This addition is necessary for BOEM to meet the requirement in § 585.102(a)(1) to ensure any authorized activity is carried out in a manner that provides for safety. Also, BOEM is currently requiring a qualified third party to ensure critical safety systems are commissioned in accordance with the procedures identified in the FDR, FIR, and the

project modification and repair reports. This addition will clarify that the qualified third party should be the CVA, who is already familiar with the project. Second, the proposed rule would clarify that the CVA requirement applies unless it is waived under paragraph (c) of this section. Third, BOEM proposes to clarify that, just as multiple CVAs may be nominated for different project elements (see § 585.706 analysis), BOEM may grant partial waivers of the CVA requirement for discrete elements of a project. For instance, BOEM could determine that a hypothetical project’s electrical service platform has a standard design that does not require CVA review, while the remainder of the project still warrants such review. Fourth, the proposed rule would substitute “fabricator” and “fabricated” for “manufacturer” and “manufactured” to avoid confusion and maintain consistency with § 585.700. Fifth, the proposed rule would add a requirement that fabrications, repairs, or modifications that are the subject of a CVA waiver nonetheless must adhere to a recognized quality assurance standard. This regulatory change would maintain consistency with proposed revisions to § 585.702(a) and would conform to industry practice while still allowing for alternative compliance standards on a case-by-case basis. Sixth, the proposed rule would eliminate the requirement that waiver requests be submitted with plans, thus relieving BOEM of the obligation to consider such waiver requests as part of its plan reviews. This change would maintain consistency with other proposed changes intended to decouple the CVA nomination process from plan approval as discussed in section V.D.1. Finally, the proposed rule would change “certify” to “verify” as also discussed in section V.D.1.

The remaining proposed changes to this section are edits for clarity and consistency.

§ 585.706 How do I nominate a CVA for BOEM approval?

This section would be amended to eliminate the requirement that a lessee or grant holder nominate a CVA with its COP, SAP, or GAP. Instead, BOEM would require only that a CVA be nominated and approved before conducting the relevant verification activities. As discussed in section V.D.3(a) above, entitled “Certified Verification Agent Roles and Flexibility,” the purpose of this proposed change is to allow a lessee and a grant holder greater flexibility to onboard CVAs earlier in the project development process so they may provide independent review of design

concepts before COP submittal—as well as to replace or nominate new CVAs as needed following COP submittal. Additionally, the proposed rule would require that if a lessee or grant holder seeks to use multiple CVAs, it must nominate a general project CVA no later than COP submittal to manage the project verification strategy, to ensure CVAs are conducting their reviews in a consistent manner, and to oversee the transition areas between various project components and their associated CVAs. BOEM recognizes that the various components of an offshore wind facility must function as an integrated whole and believes this requirement for a general project CVA will help ensure that third-party verification is coordinated.

The existing regulation bars CVAs from acting in a capacity that would create a conflict of interest or the appearance of one. Because objectivity is at the core of the CVA role, BOEM proposes to clarify that the nominated CVA must not have been involved in preparing the plans, reports, analyses, or other technical submittals that it will verify. While this requirement is encompassed in the existing regulations, BOEM believes this clarification responds to inquiries it has received from industry. The remaining proposed changes to this section are technical corrections or edits for clarity.

§ 585.707 What are the CVA’s primary duties for facility design review?

The proposed rule would change “certify” to “verify” as discussed in section V.D.1. Additionally, this section would mirror proposed changes to § 585.701 by replacing the requirements for floating turbines in the existing paragraph (c) with a reworded requirement in proposed paragraph (b)(10). The proposed rule would allow, but not require, the CVA to utilize the FDR defined in proposed § 585.700. In addition to the current “verification” requirements, the proposed rule would require the CVA to verify that the facility has been designed to provide for safety and to conduct an independent assessment of the design for human safety and accident prevention. This addition is necessary for BOEM to meet the requirement in § 585.102(a)(1) to ensure any authorized activity is carried out in a manner that provides for safety.

§ 585.708 What are the CVA’s or project engineer’s primary duties for fabrication and installation review?

The proposed rule would update existing paragraphs (a)(5) and (b) by replacing the terms “certify” and “ensure” with “verify” for consistency

with the proposed changes to the CVA standard of review as discussed further in section V.D.3(a) above, entitled “Certified Verification Agent Roles and Flexibility.” The proposed rule would add a requirement in paragraph (a)(1) for the CVA to use good engineering judgment and practice when conducting an independent assessment of the commissioning of critical safety systems, would require that the commissioning of critical safety systems be consistent with § 585.705, and would require that the CVA monitor the commissioning of critical safety systems in paragraph (a)(2). Similar to paragraph (5)(i), BOEM is proposing to add paragraph (a)(6) to require the CVA to provide records documenting that critical safety systems are commissioned in accordance with the procedures identified in § 585.702(a)(8) and to identify the location of all records pertaining to commissioning of critical safety systems, as described in § 585.714(c). Unlike paragraph (5)(i), BOEM is not expecting a full report of the commissioning of critical safety systems. BOEM expects a report with the relevant data, showing the successful completion of the commissioning, test date, and signature of the CVA.

Additionally, the proposed rule would add language regarding quality assurance standards to ensure consistency with § 585.702(a)(6). For clarity and organization, BOEM also proposes to move the requirement in the existing paragraph (a)(5)(ii) regarding commencement of commercial operations to § 585.637. Additionally, BOEM proposes to add a requirement that if multiple CVAs are used—thus necessitating multiple verification reports for different project components—the general project CVA must submit the final verification report for the entire project prior to the commencement of commercial operations under § 585.637.

The remaining proposed changes to this section are edits for clarity and consistency.

**§ 585.709** When conducting onsite fabrication inspections, what must the CVA or project engineer verify?

This section would be revised to mirror the proposed changes to § 585.701 by modifying the existing paragraph (b) to remove the references to the U.S. Coast Guard and by specifying the CVA must verify the structural integrity, stability, and ballast of a floating facility. In addition, paragraph (b) is being modified to remove the requirement for consideration of foundations,

foundation pilings and templates, and anchoring systems, as well as mooring or tethering systems, because those requirements are addressed in § 585.710.

**§ 585.710** When conducting onsite installation inspections, what must the CVA or project engineer do?

BOEM proposes to simplify this section to require only that the CVA “verify” the enumerated items. BOEM intends for this change to ensure consistency with the emphasis on the “verification” standard for CVA activities discussed in section V.D.1 and reflected in other proposed changes in this subpart. BOEM also believes the terms proposed for removal are redundant of “verification.” BOEM is also proposing to add language in several locations requiring the CVA to verify the commissioning of critical safety systems to be consistent with § 585.705. A new paragraph (f) would clarify BOEM’s expectation that the CVA make periodic on-site inspections to verify: (1) the systems and equipment function as designed; and (2) the final commissioning records are complete during periodic on-site inspections. Both the OCS Lands Act and the regulations at § 585.102(a)(1) require that lessees ensure permitted activities are conducted in a manner that provides for safety. BOEM will rely on the CVA to verify that the commissioning of critical safety systems meets this obligation. The remaining changes are proposed to enhance organization, clarity, or consistency with amendments to other sections of this subpart.

**§ 585.712** What are the CVA’s or project engineer’s reporting requirements?

The proposed rule would eliminate the paper copy requirement, consistent with BOEM’s proposed changes to § 585.110.

The proposed rule also would add a requirement that the CVA report summarize any issues with facility design, fabrication, or installation, or the commissioning of critical safety systems. This requirement would allow BOEM to catalog a history of successfully resolved issues and lessons learned, enabling BOEM to assess and facilitate the improvement and evolution of the OCS renewable energy industry and the CVA program. Adding this provision to the CVA report also would codify a standard industry practice.

**§ 585.713** [Reserved]

Section 585.713 in the existing regulations is entitled “What must I do

after the CVA or project engineer confirms conformance with the Fabrication and Installation Report on my commercial lease?” Under this section in the existing regulations a lessee must notify BOEM within 10-business days of commencing commercial operations. For clarity and better organization, BOEM proposes moving that requirement from § 585.713 in the existing regulations to § 585.637 in the proposed rule to consolidate this provision with the other requirements in § 585.637 related to the commencement of commercial operations. As that was the sole provision under § 585.713, this section title would be deleted and the section would be reserved for future use.

**§ 585.714** What records relating to FDRs, FIRs, and Project Modification and Repair Reports must I keep?

BOEM proposes adding a requirement that the records of the commissioning of critical safety systems must also be kept and made available to BOEM representatives until BOEM releases the lessee from its financial assurance. The proposed rule would also require the lessee to provide BOEM with the location of the records of the commissioning of its critical safety systems. This revision would help ensure the availability of proper records prior to release of the financial assurance.

BOEM proposes a technical correction to this section to clarify that the recordkeeping requirements apply to the design, engineering, and modification and repair reports regulated in this subpart. Reference to recordkeeping requirements for SAPs, COPs, and GAPS are removed because they are addressed in the existing and proposed § 585.602. BOEM also proposes to add records of commissioning of critical safety systems to the list of records to reflect changes proposed elsewhere.

*I. 30 CFR Part 585, Subpart I—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs, and GAPS*

Subpart H, Environmental and Safety Management, Inspections, and Facility Assessment for Activities Conducted Under SAPs, COPs, and GAPS, is being redesignated as subpart I to accommodate the addition of a new subpart B, as noted in section VI.B above.

§ 585.803 How must I conduct my approved activities to protect essential fish habitats identified and described under the Magnuson-Stevens Fishery Conservation and Management Act?

The proposed rule would correct a typographical error in paragraph (b).

#### Safety Management Systems

§ 585.810 When must I submit a Safety Management System (SMS) and what must I include in my SMS?

The existing § 585.810 broadly outlines the elements that must be described in the SMS. BOEM is proposing changes that would provide greater detail regarding what the SMS must include without changing the substantive requirements. The complexity of the SMS would be dependent on the complexity of the underlying activities that it covers and proportionate to the scope of the activity being evaluated.

As discussed in section V.H above, entitled “Safety Management Systems,” two factors prompted these proposed changes. First, the offshore wind energy industry repeatedly has requested additional detail regarding BOEM’s expectations of what must be included in the SMS. Second, in coordination with OSHA and USCG, DOI has assumed primary Federal regulatory responsibility for worker safety on OCS renewable energy facilities. Both of these factors highlight the need for BOEM to elaborate on its expectations for what must be included in the SMS. The proposed rule would provide such elaboration.

The proposed rule would require a lessee to use an SMS for activities conducted on the OCS to develop or operate a lease, from met buoy placement and site assessment work through decommissioning, and to provide its SMS to BOEM upon request. The lessee would also be required to submit a detailed description of the SMS with its COP (as provided under § 585.627(d)), SAP (as provided in § 585.614(b)), or GAP (as provided in § 585.651). This addition clarifies that a structured approach to safety is both expected and required for all lease-associated work. This structured approach should take into account the risks to personnel and the environment associated with work undertaken on the OCS. The SMS is intended to increase awareness and communication of those risks, mitigate those risks, and implement a disciplined organizational approach for ensuring effective risk mitigation. The proposed regulation provides a more robust framework for the SMS submission to provide

clarification of BOEM’s expectations, facilitate compliance review, and to ensure the submitted SMS addresses critical subjects such as the safety of personnel, remote monitoring, control and shut down capabilities, emergency response procedures, fire suppression equipment, testing of the SMS, and proper personnel training.

The SMS is required to cover only those activities that are to take place on the OCS at any given time, from met buoy placement and site assessment work through decommissioning. Each SMS needs to be only as complex as the activities with which it is associated. Should incidents occur, investigations can focus on the role and success of the SMS with the purpose of guiding continual improvement. The requirement to have an SMS in place before placement of a met buoy or engaging in site assessment activities may create a small additional burden. However, BOEM’s obligations under the OCS Lands Act to provide for personnel safety and protection of the environment justify the inclusion of such a requirement.

§ 585.811 Am I required to obtain a certification of my SMS?

The proposed rule would add a new § 585.811 stating that third-party SMS certification may be obtained from accredited safety and environmental CABs. Such certification would possibly benefit a lessee or a grant holder through reduced frequency or scope of BOEM’s safety inspections and oversight of corrective actions arising from lessee or grant holder self-inspections. As discussed in section V.H. above, entitled “Safety Management Systems,” BOEM could rely on such third-party certifications for assurance of SMS compliance in lieu of direct inspection on the part of BOEM. Additionally, BOEM believes that a CAB’s use of a consensus safety standard—such as ANSI Z10 or ISO/IEC 45001—would allow the incorporation of the most current safety approaches in a rapidly evolving industry without the need for additional rulemaking.

§ 585.812 How must I implement my SMS?

BOEM proposes to revise the section heading to reflect its expanded scope, to eliminate the word “fully” from the current “fully functional” requirement, to add the phrase “and must remain functional while you perform”, and to abbreviate “Safety Management Systems” as “SMS” to improve readability. The proposed rule also would redesignate the existing regulatory text as paragraph (a) and

modify it to be consistent with the clarifications in proposed § 585.810.

The proposed rule would also add a new paragraph (b) containing two reporting requirements. The first proposed report would be an annual summary of safety performance data due March 31 covering the previous calendar year during which site assessment, construction, operations, or decommissioning activities occurred, using a form available on the BOEM website.<sup>95</sup> That form is similar to the one currently required in BSEE’s OCS oil, gas, and sulfur regulations. The second proposed report would be a summary of the most recent SMS audit, corrective actions implemented or pending as a result of that audit, and an updated SMS description highlighting changes made since the last report. This report would be due every 3 years or upon BOEM’s request.

The proposed revisions to this section would allow DOI and relevant stakeholders to measure the success of the SMS approach to ensure safety. It also would provide credible data for comparisons of an individual project’s safety performance to that of the overall OCS renewable energy industry.

#### Equipment Failure and Adverse Environmental Effects

§ 585.815 What must I do if I have facility damage or an equipment failure?

The proposed rule would correct an erroneous cross-reference in paragraph (a) and would make other minor edits to enhance readability.

#### Inspections and Assessments

§ 585.820 Will BOEM conduct inspections?

The proposed rule would update the regulations so that BOEM’s conduct of an inspection of any OCS facilities and vessels engaged in activities under this subpart is optional, to complement changes being proposed to the industry self-inspection requirements under § 585.824. The proposed rule would clarify that during the inspections BOEM would verify that activities are conducted in compliance with the OCS Lands Act; the regulations in this part; the terms, conditions, and stipulations of the lease or grant; approved plans; and other applicable laws and regulations. BOEM would also determine whether proper safety equipment has been installed and is operating properly according to the

<sup>95</sup> The proposed form is posted to this proposed rule’s docket at <https://www.regulations.gov/docket?D=BOEM-2020-0033>. To access the form as part of the information collection review, see *infra* note 94.

SMS, as required in § 585.810. These revisions would provide clarity and transparency to the BOEM inspections process.

§ 585.821 Will BOEM conduct scheduled and unscheduled inspections?

The proposed rule would clarify that BOEM may conduct both scheduled and unscheduled inspections. This revision would provide greater flexibility for how BOEM conducts inspections.

§ 585.822 What must I do when BOEM conducts an inspection?

BOEM proposes a technical correction to clarify that, for BOEM inspections, access for BOEM inspectors must be provided to all facilities and vessels used for activities authorized under this subpart. The proposed rule would also require that certain records be retained until BOEM releases the associated financial assurance and that the lessee make these records available to BOEM upon request. This revision would help ensure the availability of proper documentation during inspection.

§ 585.824 How must I conduct self-inspections?

The proposed rule would require that you conduct an onsite inspection of each of your facilities at least once a year. This revision would allow BOEM to have flexibility in conducting the annual onsite inspection required under the OCS Lands Act by allowing BOEM to rely upon the lessee's self-inspection to fulfill this requirement in the event BOEM does not inspect a particular facility in a given year. The proposed rule provides that the inspection must include, but is not limited to, all safety equipment designed to prevent or ameliorate fires, spillages, or other major accidents. The proposed rule would also require that the lessee maintain records of the facility inspections, summarize the results of those inspections, and provide the records and result summaries to BOEM upon request.

Incident Reporting and Investigation

§ 585.830 What are my incident reporting requirements?

The proposed rule would correct an erroneous cross-reference in paragraph (d) to provide the appropriate BSEE regulatory citation for reporting oil spills.

*J. 30 CFR Part 585, Subpart J—Decommissioning*

Subpart I, Decommissioning, is being redesignated as subpart J to accommodate the addition of a new

subpart B, as noted in section VI.B above.

Decommissioning Obligations and Requirements

§ 585.900 Who must meet the decommissioning obligations in this subpart?

Proposed subpart J contains requirements for decommissioning all facilities and obstructions on a lease, RUE, or ROW issued under BOEM's renewable energy regulations. BOEM proposes to add a new paragraph (c) establishing a limited exception to its proposed subpart J requirements for facilities that are approved by, and subject to the decommissioning requirements of, another Federal authority. This proposed amendment is primarily intended to cover met buoys that would no longer require a SAP under proposed § 585.600. Such buoys would be subject to the site clearance requirements in USACE's NWP 5 and may be subject to financial assurance requirements, prior to deployment, at the discretion of USACE. The USACE permit requires that met buoys that are no longer in use are removed within 30 days. Noncompliance with the site clearance requirements would be dealt with in accordance USACE regulations at 33 CFR part 326, which provide for administrative penalties and/or legal actions in conjunction with the appropriate U.S. Attorney's Office.

BOEM believes that the USACE procedures for met buoys are an adequate substitute for any requirements that BOEM would have otherwise imposed under this subpart.<sup>96</sup> However, in the event that USACE did not require the removal of a met buoy deployed under a BOEM lease, BOEM would exercise its authority to enforce the decommissioning requirements in proposed subpart J and its enforcement options for noncompliance by lessees in proposed subpart E.<sup>97</sup>

<sup>96</sup> USACE procedures are described in detail in the Permit 10 requirements contained in the final rule "Issuance and Reissuance of Nationwide Permits" (82 FR 4, Jan. 6, 2017), available at the following URL: <https://www.swf.usace.army.mil/Portals/47/docs/regulatory/Permitting/Nationwide/NWP10TX.pdf>.

<sup>97</sup> This proposed rule also would allow FERC to substitute its own decommissioning obligations for marine hydrokinetic projects that it has licensed. Such projects would be sited on leases issued by BOEM, which would retain the authority to require supplemental financial assurance under 30 CFR 585.516(c).

§ 585.902 What are the general requirements for decommissioning for facilities authorized under my SAP, COP, or GAP?

The proposed rule would allow BOEM to order decommissioning of facilities earlier than 2 years following lease termination if the facilities are no longer useful for operations. This mirrors the corresponding "idle iron" authority found in the OCS oil and gas regulations at 30 CFR 250.1703 and described for those purposes in NTL No. 2018-G03. Idle facilities pose potential threats to the OCS environment and potential financial liabilities if destroyed or damaged in a future event, such as a hurricane. The cost and time to remove damaged facilities are significantly higher than decommissioning undamaged facilities. These increased costs have potential ramifications on financial assurance requirements and may impact the future financial viability of a lessee or operator.

BOEM is soliciting comments on the meaning of the term "no longer useful for operations" and whether this is the best or most appropriate standard for BOEM to use to describe facilities that should be required to be decommissioned.

Decommissioning Applications

§ 585.905 When must I submit my decommissioning application?

BOEM proposes to add paragraph (e) to address the timing of applications pursuant to the proposed "idle iron" authority under § 585.902.

*K. 30 CFR Part 585, Subpart K—Rights-of-Use and Easement for Energy- and Marine-Related Activities Using Existing OCS Facilities*

Subpart J, Rights-of-Use and Easement for Energy- and Marine-Related Activities Using Existing OCS Facilities, is being redesignated as subpart K to accommodate the addition of a new subpart B, as noted in section VI.B above. BOEM proposes technical corrections to hyphenate "rights-of-use" in the proposed subpart K heading.

Requesting an Alternate Use RUE

§ 585.1005 How do I request an Alternate Use RUE?

The proposed rule would clarify the information requirements for an alternate use RUE and would broaden the alternate use RUE specifications to clarify that any OCS facility could be converted to an alternate use RUE. In contrast, the existing regulations were written in such a manner as to make the



provisions of this section applicable only to existing oil and gas facilities.

Decommissioning an Alternate Use RUE

§ 585.1018 Who is responsible for decommissioning an OCS facility located on an Alternate Use RUE?

The proposed rule would correct an outdated cross-reference in paragraph (b).

**VII. Procedural Matters**

*A. Statutes*

1. National Environmental Policy Act of 1969

BOEM has concluded that this rule as proposed falls under categorical exclusions established by DOI and BOEM, does not constitute a major Federal action significantly affecting the quality of the human environment, and does not require preparation of an environmental impact statement. Most provisions of this proposed rule fall under a DOI categorical exclusion for “regulations . . . that are of an administrative, financial, legal,

technical, or procedural nature[.]”<sup>98</sup> Moreover, the entirety of the proposed rule fits into the BOEM categorical exclusion for “[i]ssuance and modification of regulations, Orders, Standards, Notices to Lessees and Operators . . . for which the impacts are limited to administrative, economic, or technological effects and the environmental impacts are minimal.”<sup>99</sup> BOEM has determined that the proposed rule does not trigger any of the extraordinary circumstances that would require analysis under NEPA.<sup>100</sup> A final decision on the level of NEPA analysis required will be made at the final rule stage.

2. Paperwork Reduction Act of 1995

This proposed rule references existing and new information collections for regulations at 30 CFR part 585. Submission to OMB for review under the Paperwork Reduction Act of 1995<sup>101</sup> is required. Therefore, BOEM will submit an IC request to OMB for review and approval and will request a new OMB control number, designated in this

discussion as “1010–NEW.” Once the 1010–AE04 final rule is effective, BOEM will transfer the hour burden and non-hour costs burden from 1010–NEW to OMB Control Number 1010–0176, which expires March 31, 2023, then discontinue the new number associated with this rulemaking. BOEM may neither conduct nor sponsor, nor are you required to respond to, an information collection unless it displays a currently valid OMB control number. The proposed regulations would establish revise current requirements and establish new requirements in 30 CFR part 585. The proposed rule would increase annual burden hours by 588 and number of responses by 7; the non-hour costs would remain unchanged. The following table and narrative provides a breakdown of the paperwork hour burdens for this proposed rule. As discussed in the section-by-section analysis above and in the supporting statement available at *Reginfo.gov*, this rule proposes to add or revise the following:

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement <sup>1</sup>	Burden changes and/or additions
<b>Subpart B—The Renewable Energy Leasing Schedule</b>		
150 .....	This section references the leasing schedule published by the Secretary .....	New Subpart B added. No new annual burden hours.
<b>Subpart C—Issuance of OCS Renewable Energy Leases</b>		
231(b) .....	Submit comments in response to <b>Federal Register</b> notice re interest of unsolicited request for a lease.	Not considered IC as defined in 5 CFR 1320.3(h)(4). Therefore, the burden will be 0 (–16 annual burden hours and –4 responses from approved OMB control number).
<b>Subpart E—Lease and Grant Administration</b>		
413 .....	Submit merger application, negotiate with BOEM any inconsistencies on terms and conditions.	10 hour burdens × 1 request = 10 annual burden hours.
<b>Subpart F—Payments and Financial Assurance Requirements</b>		
506(c)(4) .....	Submit documentation of the gross annual generation of electricity produced by the generating facility on the lease—use same form as authorized by the Department of Energy U.S. Energy Information Administration (EIA). (OMB Control Number 1905–0129 covers burden to gather info and fill out form. BOEM’s burden is for submitting a copy.)	.5 hour burden × 2 submissions = 1 annual burden hour.
<b>Subpart G—Plans and Information Requirements</b>		
600(a); 601(a), (b); 605 thru 614; 238; 810.	Within time specified after issuance of a competitive lease or grant, or within time specified after determination of no competitive interest, submit copies of SAP, including required information to assist BOEM to comply with NEPA/Coastal Zone Management Act (CZMA) such as hazard info, air quality, SMS, and all required information, certifications, requests, etc., in format specified.	–240 annual burden hours (–240 burden hours and –1 SAP from approved OMB control number).
615(b) .....	Submit annual report summarizing compliance from site assessment activities ..	–60 annual burden hours (–60 burden hours and –2 reports from approved OMB control number).

<sup>98</sup> 43 CFR 46.210(i).

<sup>99</sup> Dep’t of the Interior, Departmental Manual part 516, section 15.4C(1) (2004).

<sup>100</sup> See 43 CFR 46.215.

<sup>101</sup> 44 U.S.C. 3501 *et seq.*

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement <sup>1</sup>	Burden changes and/or additions
<b>Subpart I—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs, and GAPS</b>		
810; 614; 627; 632(b); 651.	<i>Use a Safety Management System for all activities conducted pursuant to a lease and make available to BOEM upon request.</i> Submit safety management system description with a COP, or with a SAP or GAP, if facilities being installed are deemed by BOEM to be complex or significant.	35 hour burdens × 2 submissions = 70 annual burden hours.
812(b)(i), Form BOEM–NEW. 812(b)(ii) .....	Submit safety and environmental performance data (Form BOEM–NEW, Performance Data Measures). Provide report summary on SMS audit, corrective actions, and changes to SMS	82 hour burdens × 10 submissions = 820 annual burden hours. 5 annual burdens hours added to existing OMB approval (no additional responses).
830(d) .....	Report oil spills as required by <i>BSEE 30 CFR 250.187</i> .....	Burden covered under BSEE 1014–0007. (–2 annual burden hours and –1 report).
Total Burden ....	7 Responses .....	588 Hours.

Subpart B. The proposed rule would add a new subpart B for the renewable energy leasing schedule published by the Secretary of the Interior. BOEM estimates no burdens for this subpart.

Subpart C. Section 585.216(c) relates to eligibility for bidding credits as set forth in the FSN before the lease auction takes place. Bidders must establish that they are eligible for each bidding credit that they seek. BOEM proposes to keep the annual burden hours the same as in the 2020 approved OMB Control Number 1010–0176 (2020 approval) but would attribute the hours to the requirements of the bidding credit eligibility criteria.

Section 585.231(b) relates to requests for competitive interest during the noncompetitive leasing process. Requests for competitive interest do not constitute an information collection under the PRA implementing regulations at 5 CFR 1320.3(h)(4). Therefore, BOEM proposes removing 16 annual burden hours from § 585.231(b).

Subpart E. Proposed § 585.413 would align the regulations with the existing practice allowing lease and grant consolidation. BOEM proposes to add 10 annual burden hours to the 2020 approval attributable to § 585.413 to account for submission of applications to consolidate all or part of two or more adjacent leases or grants by the same lessee or grant holder into one new lease or grant, and to negotiate with BOEM on inconsistencies in terms and conditions.

Subpart F. BOEM previously did not account for burden hours relating to § 585.506(c)(4) because the required reporting of gross annual electrical production by a generating facility uses a DOE form under OMB Control Number 1905–0129. However, BOEM would like to receive this form already completed for DOE. BOEM proposes to

add one annual burden hour to § 585.506(c)(4).

Subpart G. Proposed § 585.600(a) would significantly revise the requirement for SAPs. Under the proposed rule, a SAP would be required only when site assessment activities involve an engineered foundation. BOEM would not require a SAP for floating site assessment facilities, such as met buoys. BOEM also would have the discretion to waive certain information requirements in a proposed plan, which could add flexibility to the permit application process. BOEM proposes to remove 240 annual burden hours from § 585.600(a).

Existing and proposed § 585.615(b) relates to other reports or notices that must be submitted periodically under an approved SAP. With the narrowing of the SAP requirement to site assessment activities involving an engineered foundation, BOEM estimates fewer reports or notices would be filed under this section. BOEM proposes to remove 60 annual burden hours from § 585.615(b).

The proposed rule would allow the deferral of detailed geotechnical survey reporting from COP submission under the existing § 585.626(b) to FDR submission under the proposed § 585.701(a). This change would not increase annual burden hours, though it likely would change the allocation of existing burden hours between §§ 585.626(b) and 585.701(a). BOEM welcomes input regarding the appropriate reallocation of geotechnical survey reporting hours.

Subpart H. Proposed § 585.700(b) would allow separate FDRs and FIRs for major project components if an explanation is included in the reports describing how the systems comprising the project will function together effectively in an integrated manner in

accordance with the project design basis. BOEM welcomes input regarding the number of annual burden hours necessary to complete this integration statement if separate FDRs and FIRs for major components are submitted. Proposed § 585.704 would allow BOEM 20-calendar days to deem the FDR and/or FIR submitted prior to commencing the 60-calendar day review time. Proposed § 585.704 would also allow BOEM 20-calendar days to deem the project verification reports submitted prior to commencing the 30-calendar day review time. This would allow BOEM 20-calendar days to ensure completeness, identify deficiencies, and would provide BOEM with the ability to ask for clarifications in order to meet the 60-calendar day review time for FDRs and/or FIRs or the 30-calendar-day review time for project verification reports. Once BOEM has made the determination that an FDR and/or FIR or project verification report is deemed submitted, the previous 60- or 30-day review times specified in the current regulations would continue to remain in effect.

Subpart I. Proposed § 585.810 clarifies that an SMS is required to conduct activities pursuant to a lease, from met buoy placement and site assessment work through decommissioning. While a description of the SMS is required to be submitted for review by BOEM with a COP, and for review of a SAP or GAP if the facilities being installed are deemed by BOEM to be complex or significant, this addition makes it clear that a structured approach to safety is both expected and required for all lease-associated work. BOEM proposes to add –70 annual burden hours to the 2020 approval.

Proposed § 585.812(b)(i) and (ii) would add new reporting requirements. Proposed § 585.812(b)(i) would require

an annual summary of safety performance data covering the previous calendar year during which site assessment, construction, operations, or decommissioning activities occurred by submitting form BOEM–NEW, Performance Data Measures—Renewable Energy.<sup>102</sup> This form would include company identification and number of injuries, illnesses, and hours worked by company employees and contractors. This information would be used to develop incident rates that would help assess workplace safety and environmental compliance across the OCS renewable energy industry. Incident rates would enable benchmarking of individual projects against industry-wide performance to facilitate needed improvement. Also, these rates would allow BOEM and BSEE to better focus their regulatory and research programs by highlighting areas below expected safety performance. BOEM proposes to add 820 annual burden hours to § 585.812(b)(i).

Proposed § 585.812(b)(ii) would require a summary of the most recent SMS audit, corrective actions implemented or pending because of that audit, and an updated SMS description highlighting changes made since the last report. This report would be due every 3 years or upon BOEM's request. BOEM proposes to add 75 annual burden hours to § 585.812(b)(ii).

For § 585.830(d), BOEM is proposing to remove two burden hours since the burdens for reporting oil spills falls under OMB Control Number 1014–0007.

*Title of Collection:* Renewable Energy Modernization (Notice of Proposed Rulemaking).

*OMB Control Number:* 1010–NEW.

*Form Numbers:*

- BOEM–NEW, Performance Data Measures—Renewable Energy.

*Type of Review:* New.

*Respondents/Affected Public:*

Respondents primarily would be private sector companies interested in developing or operating OCS renewable energy leases and grants; affected State, local, and tribal governments; and other companies that submit information regarding OCS renewable energy projects.

<sup>102</sup> To see a copy of the proposed form, go to <https://www.reginfo.gov>, select “Information Collection Review,” and, in the “Currently under Review” heading, select Department of the Interior, find OMB Control Number 1010–NEW, click on the ICR Reference Number, and click on “View Supporting Statement and Other Documents;” or you may obtain a copy of the proposed form from BOEM's Information Collection Clearance Officer, whose mailing address and email may be found in the ADDRESSES section of the preamble. The proposed form also is available through this proposed rule's docket at <https://www.regulations.gov/docket?D=BOEM-2020-0033>.

*Total Estimated Number of Annual Responses:* 7 responses.

*Total Estimated Number of Annual Burden Hours:* 588 hours.

*Respondent's Obligations:* Responses to information collections under this part would be mandatory to obtain, or retain, an OCS renewable energy lease or grant.

*Frequency of Collection:* The frequency of collection would vary depending upon BOEM's decisions to issue OCS leases or grants for renewable energy development, a company's decision to seek a lease or grant, and the manner in which the lessee or grant holder elects to develop its lease or grant.

*Total Estimated Annual Non-Hour Burden Cost:* No non-hour costs.

If this proposed rule becomes effective and OMB approves the information collection request 1010–NEW, BOEM would revise the existing OMB Control Number 1010–0176 for the affected subparts discussed above and would adjust the annual burden hours accordingly. The information collections related to 30 CFR part 585 do not include questions of a sensitive nature. BOEM will continue to protect proprietary information according to FOIA and DOI's implementing regulations, which address disclosure of information to the public.<sup>103</sup>

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the collection of information. BOEM solicits your comments regarding non-hour cost burdens arising from this proposed rule. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) total capital and startup cost component, and (2) annual operation, maintenance, and disclosure cost component to provide the information. You should describe the methods you use to estimate your cost components, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased: (1) before October 1, 1995; (2) to comply with requirements not associated with the information collection arising from this proposed rule; (3) for reasons other than to provide information or to keep records for the U.S. Government; or (4) as part of customary and usual business or private practices.

As part of BOEM's continuing effort to reduce paperwork and respondent

burdens, BOEM invites the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Is the proposed information collection necessary or useful for BOEM to properly perform its functions?

(2) Are the estimated annual burden hour increases and decreases resulting from the proposed rule reasonable?

(3) Is the estimated annual non-hour cost burden resulting from this information collection reasonable?

(4) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(5) Is there a way to minimize the information collection burden on those who must respond, such as by using appropriate automated digital, electronic, mechanical, or other forms of information technology?

### 3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies to prepare and to provide a regulatory flexibility impact analysis when a regulation will have a significant economic impact on a substantial number of small entities and to consider regulatory alternatives that will achieve the agency's goals while minimizing the burden on small entities.<sup>104</sup>

When an agency issues a notice of proposed rulemaking, the RFA requires the agency to “describe the impact of the proposed rule on small entities” in its initial regulatory flexibility impact analysis.<sup>105</sup> The RFA does not require a regulatory flexibility impact analysis when an agency certifies that the proposed rule will not impose a significant economic impact on a substantial number of small entities.<sup>106</sup>

(a) Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

This proposed rule would directly affect all current and future OCS renewable energy developers.<sup>107</sup>

Renewable energy companies operating on the OCS are generally organized under North American Industry Classification System (NAICS) code 221115 Wind Electric Power Generation in Sector 22 (Utilities). The size standard for determining a small business in this category is 250 employees or fewer. OCS renewable energy companies may be financially

<sup>104</sup> See 5 U.S.C. 601–612.

<sup>105</sup> 5 U.S.C. 603(a).

<sup>106</sup> 5 U.S.C. 605(b).

<sup>107</sup> See *supra* note 1 for discussion of developers.

<sup>103</sup> See 43 CFR part 2 and 30 CFR 585.113.

supported by investment fund portfolios. The revenue threshold for determining a small Portfolio Management company, NAICS code 523940, is \$41.5 million.

The Small Business Administration's (SBA) Office of Advocacy provides guidelines for complying with the RFA. The SBA's best practice for understanding impacts to small businesses is to conduct analysis at the firm level. In the case of OCS renewable energy, the 28 active commercial OCS renewable energy leases are held by 10 lessees. All these lessees are subsidiaries of large parent companies or are majority-owned by portfolio management companies; none fit the definition of a small firm or business. To date, companies that have submitted bids in BOEM auctions are either large firms or partners with large firms in joint ventures.

Developing and operating OCS wind sites requires significant upfront capital typical of large firms or investment portfolios. Pilot-scale commercial projects cost hundreds of millions of dollars to install and operate, and utility-scale projects cost multiple billions of dollars. As a result, it is unlikely that small entities will be constructing or operating wind facilities on the OCS in the foreseeable future.

The reduction in developmental and operational costs resulting from this proposed rule would be available to all companies developing and operating OCS renewable energy facilities, whether large or small. Therefore, BOEM has determined that the proposed rule likely does not have a significant adverse economic impact on a substantial number of small entities.

Nonetheless, BOEM has prepared an initial regulatory impact analysis (IRIA) to quantify the cost savings arising from this proposed rule and solicit public comment.<sup>108</sup>

BOEM does not consider the potential impacts from this rule on small fishing businesses or small coastal communities in the IRIA, as they are not the regulated entity. BOEM does not anticipate that this proposed regulation would have any positive or negative impacts to these communities above those outlined in the baseline scenario. However, BOEM requests that if small fishing industries businesses or small coastal communities believe they are impacted as a result of this proposed rule, they submit comments during the comment period.

<sup>108</sup> The IRIA is posted to this proposed rule's docket at <https://www.regulations.gov/docket?D=BOEM-2020-0033>.

#### (b) Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

The proposed rule would add modest reporting, recordkeeping, and other compliance requirements. Specifically, proposed § 585.812 would require annual reporting of safety related information once an OCS renewable energy project begins construction and triennial reporting of safety audits and corrective actions. The information collection burden of these reports is analyzed in section VII.A.2.

#### (c) Identification of All Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

The proposed rule would neither conflict, duplicate, nor overlap with any relevant Federal rules. Indeed, it would eliminate duplication with USACE permitting requirements.

#### (d) Description of Significant Alternatives to the Proposed Rule

The regulatory alternatives are discussed in the accompanying IRIA.

#### 4. Small Business Regulatory Enforcement Fairness Act

BOEM anticipates the proposed rule would have neither significant employment nor small business impacts; nor cause major price increases for consumers, businesses, or governments; nor significantly degrade competition, employment, investment, productivity, innovation, or the ability of U.S. businesses to compete against foreign businesses. It is estimated to have an annual economic effect of \$100 million or more<sup>109</sup> and, therefore, this proposed rule is a major rule under the Small Business Regulatory Enforcement Fairness Act.<sup>110</sup> This rule seeks to enhance U.S. energy independence by reducing unnecessary regulatory costs and uncertainty within the OCS renewable energy industry while ensuring safety and appropriate environmental analyses and mitigations and providing fair return to the U.S. taxpayer.

#### 5. Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded Federal mandate on State, local, or tribal Governments, nor would it have a significant or unique effect on State, local, or tribal Governments. Thus, the proposed rule would not have disproportionate budgetary effects on

<sup>109</sup> See *infra* section VII.B.2 discussion of E.O. 12866 and E.O. 13563.

<sup>110</sup> See 5 U.S.C. 804(2).

these governments. BOEM also has determined that this proposed rule would not impose costs on the private sector of more than \$182 million in a single year.<sup>111</sup> Therefore, the proposed rule does not trigger the requirement to prepare a written statement under this act.<sup>112</sup>

#### 6. Congressional Review Act

Pursuant to the Congressional Review Act<sup>113</sup> and OMB guidance,<sup>114</sup> the Office of Information and Regulatory Affairs (OIRA) must decide whether this rule is a major rule as defined by that act.<sup>115</sup> Given its economic implications, OMB has determined that this rule is significant and major. The rule has also been designated by OMB as a significant rulemaking.

#### B. Executive Orders

##### 1. Executive Order 12630—Takings Implication Assessment

Under E.O. 12630 section 2(a)(1) criteria, this proposed rule would not have takings implications. This proposed rulemaking is a Federal action that would not interfere with constitutionally protected private property rights. To the extent OCS renewable energy lessees and grant holders possess private property rights under the terms of BOEM leases, this proposed rulemaking is not expected to reduce the value of those rights. A takings implication assessment is not required.

##### 2. Executive Order 12866—Regulatory Planning and Review; and Executive Order 13563—Improving Regulation and Regulatory Review

OIRA has determined that this proposed rule is a "significant regulatory action" under E.O. 12866 section 3(f). BOEM has prepared an IRIA that estimates a \$1 billion net benefit (7 percent discounting) over a 20-year period resulting from the compliance cost savings realized by the OCS renewable energy industry.

This proposed rule would reform, streamline, reorganize, update, and clarify existing regulations. As economic impact is realized in cost savings by developers, it is not expected to have an adverse, material effect on the economy, an economic sector,

<sup>111</sup> The private-sector cost threshold established in UMRA in 1996 was \$100 million. After adjusting for inflation, the 2022 private-sector threshold is \$182 million.

<sup>112</sup> See 2 U.S.C. 1532.

<sup>113</sup> 5 U.S.C. 801 *et seq.*

<sup>114</sup> Office of Mgmt. & Budget, Exec. Office of the President, OMB M-19-14, Guidance on Compliance With the Congressional Review Act (2019).

<sup>115</sup> 5 U.S.C. 804(2).

productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This proposed rule would not create a serious inconsistency, or otherwise interfere, with an action taken or planned by another agency. This proposed rule would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of their recipients. OIRA has also determined that this proposed rule is significant under E.O. 12866. This proposed rule is promulgated under the authority granted to the Secretary in the OCS Lands Act to authorize and regulate OCS renewable energy activities.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for systemic regulatory improvements to promote predictability, reduce uncertainty, and leverage the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens, promote flexibility, and maintain the public's freedom of choice when these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes that the best available science must inform and guide new regulations and that an open exchange of ideas benefits the rulemaking process. BOEM has developed this proposed rule in a manner consistent with these requirements. E.O. 13563 also calls for additional consideration of the regulatory impact on employment. The proposed rule is not expected to impact employment within the OCS renewable energy and associated industries in any material way.

The proposed rule includes changes across the renewable energy regulatory framework. While these proposed changes are important for reforming, streamlining, and clarifying the regulatory requirements, BOEM was

unable to quantify the impact of all the proposed changes. Those deregulatory changes, including revisions to CVA requirements, are analyzed qualitatively. Minor additional compliance costs are estimated for SMS reporting.

The proposed changes would allow greater flexibility in using decommissioning accounts. BOEM's existing regulations require full funding of a decommissioning account before each OCS renewable energy facility (*i.e.*, wind turbine) is constructed. The proposed change to § 585.529 would allow incremental funding of a decommissioning account under a BOEM-approved schedule during the operations period. This would reduce a project's upfront capital costs, would enable a lessee or a grant holder to invest available capital in planning and construction (rather than tying up excessive capital for decommissioning costs that will occur no less than 20–30 years in the future), and would result in savings through the time value of money concept.

For site assessment activities, the proposed rule would remove met buoys—used primarily to collect energy resource, oceanographic, meteorological, and other environmental data to assess OCS areas for renewable energy development—from the reach of BOEM's regulations requiring submission of a SAP (§§ 585.600 through 585.618).<sup>116</sup> Currently, both BOEM and USACE regulate met buoys. BOEM proposes to eliminate its permitting requirements for met buoys because they are unnecessarily burdensome and duplicative of USACE's NWP 5 permitting. BOEM estimates that this regulatory change would enable significantly cheaper and quicker deployment of met buoys because a SAP and BOEM approval would be no longer necessary. Instead, a USACE NWP 5 permit would be the only Federal

approval necessary to deploy a met buoy. BOEM believes that the USACE permitting process adequately ensures met buoys are deployed in a safe and an environmentally responsible manner.

The proposed rule also addresses geotechnical surveys, which are required before COP submittal by § 585.626. BOEM proposes to defer certain detailed geotechnical survey requirements from COP submittal to the FDR and FIR submittals, which occur subsequent to COP approval. This change would give a lessee or a grant holder more time to complete the surveys and would reduce upfront financial costs. BOEM recognizes that the current timing of geotechnical survey requirements is premature and limits flexibility. This proposed deferral would provide time value of money savings to a lessee or a grant holder, who also would benefit from more flexibility.

Existing regulations also require geotechnical core analysis for each renewable energy facility foundation. The proposed rule would allow a lessee or a grant holder—subject to BOEM approval—to provide data from fewer than all facility foundation locations if they can demonstrate that the project area consists of generally uniform, predictable geophysical characteristics. This would allow a lessee and a grant holder to potentially realize cost savings by reducing the number of geotechnical investigations. For this analysis, BOEM estimated a 10 percent reduction in the number of geotechnical investigations needed.

The tables below summarize BOEM's estimated 20-year compliance cost savings for the proposed changes related to decommissioning accounts, met buoys, and geotechnical surveys. The IRIA contains additional information on assumptions, compliance costs, savings, and benefits.<sup>117</sup>

TABLE—20-YEAR (2023–2042) NET PRESENT VALUE BY AFFECTED CATEGORY OF REGULATORY CHANGE  
[Millions]

Proposed revisions	Discounted at 3%	Discounted at 7%
Decommissioning Accounting Changes .....	–\$1,248.5	–\$905.3
Meteorological Buoy Streamlining .....	– 16.3	– 11.6
Geotechnical Regulatory Revisions .....	– 121.6	– 88.2
Safety Management System Reporting .....	5.3	3.5
<b>Total .....</b>	<b>– 1,381</b>	<b>– 1,001.5</b>

<sup>116</sup> The proposed rule would eliminate BOEM's approval requirement for met buoys deployed both on and off a commercial lease. The proposed

change to off-lease met buoy deployment is not analyzed quantifiably because historical activity is lacking.

<sup>117</sup> See *supra* note 100 for location of IRIA.

TABLE—20-YEAR ANNUALIZED COST SAVINGS BY REGULATORY PROVISION CATEGORY  
[Millions]

Proposed revisions	Discounted at 3%	Discounted at 7%
Decommissioning Accounting Changes .....	– \$83.9	– \$85.4
Meteorological Buoy Streamlining .....	– 1.1	– 1.1
Geotechnical Regulatory Revisions .....	– 8.2	– 8.3
Safety Management System Reporting .....	0.35	0.33
Total .....	– 92.8	– 94.5

### 3. Executive Order 12988—Civil Justice Reform

This proposed rule complies with E.O. 12988 sections 3(a) and (b)(2) requirements. This rule was reviewed to eliminate technical errors and ambiguity, simplify the existing regulatory framework, minimize litigation, and provide clear legal standards.

### 4. Executive Order 13132—Federalism

This proposed rule would not have sufficient federalism implications to warrant a summary impact statement under E.O. 13132 section 1(a) because it neither imposes direct compliance costs on States; nor does it preempt State law; nor does it have substantial direct effects on the States, nor on the relationship between the Federal and State Governments, nor on the distribution of power and responsibilities between various governmental levels in the United States. Thus, a federalism impact statement is unnecessary.

### 5. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

BOEM strives to strengthen its government-to-government relationship with American Indian and Alaska Native tribes through a commitment to consultation with federally recognized tribes (Tribes) and recognition of their right to self-governance and tribal sovereignty. BOEM also is respectful of its responsibilities for consultation with ANCSA corporations. BOEM has evaluated this proposed rule under DOI's consultation policy,<sup>118</sup> BOEM's tribal consultation guidance,<sup>119</sup> and the criteria in E.O. 13175. BOEM does not believe that this proposed rule itself would have substantial direct effects on

Tribes or ANCSA corporations and, hence, has concluded that consultation under the DOI and BOEM tribal consultation policies is not required.

BOEM reached this determination in part because the requirements of this proposed rule are, in sum, administrative, technical, procedural, or interpretive in nature and they would not themselves have foreseeable particular, substantial direct impacts on tribal resources. That does not mean that future actions under the rule will not have tribal implications requiring consultation. BOEM will review future actions carefully and will invite Tribes and ANCSA Corporations to consult when any such future actions may have a substantial direct effect on them. BOEM will also continue outreach to strengthen collaboration with Tribes and ANCSA corporations that have expressed an interest in or concern about renewable energy activities on the OCS and their impacts.

### 6. Executive Order 13211—Effects on the Nation's Energy Supply

Under E.O. 13211, agencies are required to prepare and submit to OMB a Statement of Energy Effects for "significant energy actions." This proposed rule does not add new regulatory compliance requirements that would lead to adverse effects on the nation's energy supply, distribution, or use. Rather, the regulatory changes would help reduce compliance burdens on the OCS renewable energy industry that may hinder the continued development or use of domestically produced energy resources. Reduced regulatory burdens do not adversely affect productivity, competition, or prices within the energy sector. This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

### 7. Presidential Memorandum of June 1, 1998, on Regulation Clarity

Under the criteria in Presidential Memorandum of June 1, 1998, this proposed rule is logically organized into

easily read, short sections using both sentences that are clearly written in the active voice and common words rather than jargon. If you believe this proposed rule fails these requirements, please send specific comments to BOEM by one of the methods listed in the **ADDRESSES** section.

### List of Subjects in 30 CFR Part 585

Administrative practice and procedure, Assessment plans, Coastal zone, Compliance, Continental shelf, Electric power, Energy, Environmental protection, Government leases, Intergovernmental relations, Marine resources, Natural resources, Ocean resources, Offshore energy, Offshore structures, Outer continental shelf, Payments, Planning, Power resources, Renewable energy, Reporting and recordkeeping requirements, Revenue sharing, Rights-of-way, Rights-of-use-and-easement, Wind energy.

### Laura Daniel-Davis,

*Principal Deputy Assistant Secretary Land and Minerals Management.*

For the reasons discussed in the preamble, the Bureau of Ocean Energy Management proposes to amend 30 CFR part 585 as follows:

### PART 585—RENEWABLE ENERGY AND ALTERNATE USES OF EXISTING FACILITIES ON THE OUTER CONTINENTAL SHELF

- 1. The authority citation for part 585 is revised to read as follows:

**Authority:** 43 U.S.C. 1337(p).

### Subpart A—General Provisions

- 2. Amend § 585.102 by revising paragraph (a) introductory text to read as follows:

#### § 585.102 What are BOEM's responsibilities under this part?

(a) BOEM will ensure that any activities authorized in this part are carried out in a manner that provides for and balances the following goals, none

<sup>118</sup> Dep't of the Interior, Departmental Manual part 512, chapters 4 through 5 (2015).

<sup>119</sup> Memorandum from William Y. Brown, Chief Environmental Officer, Bureau of Ocean Energy Mgmt., to Bureau Program Chiefs and Regional Directors (June 29, 2018), available at <https://www.boem.gov/BOEM-Tribal-Consultation-Guidance/>.

of which inherently outweighs or supplants any other:

\* \* \* \* \*

■ 3. Amend § 585.103 by revising the section heading and paragraph (a) to read as follows:

**§ 585.103 When may BOEM prescribe or approve departures from the regulations in this part?**

(a) BOEM may prescribe or approve a departure from these regulations when BOEM deems the departure necessary because the applicable provision(s) as applied to a specific circumstance:

- (1) Are impractical or unduly burdensome and the departure is necessary to achieve the intended objectives of the renewable energy program;
- (2) Fail to conserve the natural resources of the OCS;
- (3) Fail to protect life (including human and wildlife), property, or the marine, coastal, or human environment; or
- (4) Fail to protect sites, structures, or objects of historical or archaeological significance.

\* \* \* \* \*

■ 4. Revise § 585.104 to read as follows:

**§ 585.104 Do I need a BOEM lease or other authorization to produce or support the production of electricity or other energy product from a renewable energy resource on the OCS?**

Except as otherwise authorized by law, it is unlawful for any person to construct, operate, or maintain any facility to produce, transport, or support generation of electricity or other energy product derived from a renewable energy resource on any part of the OCS, except in accordance with the terms of a lease, easement, or ROW issued under the OCS Lands Act. For the purposes of this section, site assessment activities do not produce, transport, or support the generation of electricity or other energy product.

■ 5. Amend § 585.105 by revising paragraph (d) to read as follows:

**§ 585.105 What are my responsibilities under this part?**

\* \* \* \* \*

(d) Comply with all applicable laws and regulations, the terms of your lease or grant under this part, reports, notices, and approved plans prepared under this part, and any conditions imposed by BOEM through its review of any of these reports, notices, and approved plans, as provided in this part;

\* \* \* \* \*

■ 6. Amend § 585.106 by revising the section heading, paragraphs (a) introductory text, (a)(6), (b) introductory

text, and (b)(3) and adding paragraph (c) to read as follows:

**§ 585.106 Who can acquire or hold a lease or grant under this part?**

(a) You may acquire or hold a lease or grant under this part if you can demonstrate that you have the technical and financial capabilities to conduct the activities authorized by the lease or grant and you are a(n):

\* \* \* \* \*

(6) State of the United States; or

\* \* \* \* \*

(b) You may not acquire or hold a lease or grant under this part or acquire an interest in a lease or grant under this part if:

\* \* \* \* \*

(3) After written notice and your opportunity to be heard, BOEM determines that:

- (i) You no longer meet the qualification requirements for acquiring or holding a lease or grant in paragraph (a) of this section and § 585.107; or
- (ii) You have:

(A) Violated an applicable law, regulation, order, lease or grant provision, approved plan, or the prohibitions prescribed in a final sale notice; or otherwise engaged in illegal activity, anti-competitive or collusive behavior, fraud, or misrepresentation; and

(B) Failed to take timely remedial action as specified in the notice of the proposed disqualification to re-establish eligibility to participate in any BOEM lease or grant sale and eligibility to acquire or hold an interest in a lease or grant under this part.

(c) So long as a party is ineligible to acquire or hold a lease or grant under this part, it is also ineligible to participate in BOEM's competitive and noncompetitive lease or grant issuance processes, including auctions, conducted under this part, even as an agent for another entity. A party can restore its eligibility by completing the remedial action specified in the notice of the proposed disqualification.

■ 7. Amend § 585.107 by revising paragraph (b) to read as follows:

**§ 585.107 How do I show that I am qualified to be a lessee or grant holder?**

\* \* \* \* \*

(b) An individual must submit a written statement of citizenship status attesting to U.S. citizenship. It does not need to be notarized nor give the age of the individual. A resident alien may submit a photocopy of the form issued by the appropriate Federal immigration authority evidencing legal status as a resident alien.

\* \* \* \* \*

■ 8. Revise § 585.110 to read as follows:

**§ 585.110 How do I submit plans, applications, reports, or notices required by this part?**

Unless otherwise stated, you must submit one electronic copy of all plans, applications, reports, or notices required by this part to BOEM. BOEM will inform you if it requires paper copies of specific documents. Unless stated otherwise, documents should be submitted to the relevant contacts listed on the BOEM website.

■ 9. Amend § 585.112 by:

- a. Adding in alphabetical order a definition for "Bidding credit(s)";
- b. Revising the definitions of "Commercial activities" and "Commercial operations";
- c. Adding in alphabetical order definitions for "Critical safety system", "Engineered foundation", "Fabrication", "Lease area", "Multiple factor auction", "Project design envelope", "Provisional winner", and "Receipt"; and
- d. Revising the definition of "Site assessment activities".

The additions and revisions read as follows:

**§ 585.112 Definitions.**

\* \* \* \* \*

*Bidding credit(s)* means the value assigned by BOEM, expressed in monetary terms, to the factors or actions demonstrated, or committed to, by a bidder at a BOEM lease auction during the competitive lease award process. The type(s) and value(s) of any bidding credit(s) awarded to any given bidder will be set forth in the Final Sale Notice.

\* \* \* \* \*

*Commercial activities* means, under renewable energy leases and grants, all activities associated with the generation, storage, or transmission of electricity or other energy product from a renewable energy project on the OCS, and where such electricity or other energy product is intended for distribution, sale, or other commercial use, except for electricity or other energy product distributed or sold pursuant either to technology-testing activities on a limited lease or facilities testing on a commercial lease needed to prepare a final FIR. This term also includes activities associated with such development, including initial site characterization and assessment, facility construction, and project decommissioning.

\* \* \* \* \*

*Commercial operations* means the generation of electricity or other energy product for commercial use, sale, and distribution on a commercial lease, but

does not mean either generation needed to prepare a final FIR or generation for testing purposes, provided the electricity generated for such testing is not sold on a commercial basis.

*Critical Safety System* means safety systems and equipment designed to prevent or ameliorate major accidents that could result in harm to health, safety, or the environment in the area of your facilities.

*Engineered foundation* means any structure installed on the seabed using a fixed-bottom foundation constructed according to a professional engineering design (based on an assessment of relevant sedimentary, meteorological, and oceanographic conditions).

*Fabrication* means the cutting, fitting, welding, or other assembly of project elements of a custom design conforming to project-specific requirements. Fabrication does not include the procurement of discrete parts of the project that are commercially available in standardized form or with type-certified components.

*Lease area* means an area on the OCS that BOEM has identified for leasing for potential development of renewable energy resources.

*Multiple factor auction* means an auction that involves the use of bidding credits to incentivize goals or actions that support public policy objectives or maximize public benefits through the competitive leasing auction process. For any multiple factor auction, the monetary value of the bidding credits, if

any, would be added to the value of the cash bid to determine the highest bidder.

*Project Design Envelope (PDE)* is means a reasonable range of design parameters proposed in a lessee's plan for components of the project, such as type, dimensions, and number of wind turbine generators; foundation type; location of the export cable route; location of an onshore substation; location of the grid connection point; and construction methods and timing.

*Provisional winner* means a bidder that BOEM determines at the conclusion of the auction to have submitted the winning bid. The provisional winner becomes the winning bidder after the favorable completion of BOEM's bid review, Department of Justice antitrust review, bidder obligations under § 585.225, and any appeals process under § 585.118(c).

*Receipt*, as used in this part to describe the time when a document is received by any party in the absence of documentation to the contrary, is deemed to have taken place: 5-business days after the date the document was given to the U.S. Postal Service (or deposited in one of its mailboxes), properly addressed and with proper postage affixed, or was given to a delivery service (or deposited in one of its receptacles), properly addressed and with the delivery cost prepaid; or, on the date on which the document was properly addressed and sent electronically. This definition also applies to variants of the words

“receipt” and “receive” where those terms are used in this part to describe the receipt of a document when the timing of receipt triggers a regulatory time period or consequence.

*Site assessment activities* mean those initial activities conducted to assess an area on the OCS, such as resource assessment surveys (e.g., meteorological and oceanographic) or technology testing, involving the installation of bottom-founded facilities.

■ 10. Amend § 585.113 by revising paragraph (b)(1)(i) to read as follows:

**§ 585.113 How will data and information obtained by BOEM under this part be disclosed to the public?**

* * * * *	* * * * *
(b) * * *	
If you have a . . .	Then BOEM will review data and information for possible release:
(1) Commercial lease.	(i) 3 years after the initiation of commercial operations or.
* * * * *	* * * * *

■ 11. Amend § 585.114 by revising paragraphs (e)(2) through (10) and adding paragraph (a)(11) to read as follows:

**§ 585.114 Paperwork Reduction Act statements—information collection.**

* * * * *	* * * * *
(e) * * *	

30 CFR 585 subpart, title, and/or BOEM form (OMB control No.)

Reasons for collecting information and how used

* * * * *	* * * * *
(2) Subpart B—The Renewable Energy Leasing Schedule.	To enable BOEM to publish a proposed five-year leasing schedule for the OCS renewable energy program.
(3) Subpart C—Issuance of OCS Renewable Energy Leases.	To provide BOEM with information needed to determine when to use a competitive process for issuing a renewable energy lease, to identify auction formats and bidding systems and variables that we may use when that determination is affirmative, and to determine the terms under which we will issue renewable energy leases.
(4) Subpart D—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Renewable Energy Activities.	To issue ROW grants and RUE grants for OCS renewable energy activities that are not associated with a BOEM-issued renewable energy lease.
(5) Subpart E—Lease and Grant Administration	To ensure compliance with regulations pertaining to a lease or grant, including designation of operator, assignment, segregation, consolidation, suspension, renewal, termination, relinquishment, and cancellation.
(6) Subpart F—Payments and Financial Assurance Requirements.	To ensure that payments and financial assurance payments for renewable energy leases comply with subpart F.
(7) Subpart G—Plans and Information Requirements.	To enable BOEM to comply with the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), and other Federal laws and to ensure the safety of the environment on the OCS.
(8) Subpart H—Facility Design, Fabrication, and Installation.	To enable BOEM to review the final design, fabrication, and installation of facilities on a lease or grant to ensure that these facilities are designed, fabricated, and installed according to appropriate standards in compliance with BOEM regulations, and where applicable, the approved plan.



30 CFR 585 subpart, title, and/or BOEM form (OMB control No.)	Reasons for collecting information and how used
(9) Subpart I—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs, and GAPS.	To ensure that lease and grant operations are conducted in a manner that is safe and protects the environment. To ensure compliance with other Federal laws, these regulations, the lease or grant, and approved plans.
(10) Subpart J—Decommissioning .....	To determine that decommissioning activities comply with regulatory requirements and approvals. To ensure that site clearance and platform or pipeline removal are properly performed to protect marine life and the environment and do not conflict with other users of the OCS.
(11) Subpart K—Rights-of-Use and Easement for Energy- and Marine-Related Activities Using Existing OCS Facilities.	To enable BOEM to review information regarding the design, installation, and operation of RUEs on the OCS, to ensure that RUE operations are safe and protect the human, marine, and coastal environment. To ensure compliance with other Federal laws, these regulations, the RUE grant, and, where applicable, the approved plan.

■ 12. Revise § 585.116 to read as follows:

**§ 585.116 Requests for information.**

BOEM may publish a request for information (RFI) in the **Federal Register** for the following reasons:

(a) To solicit information from industry, State and local agencies, federally recognized Tribes, and other interested entities for evaluating the offshore renewable energy industry, including the identification of potential challenges or obstacles to its continued development. An RFI may relate to the identification of environmental, technical, regulatory, or economic matters that promote or detract from continued development of renewable energy technologies on the OCS. BOEM may use the information received to refine its renewable energy program, including to facilitate OCS renewable energy development in a safe and environmentally responsible manner and to ensure a fair return to the United States for use of the OCS.

(b) To assess interest in leasing all or part of the OCS for activities authorized in this part.

(c) To determine whether there is competitive interest in a specific OCS renewable energy proposal received by BOEM, such as an unsolicited request for a lease under § 585.231(b) or a RUE or ROW grant under § 585.307(a).

(d) To seek other information that BOEM needs for this program.

■ 13. Revise § 585.118 to read as follows:

**§ 585.118 What are my appeal rights?**

(a) Except as stated in paragraph (c) of this section, any party adversely affected by a final decision issued by BOEM under this part may appeal that decision to the Interior Board of Land Appeals (IBLA), under part 590 of this chapter and 43 CFR part 4, subpart E.

(b) Any final decision will remain in full force and effect during the pendency of an appeal unless a stay is granted under 43 CFR part 4.

(c) A bidder adversely affected by BOEM’s determination of a provisional winner made under this part may appeal to the BOEM Director; but decisions determining a provisional winner may not be appealed to the IBLA.

(1) A bidder that elects to appeal a provisional winner selection decision must file a written appeal with the Director within 15 business days after receipt of the decision.

(2) Such appeal must be accompanied by a statement of reasons. Before reversing a provisional winner selection decision, the Director will provide the provisional winner a reasonable opportunity to respond in writing to the appellant’s statement of reasons. The Director will issue a written determination either affirming or reversing the decision. The Director’s decision is not appealable to the IBLA under this section.

(3) BOEM will not execute a lease or grant until the 15-business-day appeal period closes and all timely filed appeals are resolved.

(4) The review authority of the Office of Hearings and Appeals does not apply to either the provisional winner selection decisions made under this part or the Director’s final determination affirming or reversing a provisional winner selection decision.

**Subparts B Through J [Redesignated as Subparts C Through K]**

■ 14. Redesignate subparts B through J as subparts C through K.

■ 15. Add new subpart B, consisting of § 585.150, to read as follows:

**Subpart B—The Renewable Energy Leasing Schedule**

**§ 585.150 What is the renewable energy leasing schedule?**

At least once every 2 years, the Secretary will publish a schedule with a list of locations under consideration for leasing, along with a projection of when lease sales are anticipated to occur for the 5-year period following the

schedule’s publication. This schedule will include a general description of the area covered by each proposed lease sale, the calendar year in which each lease sale is projected to occur, and the reasons for any changes made to the previous schedule. Any proposed lease sale covered by the schedule will be subject to all applicable regulations, including area identification, coordination with relevant parties, and applicable environmental reviews.

**Subpart C—Issuance of OCS Renewable Energy Leases**

■ 16. Revise § 585.202 to read as follows:

**§ 585.202 What types of leases will BOEM issue?**

BOEM may issue commercial or limited leases for OCS activities under § 585.104. BOEM may issue a lease for OCS renewable energy research activities under § 585.238.

■ 17. Revise § 585.203 to read as follows:

**§ 585.203 With whom will BOEM consult before issuance of leases?**

For leases issued under this part, through either the competitive or noncompetitive process, BOEM, prior to issuing the lease, will coordinate and consult with relevant Federal agencies (including, in particular, those agencies involved in planning activities that are undertaken to avoid or minimize conflicts among users and maximize the economic and ecological benefits of the OCS, including multifaceted spatial planning efforts), the Governor of any affected State, the executive of any affected local government, and any affected Indian Tribe, as directed by subsections 8(p)(4) and (7) of the OCS Lands Act or other relevant Federal laws. Federal statutes that require BOEM to consult with interested parties or Federal agencies or to respond to findings of those agencies, include the Endangered Species Act (ESA) and the Magnuson-Stevens Fishery Conservation and Management Act

(MSA). BOEM also engages in consultation with state and tribal historic preservation officers pursuant to the National Historic Preservation Act (NHPA).

■ 18. Revise the undesignated center heading that appears before § 585.210 and revise § 585.210 to read as follows:

**Competitive Lease Award Process—Pre-Auction Provisions**

**§ 585.210 What are the steps in BOEM's competitive lease award process?**

(a) BOEM may publish an RFI under § 585.116.

(b) BOEM will award leases through a competitive lease award process unless competitive interest does not exist. BOEM will publish details for each auction and lease through appropriate notices in the **Federal Register**. Each competitive lease award process will include the following steps:

(1) *Call for Information and Nominations (Call)*. BOEM will publish a Call in the **Federal Register** requesting information to determine qualifications of prospective bidders and interest in preliminarily identified OCS lease areas.

(2) *Area Identification*. BOEM will identify OCS areas for leasing consideration and related analysis in consultation with appropriate Federal agencies, State and local Governments, federally recognized Tribes, Alaska Native Claims Settlement Act (ANCSA) corporations, and other interested parties.

(3) *Proposed Sale Notice (PSN)*. BOEM will publish a PSN, or a notice of its availability, in the **Federal Register**, announcing BOEM's intention to conduct an auction for prospective lease areas. The PSN will set forth provisions and information concerning the proposed auction and lease, and will invite stakeholder comments.

(4) *Final Sale Notice (FSN)*. BOEM will publish an FSN, or a notice of its availability, in the **Federal Register** setting forth final information concerning the auction and lease.

(5) *Auction*. BOEM will hold an auction under the regulations in this part and the FSN.

(6) *Lease Award*. BOEM will award leases subsequent to the completion of the aforementioned steps under the regulations in this part and the FSN.

■ 19. Revise § 585.211 to read as follows:

**§ 585.211 What is the Call?**

(a) The Call is a notice that BOEM will publish in the **Federal Register** requesting responses from stakeholders interested in bidding on designated OCS areas and comments from interested and potentially affected parties. The

responses may inform the area identification process and will enable BOEM to determine whether there exists competitive interest in the proposed lease area. BOEM may request additional information from stakeholders related to environmental, economic, and other issues.

(b) The Call may include the following:

(1) The areas that BOEM has preliminarily identified for leasing;

(2) A request for comments concerning geological conditions; archaeological sites on the seabed or nearshore; multiple uses of the proposed leasing area (including, for example, navigation, recreation, military, and fisheries); and other socioeconomic, biological, and environmental information;

(3) Request for comments regarding feasibility for development, including the energy resource and opportunity for grid connection;

(4) Possible lease terms and conditions;

(5) A request to potential bidders to nominate one or more areas for a commercial renewable energy lease within the preliminarily identified leasing areas. Such nominations must include:

(i) The specific OCS blocks that the respondent is interested in leasing;

(ii) A general description of the respondent's objectives and how respondent proposes to achieve those objectives;

(iii) A preliminary schedule of the respondent's proposed activities, including those potentially leading to commercial operations, to the extent known;

(iv) Information regarding respondent's coordination, or intent to coordinate, with any other entity for the purposes of acquiring a lease from BOEM, if applicable;

(v) Documentation demonstrating the respondent's qualification to acquire a lease or grant as specified in § 585.107;

(vi) Available and pertinent information concerning renewable energy and environmental conditions in the nominated areas, including energy and resource data and information used to evaluate the areas; and

(vii) Any additional information requested by BOEM in the Call;

(c) Respondents have 45 calendar days from the date the Call is published in the **Federal Register** to reply, unless BOEM specifies another time period, to be no less than 30 calendar days, in the Call.

(d) BOEM may use the information received in response to a Call to:

(1) Identify lease areas;

(2) Develop options for its lease provisions (e.g., stipulations, payments, terms, and conditions);

(3) Inform its environmental analysis conducted under applicable Federal requirements, including, but not limited to, NEPA, ESA, and CZMA; and

(4) Determine whether competitive interest exists in all or a portion of any potential lease area. If BOEM determines no competitive interest exists, BOEM may follow the noncompetitive leasing process set forth in § 585.231(d) through (k).

■ 20. Revise § 585.212 to read as follows:

**§ 585.212 What is area identification?**

(a) Area identification is the process by which BOEM delineates one or more OCS areas for leasing consideration and environmental analysis if the areas appear appropriate for renewable energy development. This process is based on an area's relevant attributes, such as other uses of the area, environmental factors or characteristics, stakeholder comments, industry nominations, feasibility for development, and other relevant information. BOEM consults with interested parties during this process as specified in § 585.210(b)(2).

(b) BOEM may consider areas nominated by respondents to a Call and other areas determined appropriate for leasing.

(c) For the identified areas, BOEM will evaluate:

(1) The potential effects of leasing the identified areas on the human, marine, and coastal environments. BOEM may develop measures, including lease stipulations, to mitigate potential adverse impacts; and

(2) The feasibility of development.

(d) BOEM may hold public hearings on the environmental analyses associated with leasing the identified areas, after appropriate notice.

(e) At the end of the area identification, BOEM may offer selected areas for leasing.

■ 21. Revise § 585.213 to read as follows:

**§ 585.213 What information is included in the PSN?**

(a) The PSN is a notice that BOEM will publish in the **Federal Register** for each prospective auction. The PSN will request public comment on the items listed in this section. Public comments will inform BOEM's decisions regarding auction format and lease terms and conditions. At a minimum, the PSN will include or describe the availability of information pertaining to:

(1) The proposed leases to be offered, including:

- (i) The proposed lease areas, including size and location;
- (ii) The proposed lease terms and conditions, including the proposed rental rate and operating fee rate;
- (iii) Other proposed payment requirements, as applicable;
- (iv) Proposed requirements for performance under the lease, such as site-specific lease stipulations and environmental mitigation measures;
- (2) Steps a bidder must take to obtain and maintain eligibility to participate in the auction (e.g., financial forms, bid deposits);
- (3) The proposed availability and potential value of bidding credit(s), if any are offered, and the actions or commitments required to obtain them;
- (4) A detailed description of the proposed auction format and procedures as further described in § 585.223;
- (5) The maximum number or specific sets of lease areas that any given bidder may be allowed to bid on or to acquire in an auction, if applicable;
- (6) Lease award procedures, including how and when a lease will be awarded and executed, and how BOEM will address unsuccessful bids and applications;
- (7) A copy of, or a reference to, the official BOEM lease form; and
- (8) Other relevant matters, as determined by BOEM.

(b) The PSN may be used to gauge competitive interest by requiring prospective bidders to reaffirm their intent to participate in the auction as a prerequisite for continued eligibility.

(c) A prospective bidder is encouraged to identify in its comments any specific proposed terms and conditions in the PSN that may preclude its participation in the auction.

(d) The PSN's public comment period is 60 calendar days from the date of its publication in the **Federal Register**, unless BOEM specifies another time period of not less than 30 calendar days in the PSN.

(e) BOEM will notify any potentially affected States, local governments, Alaska Native and American Indian Tribes, and ANCSA corporations of the PSN's publication, and will provide copies of the PSN to these entities upon written request.

■ 22. Revise § 585.214 to read as follows:

**§ 585.214 What information is included in the FSN?**

(a) The FSN is a notice that BOEM will publish in the **Federal Register** at least 30 calendar days before each prospective auction. The FSN will describe the final auction details and will include or describe the availability of information pertaining to:

- (1) The leases to be offered, including:
  - (i) The lease areas, including size and location;
  - (ii) Lease terms and conditions, including the rental rate and the operating fee rate;
  - (iii) Other payment requirements, as applicable;
  - (iv) Requirements for performance under the lease, including site-specific lease stipulations and environmental mitigation measures;
- (2) Steps a bidder must take to ensure eligibility to participate in the auction (e.g., financial forms, bid deposits);
- (3) The availability and potential value of bidding credit(s), if any are offered, and the actions or commitments required to obtain them.
- (4) A detailed description of the auction format and procedures as further described in § 585.223;
- (5) The maximum number or specific sets of lease areas that any given bidder may be allowed to bid on or to acquire in an auction, if applicable;
- (6) Lease award procedures, including how and when a lease will be awarded and executed, and how BOEM will handle unsuccessful bids and applications;
- (7) A copy of, or a reference to, the official BOEM lease form; and
- (8) Other relevant matters as determined by BOEM.

(b) The terms of the FSN may differ from the proposed terms of the PSN.

■ 23. Revise § 585.215 to read as follows:

**§ 585.215 What may BOEM do to assess whether competitive interest for a lease area still exists before the auction?**

(a) At any time BOEM has reason to believe that competitive interest in any lease area no longer exists before the area's auction, BOEM may issue a notice in the **Federal Register**, as described in § 585.116, requesting information regarding competitive interest in that area. BOEM will consider respondents' comments to determine whether competitive interest in that area remains. BOEM may decide to end the competitive process for any area if it determines that competitive interest no longer exists.

(b) If BOEM determines after considering respondents' comments to such a notice that competitive interest remains, BOEM will continue with the competitive process set forth in §§ 585.210 through 585.226.

(c) If BOEM determines at any time before the auction that only a single party remains interested in a lease area, BOEM may proceed either with the auction or with the noncompetitive process set forth in § 585.231(d) through

(k) following payment by that party of the acquisition fee specified in § 585.502(a).

■ 24. Revise § 585.216 to read as follows:

**§ 585.216 How are bidding credits awarded and used?**

(a) BOEM will determine the highest bid, taking into account the combined value of the monetary (cash) component and the non-monetary component(s), represented by bidding credits. The PSN and FSN will explain the following details, if bidding credit(s) are available for that auction:

(1) Eligibility and application requirements;

(2) The value of each available bidding credit, which will be either a sum certain or a percentage of the cash bid; and

(3) Procedures for applying each available bidding credit to bids submitted during the auction.

(b) Eligibility for bidding credits must be established in advance of any lease auction, in accordance with the specifications of the FSN. Such eligibility may be based on actions that the bidder has already undertaken or actions that it has committed to undertake in the future, provided that BOEM has agreed to the terms by which such a commitment will be made. BOEM may offer bidding credits for any of the following:

(1) Power purchase agreements;

(2) Eligibility for, or applicability of, renewable energy credits or subsidies;

(3) Development agreements by a potential lessee that facilitate shared transmission solutions and grid interconnection;

(4) Technical merit, timeliness, or financing and economic considerations;

(5) Environmental considerations, public benefits, or compatibility with State and local needs;

(6) Agreements or commitments by the developer that would facilitate OCS renewable energy development or other OCSLA goals; or

(7) Any other factor or criteria to further development of offshore renewable energy, as identified by BOEM in the PSN and FSN.

(c) Before the auction, bidders seeking to use bidding credits must establish that they meet the eligibility criteria for each bidding credit according to the FSN provisions.

(d) Before the auction, BOEM will determine each bidder's eligibility for bidding credits, and the value of those bidding credits, and will inform each eligible bidder of the value of the bidding credits to which it may be entitled.

(e) A provisional winner who is awarded bidding credits must pay an amount equal to the cash component of its winning bid less any bid deposit retained by BOEM under § 585.501.

■ 25. Revise the undesignated center heading that appears before § 585.220 and revise § 585.220 to read as follows:

**Competitive Lease Award Process—  
Auction Provisions**

**§ 585.220 How will BOEM award leases competitively?**

(a) BOEM will award leases competitively using an objective, fair, reasonable, and competitive auction process that provides a fair return to the United States. As described in the FSN, leases will be awarded to the highest bidder.

(b) BOEM may use any analog or digital method to conduct the auction. The specific process and procedural details for each auction will be noticed in the PSN and finalized in the FSN.

■ 26. Revise § 585.221 to read as follows:

**§ 585.221 What general provisions apply to all auctions?**

(a) If BOEM determines competitive interest exists to develop a renewable energy resource in any OCS area and decides to issue a lease for that area, BOEM will conduct an auction to award the lease.

(b) The auction's format, procedures, and other details will be specified in the FSN, as outlined in § 585.214. Possible auction formats include, but are not limited to, sealed bidding and ascending bidding.

(c) The FSN will specify the potential use of alternatives if the primary auction method, system, or mechanism malfunctions. Alternatively, BOEM may take action consistent with paragraph (d) of this section until the malfunction is resolved.

(d) Any time before a provisional winner is determined, BOEM may delay, suspend, or cancel an auction due to a natural or man-made disaster, technical malfunction, security breach, unlawful bidding activity, administrative necessity, or any other reason that BOEM determines may adversely affect the fair and efficient conduct of the auction. In its discretion, BOEM may restart the auction at whatever point it deems appropriate, reasonable, fair, and efficient for all participants; or, alternatively, BOEM may cancel the auction in its entirety.

(e) BOEM will determine the provisional winner for each lease area under the auction rules and bidding procedures prescribed in the FSN.

■ 27. Revise § 585.222 to read as follows:

**§ 585.222 What other auction rules must bidders follow?**

(a) Bidders must submit a deposit to participate in an auction under § 585.501, unless otherwise specified in the FSN. A provisional winner's bid deposit will be credited toward the balance due on its bid.

(b) Only bidders qualified by BOEM under §§ 585.106 and 585.107 are permitted to bid during an auction.

(c) Only an authorized agent may act on a bidder's behalf during an auction. Bidders must submit the names of their authorized agents to BOEM before the auction, as prescribed in the FSN.

(d) Each bidder must follow the auction process specified in the FSN and may not take any action to disrupt or alter the process beyond its intended function.

(e) A bidder is responsible for immediately contacting BOEM if it is unable to submit its bid for any reason during an auction. If a bidder fails to timely notify BOEM of its inability to bid, it may not dispute the auction or lease award on that basis. If a bidder timely notifies BOEM of its inability to submit a bid, BOEM, in its discretion, may suspend the auction, continue the auction using an alternative method, or continue the auction without the participation of the affected bidder.

(f) Bidders may not disclose their auction strategies or economic valuations of a lease area to other bidders listed in the FSN.

■ 28. Revise § 585.223 to read as follows:

**§ 585.223 What supplemental information will BOEM provide in a PSN and FSN?**

(a) In addition to the information described in §§ 585.213 and 585.214, BOEM may provide the following auction information, as appropriate, in the PSN and FSN:

(1) *Bidding instructions, procedures, and systems, including the bid variables.* How the auction will be conducted and what systems and procedures will be utilized.

(2) *Bid deposit.* The amount a bidder must pay under § 585.501 to be eligible to bid. The FSN will prescribe the process and deadline for submitting a bid deposit.

(3) *Mock auction.* Notice of a practice auction before the actual auction. Only bidders eligible for the actual auction will be permitted to participate in the mock (*i.e.*, practice) auction.

(4) *Auction date, starting time and location.* The starting time will include the relevant time zone, and the location

will indicate where the auction will take place.

(5) *Minimum bid.* The price at which the bidding will start.

(6) *Information BOEM will release to bidders between rounds.* This information may include prior round results and other updates.

(7) *Tie-breaking provision.* This provision describes the method that BOEM will use to break a tie between two or more identical high bids offered for the same lease area, or package of lease areas.

(8) *Next highest bidder.* The method that BOEM will use to determine the next highest bidder of a completed auction in the event the provisional winner fails to meet its obligations or is unable to acquire a lease for any reason, or if a competitively issued lease or any portion thereof is relinquished or cancelled within six months of the auction.

(b) The list in paragraph (a) of this section is not exhaustive. BOEM may include in the FSN any other information relevant to that auction.

■ 29. Add an undesignated center heading before § 585.224 and revise § 585.224 to read as follows:

**Competitive Lease Award Process—  
Post-Auction Provisions**

**§ 585.224 What will BOEM do after the auction?**

(a) At the conclusion of the auction, BOEM will:

(1) Declare the bidding closed.

(2) Assess whether the bids meet the requirements of BOEM's regulations and the FSN. BOEM may disqualify bids based on this review.

(3) Under 43 U.S.C. 1337(c), provide the Department of Justice, in consultation with the Federal Trade Commission, the opportunity to conduct an antitrust review of the lease sale results. BOEM may disqualify bids based on the results of this review.

(4) BOEM will declare the provisional winner of each lease area.

(b) BOEM may reject any and all bids received, regardless of the amount offered.

(c) BOEM will accept or reject bids within 90 calendar days of auction closure; BOEM may extend that time by notice to bidders within 15 calendar days before the 90-calendar day period ends.

(d) BOEM will deem rejected any bid not accepted within the 90-calendar-day period, or any extension. BOEM will provide each rejected bidder a written explanation for the rejection and will refund, without interest, any monies deposited by the rejected bidder.

(e) BOEM may withdraw all or part of a lease area from the lease sale between auction closure and lease execution. In the event that a portion of the lease area is withdrawn, the provisional winner has the option to refuse the lease without penalty, to propose new lease terms for BOEM's concurrence, or to accept the lease with the reduced area.

(f) BOEM may re-auction any lease area or portions thereof that remain unsold at the conclusion of an auction. BOEM may restart the competitive leasing process at any point in the process set forth in § 585.210 that it deems reasonable and appropriate (e.g., RFI, Call, area identification, PSN, or FSN).

■ 30. Revise § 585.225 to read as follows:

**§ 585.225 What happens if BOEM accepts a bid?**

(a) BOEM will identify and notify the lease area's provisional winner of the amount due on each winning bid, which equals the cash component of the provisional winner's bid less its bid deposit retained by BOEM under § 585.501 and paragraph (c) of this section. BOEM will provide three unsigned copies of the lease to the provisional winner.

(b) Within 10 business days after receipt of the unsigned copies, or as otherwise specified by BOEM under paragraph (d) of this section, the provisional winner must:

(1) Execute all three copies of the lease and return them to BOEM;

(2) File financial assurance as required by §§ 585.515 through 585.537; and

(3) Pay the amount due.

(c) When the bid deposit exceeds the amount due, BOEM will refund the overage without interest.

(d) A provisional winner may request in writing an extension of the 10-day time limit in paragraph (b) of this section. BOEM, in its discretion, may grant such a request.

(e) BOEM will execute the lease by signing the three returned copies on behalf of the United States only after the provisional winner completes the requirements in paragraph (b) of this section and any appeals timely filed under § 585.118(c)(1) have been resolved. After BOEM executes the lease, the provisional winner becomes the winning bidder, and BOEM will send the winning bidder one fully executed copy of the lease. The lease takes effect as set forth in § 585.237.

(f) The winning bidder must pay the first 12 months' rent under § 585.503(a) within 45-calendar days after receiving

a copy of the executed lease from BOEM.

(g) In the event that a lessee does not meet the commitments it made to obtain any bidding credits, the lessee will be required to repay the value of the bidding credits that it received, adjusted for inflation.

■ 31. Add § 585.226 to read as follows:

**§ 585.226 What happens if the provisional winner fails to meet its obligations?**

(a) If BOEM determines that a provisional winner has failed to timely complete the steps outlined in § 585.225(b) or § 585.316, or has otherwise failed to comply with applicable laws, regulations, or FSN provisions, BOEM may take one or more of the following actions:

(1) Decline to execute the applicable lease.

(2) Decline to execute the lease for any other lease areas that the provisional winner won during the auction.

(3) Require forfeiture of the bid deposit. In the event the bid deposit exceeds the amount of the winning bid, BOEM would limit the required forfeiture to the lesser amount.

(4) Refer the matter to the Department of the Interior's Administrative Remedies Division for suspension or debarment review pursuant to 2 CFR part 180 as implemented at 2 CFR part 1400.

(5) Pursue any other remedy available.

(b) If BOEM declines to execute a lease with the provisional winner under paragraph (a) of this section, BOEM may decide to select a new provisional winner by either repeating the auction under § 585.224(f), or pursuant to the procedures in § 585.224(a)(3), by selecting the next highest bid submitted during the auction, or by using other procedures specified in the FSN.

(c) BOEM's decisions under this section are appealable under § 585.118(a).

■ 32. Revise § 585.231 to read as follows:

**§ 585.231 Will BOEM issue leases noncompetitively?**

(a) BOEM will consider unsolicited requests for a lease on a case-by-case basis and may issue a lease noncompetitively in accordance with this part. BOEM will issue a lease noncompetitively only if it has determined after public notice that no competitive interest exists. BOEM will not consider an unsolicited request for a lease under this part that is proposed in a lease area that is scheduled for a lease auction under this part.

(b) At BOEM's discretion, BOEM may issue an RFI under § 585.116 relating to

your unsolicited lease request and will consider comments received to determine if competitive interest exists. If BOEM decides not to issue an RFI and, therefore, not to continue processing your unsolicited lease request, it will refund your acquisition fee.

(c) If BOEM determines that competitive interest exists in the lease area:

(1) BOEM will proceed with the competitive process set forth in §§ 585.210 through 585.226;

(2) If you submit a bid for the lease area in a competitive lease sale, your acquisition fee will be applied to the deposit for your bonus bid; and

(3) If you do not submit a bid for the lease area in a competitive lease sale, BOEM will not refund your acquisition fee.

(d) If BOEM determines that there is no competitive interest in a lease and that further investigation of the area is in the public interest, it will:

(1) Publish in the **Federal Register** a determination of no competitive interest, and

(2) Prepare and provide you with a written estimate of the proposed fee to pay for the processing costs under § 585.111, including any environmental review that BOEM may require before lease issuance.

(3) Conduct environmental reviews required by Federal law and consult with affected Federal agencies, State and local governments, and Native Alaskan and Indian Tribes.

(e) The following deadlines apply after issuance of a determination of no competitive interest:

(1) Within 90 calendar days of receiving the written estimate of the fee, or longer (as determined at BOEM's discretion), you must pay the fee for any environmental review under § 585.111. Failure to pay the required fee may result in withdrawal of the determination of no competitive interest.

(2) A determination of no competitive interest expires two years after its publication, unless BOEM determines that it should be extended for good cause. BOEM reserves the right to withdraw a determination of no competitive interest before it expires if BOEM determines that you have failed to exercise due diligence in obtaining a lease.

(f) After BOEM publishes the determination of no competitive interest, you will be responsible for submitting any consistency certification and necessary data and information in a timely manner to the applicable State

CZMA agencies and BOEM pursuant to 15 CFR part 930, subpart D.

(g) After completing its review of your lease request, BOEM may offer you a noncompetitive lease.

(h) If you accept the terms and conditions of the lease, BOEM will issue the lease. You must comply with the terms and conditions of your lease and the applicable provisions of this part. If BOEM issues you a lease, BOEM will send you a notice with 3 copies of the lease form.

(1) Within 10 business days after you receive the lease copies you must:

(i) Execute all three copies of the lease; and

(ii) File financial assurance as required under §§ 585.516 through 585.537.

(2) You must pay the first 12 months' rent no later than 45 calendar days after you receive your copy of the executed lease from BOEM under § 585.503(a)(1).

(i) BOEM will publish in the **Federal Register** a notice announcing the issuance of your lease.

(j) If you do not accept the terms and conditions in a timely manner, BOEM will not issue a lease. Additionally, if you do not comply with the requirements for financial assurance, BOEM may decide not to issue a lease. If BOEM does not issue a lease due to your noncompliance or non-acceptance, BOEM will not refund your acquisition fee or any fees paid under paragraph (e)(1) of this section.

■ 33. Amend § 585.232 by revising the section heading and paragraph (c) to read as follows:

**§ 585.232 May I acquire a lease noncompetitively after responding to a request for information or a Call for Information and Nominations?**

\* \* \* \* \*

(c) After receiving the acquisition fee, BOEM will follow the process outlined in § 585.231(d) through (i).

■ 34. Revise the undesignated center heading before § 585.235 and revise § 585.235 to read as follows:

**Commercial and Limited Lease Periods**

**§ 585.235 What are the lease periods for a commercial lease?**

(a) The lease periods within the term of your commercial lease are defined as follows:

(1) *Preliminary period.* Each commercial lease has a preliminary period of up to five years. During the preliminary period, the lessee must submit a COP. The preliminary period begins on the effective date of the lease and ends either when a COP is received by BOEM for review or at the expiration of five years, whichever occurs first.

(2) *COP review period.* A commercial lease has a COP review period. The COP review period begins when BOEM receives a COP from the lessee and ends upon COP approval, disapproval, or approval with modifications pursuant to § 585.628. During the COP review period, BOEM conducts the necessary reviews and consultations associated with the COP. The lessee must resolve issues identified as incomplete in the COP by BOEM within the first year of the COP review period.

(3) *Design and construction period.* A commercial lease has a design and construction period for the duration specified in the approved COP, which may be modified by mutual agreement

of the lessee and BOEM. During the design and construction period, the lessee must submit its FDR and FIR, address any issues raised by BOEM, and complete project construction. The design and construction period begins at COP approval and ends either when commercial operations begin or at the expiration of the period set forth in the approved COP as modified, whichever occurs first.

(4) *Operations period.* A commercial lease has an operations period of 30 years or the duration specified in the lease. The operations period begins at the start of commercial operations. Additional time may be added to the operations period through a lease suspension under § 585.415 issued during this period; a lease extension requested pursuant to paragraph (b) of this section; or a lease renewal under § 585.425.

(b) You may request an extension of any of the lease periods outlined in paragraph (a) of this section for good cause. In its discretion, BOEM may approve your request.

(c) If you intend to develop your lease in phases under § 585.629, you may propose lease period schedules as appropriate for each phase in your COP.

(d) If you intend to segregate or merge your lease under §§ 585.408 through 585.413, you and your assignees may propose lease period schedules in your segregation or merger application.

■ 35. Revise § 585.236 to read as follows:

**§ 585.236 If I have a limited lease, how long will my lease remain in effect?**

(a) For limited leases, the lease periods are as shown in the following table:

Lease period	Extension or suspension	Requirements
(1) Each limited lease has a preliminary period of 12 months within which to submit a GAP. The preliminary period begins on the effective date of the lease.	If we receive a GAP that satisfies the requirements of §§ 585.640 through 585.648, the preliminary period will be automatically extended for the period of time necessary for us to conduct a technical and environmental review of the GAP.	The GAP must meet the requirements of §§ 585.640 through 585.648
(2) Each limited lease has an operations period as specified by BOEM (if the lease is issued competitively) or negotiated by the parties (if the lease is issued noncompetitively). In either case, the duration of the operations period will depend on the intended use of the lease. The operations period begins on the date that we approve your GAP.	We may order or grant a suspension of the operations period as provided in §§ 585.415 through 585.421.	

(b) You may request an extension of any of the lease periods outlined in paragraph (a) of this section for good cause. In its discretion, BOEM may approve your request.

**Subpart D—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Renewable Energy Activities**

■ 36. Amend § 585.301 by revising paragraphs (a)(2) and (3) to read as follows:

**§ 585.301 What do ROW grants and RUE grants include?**

(a) \* \* \*

(2) Is of a width sufficient to accommodate potential changes at the design and installation phases of the

project, with an option for the grant holder to relinquish unused portions of the ROW after construction is complete;

(3) For the associated facilities, is limited to the area reasonably necessary for a power or pumping station or other facilities requested.

\* \* \* \* \*

■ 37. Amend § 585.302 by revising paragraph (a) to read as follows:

**§ 585.302 What are the general requirements for ROW grant and RUE grant holders?**

(a) To acquire a ROW grant or RUE grant, you must provide evidence that you meet the qualifications set forth in §§ 585.106 and 585.107.

\* \* \* \* \*

■ 38. Revise § 585.303 to read as follows:

**§ 585.303 How long will my ROW grant or RUE grant remain in effect?**

The periods within the term of your grant are defined as follows:

(a) Each ROW or RUE grant has a preliminary period of 12 months from the effective date of the ROW or RUE grant within which to submit a GAP.

The preliminary period begins on the effective date of the grant. You must submit a GAP no later than the end of the preliminary period for your grant to remain in effect. However, you may submit a GAP before the issuance of your ROW or RUE grant.

(b) Each ROW or RUE grant has an operations period as set by BOEM (if the grant is issued competitively) or negotiated by the parties (if the grant is issued noncompetitively). In either case, the duration of the operations period will depend on the intended use of the grant. The operations period begins on the date that we approve your GAP.

(c) You may request an extension of any of the grant periods outlined in paragraphs (a) and (b) of this section for good cause. In its discretion, BOEM may approve your request.

■ 39. Amend § 585.305 by revising the introductory text to read as follows:

**§ 585.305 How do I request a ROW grant or RUE grant?**

You must submit a request for a new or modified ROW grant or RUE grant to BOEM pursuant to § 585.110. You must submit a separate request for each ROW grant or RUE grant you are requesting. The request must contain the following information:

\* \* \* \* \*

■ 40. Amend § 585.306 by revising paragraph (b) to read as follows:

**§ 585.306 What action will BOEM take on my request?**

\* \* \* \* \*

(b) If BOEM determines there is no competitive interest in a ROW or RUE grant, BOEM will publish a notice in the **Federal Register** of such determination. After BOEM publishes this notice, you are responsible for submitting any required consistency certification and necessary data and information under 15 CFR part 930, subpart D, to BOEM and the applicable State CZMA agency. BOEM may establish terms and conditions for a noncompetitive grant and offer the grant to you:

(1) If you accept the terms and conditions of the grant, BOEM will issue the grant.

(2) If you do not accept the terms and conditions of the grant, BOEM may agree to modify the terms and conditions or may decide not to issue the grant.

**§ 585.309 [Removed]**

■ 41. Remove § 585.309.

**§ 585.310 [Redesignated as § 585.309]**

■ 42. Redesignate § 585.310 as new § 585.309.

**§ 585.310 [Reserved]**

■ 43. Add new reserved § 585.310

**§ 585.316 [Amended]**

■ 44. Amend § 585.316 in paragraph (a) by removing the acronym “BOEM” and adding in its place the words “Office of Natural Resources Revenue (ONRR)”.

**Subpart D—Lease and Grant Administration**

■ 45a. Remove the undesignated center heading appearing before § 585.436 and the undesignated heading appearing before § 585.437.

■ 45b. Amend § 585.400 by revising paragraph (f) to read as follows:

**§ 585.400 What happens if I fail to comply with this part?**

\* \* \* \* \*

(f) BOEM may assess civil penalties as authorized by section 24 of the OCS Lands Act and as determined under the procedures set forth in 30 CFR part 550, subpart N, if you fail to comply with any provision of this part or any term of a lease, grant, or order issued under the authority of this part:

(1) After notice of such failure and expiration of any reasonable period allowed for corrective action; or

(2) Without notice of such failure and expiration of a period allowed for corrective action if BOEM determines the failure may constitute, or constituted, a threat of serious, irreparable, or immediate harm or damage to life (including fish and other

aquatic life), property, or the marine, coastal, or human environment.

\* \* \* \* \*

■ 46. Amend § 585.405 by revising first sentence of paragraph (a) to read as follows:

**§ 585.405 How do I designate an operator?**

(a) If you intend to designate an operator who is not the lessee or grant holder, you must identify the proposed operator in your SAP (under § 585.610(a)(3)), COP (under § 585.626(a)(2)), or GAP (under § 585.645(a)(2)), as applicable. \* \* \*

\* \* \* \* \*

■ 47. Revise the undesignated center heading immediately before § 585.408 and amend § 585.408 by revising the first sentence of paragraph (b) introductory text and first sentence of paragraph (e) to read as follows:

**Lease or Grant Assignment, Segregation, and Consolidation**

**§ 585.408 May I assign my lease or grant interest?**

\* \* \* \* \*

(b) You may assign a lease or grant interest by submitting one paper copy and one electronic copy of an assignment application to BOEM, Form BOEM–0003 for leases and Form BOEM–0002 for grants. \* \* \*

\* \* \* \* \*

(e) You do not need to request an assignment for business mergers, name changes, or changes of business form.

\* \* \*

**§§ 585.410 and 585.411 [Redesignated as §§ 585.411 and 585.412]**

■ 48. Redesignate §§ 585.410 and 585.411 as §§ 585.411 and 585.412, respectively.

■ 49. Add new § 585.410 to read as follows:

**§ 585.410 When will my assignment result in a segregated lease?**

(a) When there is an assignment by all record title owners of 100 percent of the record title to one or more aliquots in a lease, the assigned and retained portions become segregated into separate and distinct leases. In such a case, both the new lease and the remaining portion of the original lease are referred to as “segregated leases” and the assignee becomes the record title owner of the new lease, which is subject to all the terms and conditions of the original lease. The financial assurance requirements of subpart F of this part apply separately to each segregated lease.

(b) If a record title owner transfers an undivided interest of less than 100 percent of the record title interest in any

given aliquot, that transfer will not segregate the portions of that aliquot, or the whole aliquot, in which part of the record title was transferred, into a separate lease from the portions in which no interest was transferred. Instead, that transfer will create a joint ownership between the assignee and assignor in the portions of the lease in which part of the record title interest was transferred.

■ 50. Amend newly redesignated § 585.412 by revising the first sentence of paragraph (b) to read as follows:

**§ 585.412 How does an assignment affect the assignee's liability?**

\* \* \* \* \*

(b) Assignees are bound to comply with each term or condition of the lease or grant and the regulations in this part.

■ 51. Add § 585.413 to read as follows:

**§ 585.413 How do I consolidate leases or grants?**

(a) You may apply to consolidate all or part of two or more adjacent leases or grants held by the same lessee or grant holder into one new lease or grant, subject to BOEM's approval. The application must include a description of the leases or grants, or portions thereof, to be consolidated, including the relevant lease number, lease blocks, and aliquots.

(b) An approved consolidation will create a new lease or grant that will be subject to the terms and conditions of the consolidated leases and grants.

(c) To the extent the leases and grants to be consolidated have different times remaining in the relevant lease periods, BOEM will default to using the shorter remaining periods in the new lease or grant but will consider requests for extensions pursuant to § 585.235(b).

(d) To the extent the leases and grants to be consolidated have other different terms and conditions, BOEM will default to using the terms and conditions in the most recently issued leases and grants to be consolidated for the new lease. BOEM will consider requests for modifications on a case-by-case basis and, in its discretion, approve such requests for good cause.

(e) Before BOEM will approve your consolidation request, BOEM will assess appropriate financial assurance obligations for the new lease or grant per §§ 585.516 and 585.517 or §§ 585.520 and 585.521.

(f) Any consolidated leases and grants that have been fully absorbed into the new lease or grant in their entirety will be considered terminated at the time of consolidation approval.

■ 52. Amend § 585.415 by revising paragraph (b) to read as follows:

**§ 585.415 What is a lease or grant suspension?**

\* \* \* \* \*

(b) A suspension extends the expiration date for the relevant period of your lease or grant for the length of time the suspension is in effect.

\* \* \* \* \*

■ 53. Revise § 585.416 to read as follows:

**§ 585.416 How do I request a lease or grant suspension?**

(a) You must submit a written request to BOEM that includes the following information no later than 90 calendar days before the expiration of your appropriate lease or grant period:

(1) The reasons you are requesting suspension of your lease or grant, including an explanation why the suspension is necessary.

(2) The length of additional time requested.

(3) An explanation why it is in the public interest to approve the suspension.

(4) Any other information BOEM may require.

(b) If you are unable to timely submit a COP or GAP, as required, you may request a suspension to extend the preliminary period of your lease or grant. Your request must include a revised schedule for submission of your COP or GAP, as appropriate.

■ 54. Amend § 585.417 by revising paragraph (b)(2) to read as follows:

**§ 585.417 When may BOEM order a suspension?**

\* \* \* \* \*

(b) \* \* \*

(2) You must furnish a copy of the study and results to BOEM pursuant to § 585.110;

\* \* \* \* \*

■ 55. Amend § 585.420 by revising paragraph (b) and removing paragraph (c).

The revision reads as follows:

**§ 585.420 What effect does a suspension order have on my payments?**

\* \* \* \* \*

(b) If BOEM approves your request for a suspension under § 585.416, or orders a suspension under § 585.417, BOEM may waive or defer your payment obligations during the suspension. BOEM's decision to waive or defer payments will depend on the reasons for the suspension, including your responsibility for the circumstances necessitating a suspension.

■ 56. Amend § 585.425 by revising the first sentence to read as follows:

**§ 585.425 May I obtain a renewal of my lease or grant before it terminates?**

You may request renewal of the operations period of your lease or the original authorized period of your grant.

■ 57. Amend § 585.426 by revising paragraph (a)(2) to read as follows:

**§ 585.426 When must I submit my request for renewal?**

(a) \* \* \*

(2) No later than two years before the termination date of the operations period of your commercial lease.

\* \* \* \* \*

■ 58. Amend § 585.427 by revising the introductory text and paragraphs (a) and (b) to read as follows:

**§ 585.427 How long is a renewal?**

BOEM will set the length of the renewal at the time of renewal on a case-by-case basis.

(a) For commercial leases, the length of the renewal will not exceed the original operations period unless a longer time is negotiated by the parties.

(b) For limited leases, the length of the renewal will not exceed the original operations period.

\* \* \* \* \*

■ 59. Amend § 585.429 by adding paragraph (g) to read as follows:

**§ 585.429 What criteria will BOEM consider in deciding whether to renew a lease or grant?**

\* \* \* \* \*

(g) Other relevant factors, as appropriate.

■ 60. Amend § 585.432 by revising paragraph (a) to read as follows:

**§ 585.432 When does my lease or grant terminate?**

\* \* \* \* \*

(a) The expiration of the applicable period of your lease or grant, unless the relevant period is extended under § 585.235(b) or § 585.236(b), a request for renewal of your lease or grant is pending a decision by BOEM, or your lease or grant is suspended or renewed as provided in this subpart, in which case it terminates on the date set forth in the notice of suspension or renewal;

\* \* \* \* \*

■ 61. Revise the undesignated center heading appearing before § 585.435 and revise § 585.435 to read as follows:

**Lease or Grant Relinquishment, Contraction, or Cancellation**

**§ 585.435 How can I relinquish a lease or a grant or parts of a lease or grant?**

(a) You may surrender a lease or grant, or a designated subdivision thereof, by filing with BOEM a properly



completed official relinquishment form available on the BOEM website. A relinquishment takes effect on the date BOEM receives your completed form, subject to the continued obligation of the lessee or grant holder and the surety to:

- (1) Make all payments due on the lease or grant, including any accrued rent and deferred bonuses;
- (2) Decommission all facilities on the relinquished lease or grant (or portion thereof) to BOEM's satisfaction; and
- (3) Perform any other outstanding obligations under the lease or grant.

(b) After you submit a completed relinquishment form for a lease or grant, ONRR will bill you for any outstanding payments that have accrued from obligations arising under the relinquished lease or grant.

■ 62. Add § 585.438 to read as follows:

**§ 585.438 What happens to leases or grants (or portions thereof) that have been relinquished, contracted, or cancelled?**

(a) If a lease or grant (or portion thereof) is relinquished, contracted, or cancelled under § 585.435, § 585.436, or § 585.437, respectively, BOEM may restart the competitive leasing process at any point set forth in § 585.210 that it deems reasonable and appropriate (e.g., RFI, Call, area identification, PSN, or FSN), subject to all necessary environmental analyses and consultations.

(b) If a competitively issued lease or grant (or portion thereof) is relinquished or cancelled under § 585.435 or § 585.437, respectively, within six months of the auction, BOEM may reoffer the lease or grant (or portion thereof) to the next highest bidder from that auction, if one can be identified. If BOEM decides to reoffer to the next highest bidder, the price will be the next best bid, or a prorated amount based on

the size of the relinquished share, as long as the next best bid reflects a fair return to the government.

**Subpart F—Payments and Financial Assurance Requirements**

■ 63. Amend § 585.500 by revising paragraphs (a) and (c)(1) through (7) and removing paragraph (c)(8).

The revisions read as follows:

**§ 585.500 How do I make payments under this part?**

(a) For acquisition fees or the initial 12 months' rent paid for the preliminary period of your lease, you must make your electronic payments through the Fees for Services page on the BOEM website at <https://www.boem.gov>, and you must include one copy of the *Pay.gov* confirmation receipt page with your unsolicited request.

\* \* \* \* \*

(c) \* \* \*

	Payment	Amount	Due date	Payment mechanism	Section reference
<b>Initial payments for leases</b>					
(1) If your lease is issued competitively.	Bid Deposit .....	As set in Final Sale Notice/depends on bid.	With bid .....	<i>Pay.gov</i> .....	§ 585.501.
	Bonus Balance .....	.....	Within 10-business days of receiving unsigned lease.	30 CFR 1218.51 ...	§ 585.225.
(2) If your lease is issued non-competitively.	Acquisition Fee .....	\$0.25 per acre, unless otherwise set by the Director.	With application .....	<i>Pay.gov</i> .....	§ 585.502.
(3) All leases .....	Initial Rent .....	\$3 per acre per year ...	45-calendar days after lease execution.	<i>Pay.gov</i> .....	§ 585.503.
<b>Subsequent payments for leases and project easements</b>					
(4) All leases .....	Subsequent Rent, unless otherwise provided in the terms of the lease.	\$3 per acre per year ...	Annually .....	30 CFR 1218.51 ...	§§ 585.503 and 585.504.
(5) If you have a project easement.	Rent, unless otherwise provided in the terms of the grant.	Greater of \$5 per acre per year or \$450 per year.	When/operations period for associated lease starts, then annually.	30 CFR 1218.51 ...	§ 585.507.
(6) If your commercial lease is producing.	Operating Fee .....	Determined by the formula in § 585.506.	Annually .....	30 CFR 1218.51 ...	§ 585.506.
<b>Payments for ROW grants and RUE grants *</b>					
(7) All ROW grants and RUE grants.	Initial Rent .....	Greater of \$5 per acre per year or \$450 per year, unless otherwise established in the grant.	Grant execution .....	<i>Pay.gov</i> .....	§ 585.508.
	Subsequent Rent .....	.....	Annually or in 5-year batches.	30 CFR 1218.51.	

■ 64. Revise § 585.501 to read as follows:

**§ 585.501 What deposits must I submit for a competitively issued lease, ROW grant, or RUE grant?**

(a) For a competitively issued lease or grant, BOEM may require a bid deposit before the auction as established in the FSN.

(b) The provisional winner of an auction must pay the balance of its accepted bid in accordance with the FSN.

■ 65. Revise § 585.503 to read as follows:

**§ 585.503 What are the rent and operating fee requirements for a commercial lease?**

(a) The rent for a commercial lease is \$3 per acre per year, unless otherwise established in the FSN or lease.

(1) You must pay ONRR the first 12 months' rent no later than 45 calendar days after you receive your copy of the executed lease from BOEM under § 585.500(a).

(2) You must pay ONRR as provided in 30 CFR 1218.51 the rent due at the beginning of each subsequent 1-year period for the entire lease area until the facility begins commercial operations as specified in § 585.506 or as otherwise specified in the FSN or lease:

(i) For leases issued competitively, BOEM will specify in the FSN and lease any adjustment to the rent that will take effect during the operations period and before commercial operations.

(ii) For leases issued noncompetitively, BOEM will specify in the lease any adjustment to the rent that will take effect during the operations period and before commercial operations.

(3) You must pay ONRR as provided in 30 CFR 1218.51 the rent due for a project easement in addition to the lease rent as provided in § 585.507. You must commence rent payments for your project easement upon BOEM's approval of your COP or GAP.

(b) After your lease begins commercial operations or on the date BOEM specifies in the lease, you must pay operating fees in the amount specified in § 585.506. Regardless of whether the lease is awarded competitively or noncompetitively, BOEM will specify in the lease the date when operating fees commence.

■ 66. Amend § 585.504 by revising the introductory text to read as follows:

**§ 585.504 How are my payments affected if I develop my commercial lease in phases?**

If you develop your commercial lease in phases as approved by BOEM in your COP under § 585.629, you must pay ONRR as provided in 30 CFR 1218.51:

■ 67. Amend § 585.505 by revising paragraph (c) to read as follows:

**§ 585.505 What are the rent and operating fee requirements for a limited lease?**

(c) You must pay ONRR as provided in 30 CFR 1218.51 the rent due at the

beginning of each subsequent 1-year period on the entire lease area for the duration of your operations period.

■ 68. Amend § 585.506 by:

- a. Revising the introductory text and the first sentence of paragraph (c)(1);
- b. Removing the acronym "DOE" and adding in its place the words "Department of Energy (DOE)" in paragraph (c)(2)(i); and
- c. Removing the acronym "BOEM" and adding in its place the acronym "ONRR" in paragraph (d).

The revisions read as follows:

**§ 585.506 What operating fees must I pay on a commercial lease?**

Once you begin commercial operations, you must pay ONRR as provided in 30 CFR 1218.51 operating fees on your commercial lease as described in § 585.503.

(1) Unless BOEM specifies otherwise, the operating fee rate "r" is 0.02 for each year the operating fee applies when you begin commercial generation of electricity.

■ 69. Amend § 585.507 by revising paragraphs (a) introductory text, (a)(1), and (b)(1) to read as follows:

**§ 585.507 What rent payments must I pay on a project easement?**

(a) You must pay ONRR, as provided in 30 CFR 1218.51, rent for your project easement in the amount of \$5 per acre, subject to a minimum of \$450 per year, unless specified otherwise in the lease.

(1) The size of the project easement will be determined according to § 585.628(g)(1).

(1) You must make the first rent payment when the operations period begins, as provided in § 585.500.

■ 70. Amend § 585.508 by revising paragraph (a) and paragraph (b) introductory text to read as follows:

**§ 585.508 What rent payments must I pay on ROW grants or RUE grants associated with renewable energy projects?**

(a) For each ROW grant BOEM approves under subpart D of this part, you must pay ONRR, as provided in 30 CFR 1218.51, an annual rent of \$5 per

acre as determined by § 585.301(a), but in no case less than \$450, for use of the grant, unless specified otherwise in the grant.

(b) For each RUE grant BOEM approves under subpart D of this part, you must pay ONRR, as provided in 30 CFR 1218.51, a rent in the amount of:

**§ 585.509 [Amended]**

■ 71. Amend § 585.509 in the section heading by removing the acronym "BOEM" and adding in its place the acronym "ONRR".

■ 72. Amend § 585.510 by revising the section heading and paragraphs (a), (b) introductory text, (b)(4)(i) and (ii), and (c) to read as follows:

**§ 585.510 May BOEM defer, reduce, or waive my lease or grant payments?**

(a) The BOEM Director may defer, reduce, or waive the rent or operating fee or components of the operating fee, such as the fee rate or capacity factor, when the Director determines that continued activities would be uneconomic without the requested deferral, reduction, or waiver, or that it is necessary to encourage continued or additional activities.

(b) When requesting a deferral, reduction, or waiver, you must submit an application to BOEM that includes all of the following:

(4) \* \* \*

(i) Continued activities would be uneconomic without the requested deferral, reduction, or waiver, or

(ii) A deferral, reduction, or waiver is necessary to encourage additional activities; and

(c) No more than 6 years of your operations period will be subject to a full waiver of the operating fee.

**§ 585.515 [Removed and Reserved]**

■ 73. Remove and reserve § 585.515.

■ 74. Revise § 585.516 to read as follows:

**§ 585.516 What are the financial assurance requirements for each stage of my commercial lease?**

(a) The financial assurance requirements for each stage of your commercial lease are:

Before BOEM will . . .	You must provide . . .
(1) Execute a commercial lease or approve an assignment of an existing commercial lease.	A bond or other authorized financial assurance in the amount of 12 months' rent.

Before BOEM will . . .	You must provide . . .
(2) Allow you to install facilities approved in your SAP.	A supplemental bond or other authorized financial assurance in an amount determined by BOEM based on the anticipated decommissioning costs of the proposed facilities.
(3) Allow you to install facilities approved in your COP.	A supplemental bond or other authorized financial assurance in an amount determined by BOEM based on anticipated decommissioning costs of the proposed facilities. If you propose to incrementally fund your financial assurance instrument, BOEM must approve the schedule for providing the appropriate financial assurance.

(b) Each bond or other authorized financial assurance must guarantee compliance with this part, the applicable plan approvals, and the terms and conditions of the lease.

(c) For hydrokinetic commercial leases, supplemental financial assurance may be required in an amount determined by BOEM prior to installation of facilities pursuant to a FERC license.

■ 75. Revise § 585.517 to read as follows:

**§ 585.517 How will BOEM determine the amounts of the supplemental financial assurance requirements associated with commercial leases?**

(a) BOEM determines the amount of your supplemental financial assurance based on the estimated costs to meet all accrued lease obligations, including:

- (1) The projected amount of annual rent and other payments due the United States over the next 12 months, to the extent that amount is not covered in the initial financial assurance provided in § 585.516(a)(1);
- (2) Any past due rent and other payments;
- (3) Other monetary obligations; and
- (4) The estimated cost of facility decommissioning required by subpart J of this part.

(b) If your cumulative potential obligations and liabilities increase or decrease, we may adjust the amount of the supplemental financial assurance.

(1) If we propose adjusting your financial assurance amount, we will notify you of the proposed adjustment and give you an opportunity to comment; and

(2) We may approve a reduced financial assurance amount if you request it and if the reduced amount that you request is sufficient to cover your obligations and liabilities calculated under paragraph (a) of this section.

■ 76. Revise § 585.520 to read as follows:

**§ 585.520 What financial assurance must I provide when I obtain my limited lease, ROW grant, or RUE grant?**

Before BOEM will execute your limited lease, ROW grant, or RUE grant, or approve an assignment of an interest therein, you or a proposed assignee

must guarantee compliance with all terms and conditions of the lease or grant by providing a bond or other authorized financial assurance in the amount of 12 months' rent.

■ 77. Revise § 585.521 to read as follows:

**§ 585.521 Do my financial assurance requirements change as activities progress on my limited lease or grant?**

(a) BOEM may require you to increase or allow you to decrease the amount of your financial assurance as activities progress on your limited lease or grant based on the estimated costs to meet all accrued lease or grant obligations.

(b) The total amount of the financial assurance must be no less than the amount required to meet your limited lease and grant obligations, including:

- (1) The projected amount of rent and other payments due the United States over the next 12 months;
- (2) Any past due rent and other payments;
- (3) Other monetary obligations; and
- (4) The estimated cost of facility decommissioning as required by subpart J of this part.

(c) If BOEM proposes adjusting the amount of your financial assurance to ensure your limited lease and grant obligations are met, BOEM will notify you of the proposed adjustment and will provide you an opportunity to object.

(d) You may submit a written request to BOEM to reduce the amount of your financial assurance if your proposed amount is not less than the sum of your obligations listed in paragraph (b) of this section. BOEM may approve your request in its discretion.

(e) You may satisfy the requirement for increased financial assurance on your limited lease or grant by increasing the amount of your existing bond or by providing a supplemental bond or other financial assurance.

(1) The supplemental bond or other financial assurance must meet the requirements specified in §§ 585.525 through 585.529.

(2) If you propose to incrementally fund your financial assurance, BOEM must approve the schedule for providing the appropriate financial assurance.

■ 78. Amend § 585.526 by:

- a. Revising paragraph (a)(2);
- b. Removing the word “and” after the semi-colon at the end of paragraph (a)(5); and
- c. Adding paragraphs (a)(7) through (9).

The revision and additions read as follows:

**§ 585.526 What instruments other than a surety bond may I use to meet the financial assurance requirement?**

(a) \* \* \*  
 (2) A pledge of cash, in an amount equal to the required dollar amount of the financial assurance, to be deposited and maintained in a Federal depository account of the U.S. Treasury;

\* \* \* \* \*

(7) Letters of credit, subject to the following conditions:

(i) The letter of credit provider must have an issuer credit rating from an Nationally Recognized Statistical Rating Organization (NRSRO) greater than or equal to investment grade from either Standard & Poor's Ratings Service or from Moody's Investor Service, or a proxy credit rating determined by BOEM based on audited financial information (including an income statement, balance sheet, statement of cash flows, and the auditor's certificate) greater than or equal to either investment grade from Standard & Poor's Ratings Service or from Moody's Investor Service;

(ii) The letter of credit must grant BOEM full authority to demand immediate payment in case of default in the performance of the terms and conditions of a lease or regulatory obligations;

(iii) The letter of credit must be irrevocable during its term and will be subject to collection by BOEM if not replaced by another letter of credit or other form of financial assurance at least 30 calendar days before its expiration date;

(iv) The expiration date of the letter of credit must not be less than 1 year following the date it becomes effective;

(v) The letter of credit must contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice of cancellation to BOEM at least 90 calendar days before the expiration date; and

(vi) The letter of credit must contain a venue provision, which requires any disputes to be adjudicated in a U.S. Federal court that is mutually agreed upon by BOEM and the issuers of the letter of credit.

(8) Another form of security approved by BOEM in its discretion; or

(9) A combination of paragraphs (a)(1) through (8) of this section.

■ 79. Amend § 585.528 by revising the first sentence of paragraph (a), the second sentence of paragraph (c) introductory text, paragraph (c)(4), and the first sentence of paragraph (c)(5) to read as follows:

**§ 585.528 May I use a third-party guaranty to meet the financial assurance requirement for lease or grant activities?**

(a) You may use a third-party guaranty to secure all or part of the obligations for which financial assurance was demanded by BOEM if the guarantor meets the criteria prescribed in paragraph (b) of this section and submits an agreement meeting the criteria prescribed in paragraph (c) of this section. \* \* \*

(c) \* \* \* All parties are bound jointly and severally, and the guarantor must meet the legal and financial qualifications set forth in §§ 585.106 and 585.107.

(4) The guaranty agreement must contain a confession of judgment providing that, if BOEM determines that you or your operator are in default, the guarantor must not challenge the determination and must remedy the default.

(5) If you or your operator fail to comply with any law, term, or regulation, your guarantor must either take corrective action or provide, within 7 calendar days or other agreed upon

time period, sufficient funds, up to the value of the guaranty, for BOEM to complete corrective action. \* \* \*

■ 80. Amend § 585.529 by removing “; and” from the end of the paragraph (a)(1), revising paragraph (a)(2), and adding paragraph (a)(3).

The revision and addition read as follows:

**§ 585.529 Can I use a lease- or grant-specific decommissioning account to meet the financial assurance requirements related to decommissioning?**

(a) \* \* \*  
(2) You must fund the account in the amount determined by and according to the payment schedule approved by BOEM. BOEM will estimate the cost of decommissioning, including site clearance; and

(3) Subject to BOEM’s approval, a decommissioning account may be funded in whole or in part during the operations period of a lease or grant.

■ 81. Amend § 585.532 by revising the section heading, the first sentence of paragraph (a) introductory text, and the first and second sentences of paragraph (b) to read as follows:

**§ 585.532 What happens if my surety wants to terminate the period of liability of my financial assurance?**

(a) Terminating the period of liability of your financial assurance ends the period during which surety liability continues to accrue. \* \* \*

(b) Your surety must submit to BOEM its request to terminate the period of liability under its financial assurance and notify you of that request no less than 90 days before the proposed termination date. If you intend to continue activities on your lease or

grant, you must provide replacement financial assurance of equivalent or greater value. \* \* \*

■ 82. Revise § 585.533 to read as follows:

**§ 585.533 How does my surety obtain cancellation of my financial assurance?**

BOEM will allow a surety to cancel financial assurance and will relieve the surety from liability for accrued obligations on the earliest to occur of the following:

(a) BOEM determines that there are no outstanding obligations covered by the financial assurance;

(b) The following occurs:

(1) BOEM accepts replacement financial assurance in an amount equal to or greater than the financial assurance to be cancelled to cover the period of liability prior to termination; or

(2) The surety issuing the new financial assurance has expressly agreed to assume all outstanding liabilities under the original financial assurance that accrued during the period of liability that was terminated;

(c) Seven years have elapsed since the termination of the period of liability if the new surety did not assume the accrued obligations for the terminated period of liability; or

(d) A longer period as necessary to complete any appeals or judicial litigation related to your liabilities covered by the financial assurance.

■ 83. Revise § 585.534 to read as follows:

**§ 585.534 When may BOEM cancel my financial assurance?**

(a) When your lease or grant ends, your sureties remain responsible, and BOEM will cancel your financial assurance as shown in the following table:

Financial assurance	Your financial assurance will not be cancelled until . . .
(1) Financial assurance for commercial leases submitted under § 585.516(a)(1), and for grants or limited leases submitted under §§ 585.520 and 585.521.	Seven years after all operations and activities under the lease or grant cease, including decommissioning and site clearance, or a longer period as necessary to complete any appeals or judicial litigation related to your financial assurance obligation. BOEM may reduce or cancel your financial assurance or return some or all of your security if BOEM determines that the full amount is no longer needed.

Financial assurance	Your financial assurance will not be cancelled until . . .
(2) Supplemental financial assurance for commercial leases submitted under § 585.516 and for grants or limited leases submitted under §§ 585.520 and 585.521.	(i) The lease or grant expires or is terminated and BOEM determines you have met your secured obligations, unless BOEM: (A) Determines that the future potential liability resulting from any undetected problem is greater than the amount of your lease-specific financial assurance; and (B) Notifies the provider of the supplemental financial assurance that BOEM will wait 7 years before cancelling all or a part of the supplemental financial assurance (or longer period as necessary to complete any appeals or judicial litigation related to your secured obligations); or (ii) At any time when: (A) BOEM determines, in its discretion, that you no longer need to provide the supplemental financial assurance; (B) The operations for which the supplemental financial assurance was provided were cancelled before accrual of any decommissioning obligation; or (C) Cancellation of the supplemental financial assurance is appropriate because, under the regulations, BOEM determines such financial assurance never should have been required.

(b) BOEM may require reinstatement of your financial assurance as if no cancellation had occurred if:

(1) A person makes a payment under the lease or grant, and the payment is rescinded or must be repaid by the recipient because the person making the payment is insolvent, bankrupt, subject to reorganization, or placed in receivership; or

(2) The responsible party represents to BOEM that it has discharged its obligations under the lease or grant, and the representation was materially false when the financial assurance was cancelled.

■ 84. Amend § 585.535 by revising the section heading, paragraph (a) introductory text, and paragraph (a)(2) to read as follows:

**§ 585.535 Why might BOEM call for forfeiture of my financial assurance?**

(a) BOEM may call for forfeiture of all or part of your financial assurance if:

\* \* \* \* \*

(2) You default on one of the conditions under which we accepted your financial assurance.

\* \* \* \* \*

**§ 585.541 [Amended]**

■ 85. Amend § 585.541 by removing the word “nautical” from the first sentence.

**§ 585.542 [Amended]**

■ 86. Amend § 585.542 by removing the word “nautical” from the third sentence.

**Subpart G—Plans and Information Requirements**

■ 87. Revise § 585.600 to read as follows:

**§ 585.600 What plans and information must I submit to BOEM before I conduct activities on my lease or grant?**

(a) You must submit a SAP, COP, or GAP and receive BOEM approval as set forth in the following table:

Before you:	you must:
(1) Conduct any site assessment activities on your commercial lease involving an engineered foundation, such as meteorological towers or other facilities that are installed using a fixed-bottom foundation requiring professional engineering design and assessment of sediment, meteorological, and oceanographic condition.	Submit, and obtain approval of, your SAP under §§ 585.605 through 585.613.
(2) Conduct any activities pertaining to construction of facilities for commercial operations on your commercial lease.	Submit, and obtain approval of, your COP under §§ 585.620 through 585.629.
(3) Conduct any activities on your limited lease or grant in any OCS area .....	Submit, and obtain approval of, your GAP under §§ 585.640 through 585.648.

(b) BOEM may waive certain types of information or analyses that you otherwise must provide in your proposed plan when you demonstrate that:

(1) Sufficient applicable information or analysis is readily available to BOEM.

(2) The coastal or marine resources that are the subject of the information requirement are not present or affected.

(3) Other factors affect your ability to obtain or BOEM’s need for the required information.

(4) Information is neither necessary nor required for a State to determine consistency with its coastal management program.

■ 88. Revise § 585.601 to read as follows:

**§ 585.601 When must I submit my plans to BOEM?**

(a) You may submit your SAP anytime; however, your SAP must be submitted to and approved by BOEM before you conduct activities requiring a SAP under § 585.600(a)(1).

(b) You must submit your COP within 5 years of your lease effective date as determined by § 585.237.

(1) Your COP must contain sufficient data and information for BOEM to complete its reviews and NEPA analysis.

(2) BOEM may need to conduct additional reviews of your COP, including environmental analysis under NEPA, if significant, new information becomes available from your site assessment and characterization activities or if you substantially revise

your COP. As a result of the additional reviews, BOEM may require that you modify your COP.

(c) You must submit your GAP within 12 months of your lease effective date as determined by § 585.237 or your grant effective date as determined by § 585.303(a), as applicable.

■ 89. Revise § 585.602 to read as follows:

**§ 585.602 What records must I maintain?**

Until BOEM releases your financial assurance under § 585.534, you must maintain and provide to BOEM upon request all data and information related to compliance with the required terms and conditions of your lease, grant, and approved plans.

■ 90. Revise § 585.605 to read as follows:

**§ 585.605 What is a Site Assessment Plan (SAP)?**

(a) A SAP describes the site assessment activities meeting the criteria in § 585.600(a)(1) that you plan to perform on your commercial lease.

(b) You must receive BOEM approval of your SAP, as provided in § 585.613, before you can begin any proposed site assessment activities requiring such approval.

(c) If BOEM determines that your proposed site assessment facility or combination of facilities is complex or significant under § 585.613(a)(1), you must comply with the requirements in subpart H of this part regarding facility design and construction and submit your SMS as required by § 585.810.

■ 91. Revise § 585.606 to read as follows:

**§ 585.606 What must I demonstrate in my SAP?**

Your SAP must demonstrate that you have planned and are prepared to conduct the proposed site assessment activities in a manner that:

(a) Conforms to your responsibilities listed in § 585.105(a);

(b) Conforms to all applicable laws, regulations, and provisions of your commercial lease;

(c) Is safe;

(d) Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;

(e) Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(f) Uses best available and safest technology;

(g) Uses best management practices; and

(h) Uses properly trained personnel.

■ 92. Revise § 585.607 to read as follows:

**§ 585.607 How do I submit my SAP?**

You must submit your SAP to BOEM pursuant to § 585.110.

■ 93. Revise § 585.610 to read as follows:

**§ 585.610 What must I include in my SAP?**

(a) Project information may be provided using a PDE. When you provide information using a PDE, BOEM reserves the right to determine what range of values for any given parameter are acceptable. Your SAP must include the following project-specific information, as applicable:

Project information	Including
(1) Contact information .....	The name, address, e-mail address, and phone number of an authorized representative.
(2) The site assessment or technology testing concept.	A discussion of the objectives; description of the proposed activities, including the technology you will use; and proposed schedule from start to completion.
(3) Designation of operator, if applicable .....	As provided in § 585.405.
(4) Commercial lease stipulations and compliance.	A description of the measures you took, or will take, to satisfy the conditions of any lease stipulations related to your proposed activities.
(5) A location plat, or indicative layout .....	The range of surface locations and associated water depths for proposed structures, facilities, and appurtenances located both offshore and onshore, including all anchor and mooring data; and the location and associated water depths of all existing structures.
(6) General structural and project design, fabrication, and installation.	Preliminary design information for each facility associated with your site assessment activity.
(7) Deployment activities .....	A description of the safety, prevention, and environmental protection features or measures that you will use.
(8) Your proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.	A description of the measures you will use to avoid or minimize adverse effects and any potential incidental take, before you conduct activities on your lease, and how you will mitigate environmental impacts from your proposed activities, including a description of the measures you will use as required by subpart I of this part.
(9) Project verification strategy .....	An analysis supporting your recommendation as to whether your site assessment activities should be determined complex or significant. If your recommendation supports a complex or significant determination, describe your strategy for compliance with §§ 585.705 through 585.714.
(10) References .....	A bibliographic list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans you previously submitted or that are otherwise readily available to BOEM.
(11) Decommissioning and site clearance procedures.	A discussion of general concepts and methodologies.
(12) Air quality information .....	Information as described in § 585.659.
(13) A listing of all Federal, State, and local authorizations or approvals required to conduct site assessment activities.	A statement indicating whether you have applied for or obtained such authorization or approval from the U.S. Coast Guard, U.S. Army Corps of Engineers, and any other applicable Federal, State, or local authorizers.
(14) A list of agencies and persons with whom you have communicated, or with whom you will communicate, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.
(15) Financial assurance information .....	Statements attesting that the activities and facilities proposed in your SAP are or will be covered by an appropriate bond or other approved financial assurance instrument as required in § 585.516 and §§ 585.525 through 585.529.
(16) Information you incorporate by reference ...	A list of the documents you have incorporated by reference and their public availability.
(17) Other information .....	Additional information as required by BOEM.

(b) You must include reports that document the results of surveys and

investigations that characterize and model the site of your proposed

assessment activities. Your reports must address the following topics:

Topic:	Purpose of report:	Including:
(1) Geological and geotechnical.	To define the baseline geological conditions of the seabed and provide sufficient data to develop a geologic model, assess geologic hazards, and determine the feasibility of the proposed site for your assessment facility.	(i) Desktop studies to collect available data from published sources and nearby sites. (ii) Geophysical surveys of the proposed area with sufficient areal coverage, depth penetration, and resolution to define the geological conditions of the seabed at the site that could impact, or be impacted by, your proposed site assessment activities.  (iii) Geotechnical investigations of sufficient scope and detail to: ground truth the geophysical surveys; support development of a geological model; assess potential geological hazards that could impact the proposed site assessment activities; and provide geotechnical data for design of the site assessment facility, including type and approximate dimensions of the foundation. (iv) An overall site characterization report for your site assessment facility that integrates the findings of your studies, surveys, and investigations; describes the geological model; contains supporting data and findings; and states your recommendations.
(2) Biological .....	To determine the presence of biological features and marine resources.	A description of the results of biological surveys used to determine the presence of live bottoms, hard bottoms, topographic features, and other marine resources, including migratory populations such as fish, marine mammals, sea turtles, and coastal and marine birds.
(3) Archaeological resources and other historic properties.	To provide BOEM with required information to conduct review of your SAP under NHPA.	Archaeological resource and other historic property identification surveys with supporting data.
(4) Meteorological and oceanographic (metocean).	To provide an overall understanding of the meteorological and oceanographic conditions at the site of your proposed facility, and to identify conditions that may pose a significant risk to your facility.	Desktop studies to collect available data from hindcast or re-analysis models and field measurements in sufficient detail to support design of your facility and support the analysis of wake effects, sediment mobility and scour, and navigation risks.

■ 94. Revise § 585.611 to read as follows:

**§ 585.611 What information and certifications must I submit with my SAP to assist BOEM in complying with NEPA and other applicable laws?**

(a) Your SAP must contain detailed information and analysis to assist BOEM in complying with NEPA and other applicable laws.

(b) When proposing site assessment activities in an area where BOEM has no previous experience, your SAP must contain information about resources, conditions, and activities listed in the following table that could be affected by or that could affect your proposed activities:

Type of information:	Including:
(1) Hazard information .....	Meteorology, oceanography, sediment transport, geology, and shallow geological or manmade hazards.
(2) Water quality .....	Turbidity and total suspended solids from construction; impact from vessel discharges.
(3) Biological resources .....	Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, plankton, sea grasses, and other plant life.
(4) Threatened or endangered species .....	As needed for ESA consultation.
(5) Sensitive biological resources or habitats .....	Essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, nearby marine protected areas, including State and Federal coastal and marine protected areas, as well as nearby national marine sanctuaries, and nearby marine national monuments, rookeries, hard bottom habitat, chemosynthetic communities, calving grounds, barrier islands, beaches, dunes, and wetlands.
(6) Archaeological resources use, other historic property use, Indigenous traditional cultural use, or use pertaining to treaty and reserved rights with Native Americans or other Indigenous peoples.	To provide BOEM with required information to conduct review of the COP under the NHPA or other applicable laws or policies, including treaty and reserved rights with Native Americans or other Indigenous peoples.
(7) Social and economic conditions .....	Employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, coastal zone management programs, and a visual impact assessment.
(8) Coastal and marine uses .....	Military activities, vessel traffic, fisheries, and exploration and development of other natural resources. This includes a navigational safety risk assessment that provides a description of the predicted impacts of the project to navigation, and the measures you will use to avoid or minimize adverse impacts. This document must also be submitted to the U.S. Coast Guard to assist with its analysis if your proposal identifies potential impediments to safe navigation.
(9) Consistency Certification .....	If required by CZMA, under: (i) 15 CFR part 930, subpart D, if the SAP is submitted before lease issuance; (ii) 15 CFR part 930, subpart E, if the SAP is submitted after lease issuance.

Type of information:	Including:
(10) Other resources, conditions, and activities	As identified by BOEM.

(c) When proposing site assessment activities in an area BOEM previously considered, BOEM will review your SAP to determine if its impacts are consistent with those previously considered. If the anticipated effects of your proposed SAP activities are significantly different than those

previously anticipated, we may determine that additional NEPA and other relevant Federal reviews are required. In that case, BOEM will notify you of such determination, and you must submit information required in paragraph (b) of this section as appropriate.

■ 95. Amend § 585.612 by revising paragraphs (a) and (b) to read as follows:

**§ 585.612 How will my SAP be processed for Federal consistency under the Coastal Zone Management Act?**

\* \* \* \* \*

If your SAP is submitted:	Consistency review of your SAP will be handled as follows:
(a) Before lease issuance ....	You will furnish a copy of your SAP, consistency certification, and necessary data and information, to the applicable State CZMA agencies if required by 15 CFR part 930, subpart D. Submit a copy to BOEM in accordance with § 585.110.
(b) After lease issuance .....	You must submit a copy of your SAP, consistency certification, and necessary data and information pursuant to 15 CFR part 930, subpart E, to BOEM only if BOEM did not consider the proposed site assessment activities for your lease area under its previously submitted consistency determination under 15 CFR part 930, subpart C, and if required by 15 CFR part 930, subpart E. BOEM will forward to the applicable State CZMA agency or agencies one copy of your SAP, consistency certification, and necessary data and information required under 15 CFR part 930, subpart E, after BOEM has determined that all information requirements for the SAP are met.

■ 96. Amend § 585.613 by revising paragraph (e)(2) to read as follows:

**§ 585.613 How will BOEM process my SAP?**

\* \* \* \* \*

(e) \* \* \*

(2) If we disapprove your SAP, we will inform you of the reasons and allow you an opportunity to submit a revised plan addressing our concerns, and we may suspend your lease, as appropriate, to give you a reasonable amount of time to resubmit the SAP.

■ 97. Amend § 585.614 by revising paragraph (b) to read as follows:

**§ 585.614 When may I begin conducting activities under my approved SAP?**

\* \* \* \* \*

(b) If you are installing a facility or a combination of facilities deemed by BOEM to be complex or significant, as provided in § 585.613(a)(1), you must comply with the requirements of subpart H of this part and submit your Safety Management System description required by § 585.810 before construction may begin.

■ 98. Revise § 585.617 to read as follows:

**§ 585.617 What activities require a revision to my SAP, and when will BOEM approve the revision?**

(a) You must notify BOEM in writing before conducting any site assessment activities not described in your approved SAP. Your notice must describe in detail the type of activities you propose to conduct. We will determine whether the activities you propose require a revision to your SAP.

We may request additional information from you, if necessary, to make this determination.

(b) If a revised SAP is required, BOEM will reassess, upon its receipt, whether the facility or combination of facilities described in it is complex or significant.

(1) If BOEM determines that the facilities described in your revised SAP are not complex or significant, you may conduct your approved activities under § 585.614(a).

(2) If BOEM determines that the facilities described in your revised SAP are complex or significant, you must comply with § 585.614(b).

(c) BOEM will periodically review the activities conducted under an approved SAP. The frequency and extent of the review will be based on the significance of any changes in available information and on onshore or offshore conditions affecting or affected by the activities conducted under your SAP. If the review indicates that the SAP should be revised to meet the requirements of this part, we will require you to submit the needed revisions.

(d) Activities for which a proposed revision to your SAP likely will be necessary include:

(1) Activities not described in your approved SAP;

(2) Modifications to the number, size, or type of facilities or equipment you will use;

(3) Changes in the geographical location or layout of your bottom disturbances, offshore facilities, or onshore support bases beyond the range of possible locations described in your approved SAP;

(4) Structural failure of any facility; or  
(5) Changes to any other activity specified by BOEM.

(e) We may begin the appropriate NEPA analysis and other relevant consultations when we determine that a proposed revision could:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional Federal authorizations; or

(3) Involve activities not previously identified and evaluated.

(f) When you propose a revision, we may approve the revision if we determine that the revision is:

(1) Designed not to cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; and

(2) Otherwise consistent with the provisions of section 8(p) of the OCS Lands Act.

■ 99. Amend § 585.618 by revising paragraphs (a) and (e) to read as follows:

**§ 585.618 What must I do upon completion of approved site assessment activities?**

(a) If your COP or FERC license application describes the continued use of existing facilities approved in your SAP, you may keep such facilities in place on your lease during the time that BOEM reviews your COP or FERC reviews your license application.

\* \* \* \* \*

(e) You must decommission your site assessment facilities as set forth in



subpart J of this part upon the termination of your lease. You must submit your decommissioning application as required in §§ 585.905 and 585.906.

■ 100. Revise § 585.621 to read as follows:

**§ 585.621 What must I demonstrate in my COP?**

Your COP must demonstrate that you have planned and are prepared to conduct the proposed activities in a manner that:

(a) Conforms to your responsibilities listed in § 585.105(a);

(b) Conforms to all applicable laws, regulations, and provisions of your commercial lease;

(c) Is safe;

(d) Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;

(e) Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(f) Uses best available and safest technology;

(g) Uses best management practices; and

(h) Uses properly trained personnel.

■ 101. Amend § 585.622 by revising paragraph (a) to read as follows:

**§ 585.622 How do I submit my COP?**

(a) You must submit your COP to BOEM pursuant to § 585.110.

\* \* \* \* \*

■ 102. Revise § 585.626 to read as follows:

**§ 585.626 What must I include in my COP?**

(a) Project information may be provided using a PDE. When you provide information using a PDE, BOEM reserves the right to determine what range of values for any given parameter are acceptable. Your COP must include the following project-specific information, as applicable:

Project information:	Including:
(1) Contact information .....	The name, address, e-mail address, and phone number of an authorized representative.
(2) Designation of operator, if applicable.	As provided in § 585.405.
(3) Commercial lease stipulations and compliance.	A description of the measures you took, or will take, to satisfy the conditions of any lease stipulations related to your proposed activities.
(4) A location plat, or indicative layout.	The range of surface locations and associated water depths for proposed structures, facilities, and appurtenances located both offshore and onshore, including all anchor and mooring data, and the location and associated water depths of all existing structures.
(5) General structural and project design, fabrication, and installation.	Preliminary design information for each facility associated with your project.
(6) Deployment activities .....	A description of safety, prevention, and environmental protection features or measures that you will use.
(7) A list of solid and liquid wastes generated.	Disposal methods and locations.
(8) A listing of chemical products used (if stored volume exceeds Environmental Protection Agency (EPA) reportable quantities).	A list of chemical products used; the volume stored on location; their treatment, discharge, or disposal methods used; and the name and location of the onshore waste receiving, treatment, and/or disposal facility. A description of how these products would be brought onsite, the number of transfers that may take place, and the quantity that will be transferred each time.
(9) A description of any vessels, vehicles, and aircraft you will use to support your activities.	An estimate of the frequency and duration of vessel, vehicle, or aircraft traffic.
(10) A general description of the operating procedures and systems.	(i) Under normal conditions. (ii) In the case of accidents or emergencies, including those that are natural or manmade.
(11) Decommissioning and site clearance procedures.	A discussion of general concepts and methodologies.
(12) A listing of all Federal, State, and local authorizations or approvals required to conduct the proposed activities, including commercial operations.	A statement indicating whether you have applied for or obtained such authorization or approval from the U.S. Coast Guard, U.S. Army Corps of Engineers, and any other applicable Federal, State, or local authorizers pertaining to energy gathering, transmission or distribution (e.g., interconnection authorizations).
(13) Your proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.	A description of the measures you will use to avoid or minimize adverse effects and any potential incidental take before you conduct activities on your lease, and how you will mitigate environmental impacts from your proposed activities, including a description of the measures you will use as required by subpart I of this part.
(14) Information you incorporate by reference.	A list of the documents you have incorporated by reference and their public availability.
(15) A list of agencies and persons with whom you have communicated, or with whom you will communicate, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.

Project information:	Including:
(16) References .....	A bibliographic list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans you previously submitted or that are otherwise readily available to BOEM.
(17) Financial assurance .....	Statements attesting that the activities and facilities proposed in your COP are or will be covered by an appropriate bond or other approved financial assurance instrument as required in § 585.516 and §§ 585.525 through 585.529.
(18) Project verification strategy.	A list of all facilities or combination of facilities on your approved COP that are considered complex or significant. You must describe your strategy for compliance with §§ 585.705 through 585.714.
(19) Construction schedule ..	A reasonable schedule of construction activity showing significant milestones leading to the commencement of commercial operations consistent with the requirements of subpart H of this part.
(20) Air quality information ...	Information as described in § 585.659.
(21) Other information .....	Additional information as required by BOEM.

(b) You must include reports that document the results of surveys and investigations that characterize and model the site of your proposed project. Your reports must address the following topics:

Topic:	Purpose of report:	Including:
(1) Geological and geotechnical.	To define the baseline geological conditions of the seabed and provide sufficient data to develop a geologic model, assess geologic hazards, and determine the feasibility of the proposed site for your proposed facility.	(i) Desktop studies to collect available data from published sources and nearby sites. (ii) Geophysical surveys of the proposed area with sufficient areal coverage, depth penetration, and resolution to define the geological conditions of the site's seabed that could impact, or be impacted by, the proposed project. (iii) Geotechnical investigations of sufficient scope and detail to: ground truth the geophysical surveys; support development of a geological model; assess potential geological hazards that could impact the proposed project; and provide geotechnical data for preliminary design of the facility, including type and approximate dimensions of the foundation. (iv) An overall site characterization report for your facility that integrates the findings of your studies, surveys, and investigations; describes the geological model; contains supporting data and findings; and states your recommendations.
(2) Biological .....	To determine the presence of biological features and marine resources.	A description of the results of biological surveys used to determine the presence of live bottoms, hard bottoms, topographic features, and other marine resources, including migratory populations such as fish, marine mammals, sea turtles, and sea birds.
(3) Archaeological resources other historic properties.	To provide BOEM with required information to conduct review of the COP under NHPA.	Archaeological resource and other historic property. On a case-by-case basis and subject to terms and conditions of COP approval per § 585.628(f), BOEM may permit you to submit certain surveys of the subsea portions of the area of potential effects with your FDR per § 585.701(a)(11).
(4) Meteorological and oceanographic (metocean).	To provide an overall understanding of the meteorological and oceanographic conditions at the site of the proposed facility, and to identify conditions that may pose a significant risk to the facility.	Desktop studies to collect available data from hindcast or re-analysis models and field measurements in sufficient detail to support preliminary design of the facility and support the analysis of wake effects, sediment mobility and scour, and navigational risks.

■ 103. Amend § 585.627 by revising the section heading and paragraphs (a) through (c) to read as follows:

**§ 585.627 What information and certifications must I submit with my COP to assist BOEM in complying with NEPA and other applicable laws?**

(a) Your COP must contain detailed information and analysis to assist BOEM in complying with NEPA and other

applicable laws. Your COP must contain information about those resources, conditions, and activities listed in the following table that could be affected by, or that could affect, your proposed activities:

Type of information:	Including:
(1) Hazard information .....	Meteorology, oceanography, sediment transport, geology, and shallow geological or manmade hazards.
(2) Water quality .....	Turbidity and total suspended solids from construction; impact from vessel discharges.
(3) Biological resources .....	Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, plankton, seagrasses, and plant life.
(4) Threatened or endangered species.	As required by ESA.
(5) Sensitive biological resources or habitats.	Essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, nearby marine protected areas, including State and Federal coastal and nearby marine protected areas, as well as national marine sanctuaries and nearby marine national monuments, rookeries, hard bottom habitat, chemosynthetic communities, calving grounds, barrier islands, beaches, dunes, and wetlands.
(6) Archaeological resources use, other historic property use, Indigenous traditional cultural use, or use pertaining to treaty and reserved rights with Native Americans or other Indigenous peoples.	To provide BOEM with required information to conduct review of the COP under the NHPA or other applicable laws or policies, including treaty and reserved rights with Native Americans or other Indigenous peoples.

Type of information:	Including:
(7) Social and economic resources	Employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, coastal zone management programs, and a visual impact assessment.
(8) Coastal and marine uses .....	Military activities, vessel traffic, fisheries, and exploration and development of other natural resources. This includes a navigational safety risk assessment that provides a description of the predicted impacts of the project to navigation, and the measures you will use to avoid or minimize such adverse impacts. This document also must be submitted to the U.S. Coast Guard to assist with its analysis.
(9) Consistency Certification .....	If required by the CZMA regulations: (i) 15 CFR part 930 subpart D, if your COP is submitted before lease issuance. (ii) 15 CFR part 930 subpart E, if your COP is submitted after lease issuance.
(10) Other resources, conditions, and activities.	As identified by BOEM.

(b) You must submit one copy of your consistency certification. Your consistency certification must include:

(1) One copy of your consistency certification under either subsection 307(c)(3)(B) of the CZMA (16 U.S.C. 1456(c)(3)(B)) and 15 CFR 930.76 or subsection 307(c)(3)(A) of the CZMA (16 U.S.C. 1456(c)(3)(A)) and 15 CFR 930.57, stating that the proposed activities described in detail in your plans comply with the enforceable policies of the applicable States' approved coastal management programs and will be conducted in a manner that is consistent with such programs; and

(2) "Necessary data and information," as required by 15 CFR 930.58.

(c) You must submit an oil spill response plan in compliance with 33 U.S.C. 1321, including information identified in 30 CFR part 254 that is applicable to your activities.

\* \* \* \* \*

■ 104. Amend § 585.628 by revising the first sentence of paragraph (a) and paragraphs (c), (f)(2), and (g) to read as follows:

**§ 585.628 How will BOEM process my COP?**

(a) BOEM will review your submitted COP, including the information provided under § 585.627, to determine if it contains the information necessary to conduct our technical and environmental reviews. \* \* \*

\* \* \* \* \*

(c) If your COP is submitted after lease issuance, and if your COP is subject to Federal consistency review under the CZMA regulations at 15 CFR part 930, subpart E, you must submit your COP, consistency certification, and associated data and information under CZMA to BOEM after all information requirements for the COP are met, and the appropriate environmental assessment or draft environmental impact statement, if required, has been published. BOEM will forward the COP, consistency certification, and associated

data and information to the applicable State CZMA agencies.

\* \* \* \* \*

(f) \* \* \*

(2) If we disapprove your COP, we will inform you of the reasons and allow you an opportunity to submit a revised plan addressing our concerns, and we may suspend the COP review period of your lease, as appropriate, to give you a reasonable amount of time to submit the revised plan.

(g) If BOEM approves your project easement, BOEM will issue an addendum to your lease specifying the terms of the project easement.

(1) The project easement will provide sufficient off-lease area to accommodate potential changes at the design and installation phases of the project for locating cables, pipelines, and other appurtenances necessary for your project.

(2) Unused portions of the project easement may be relinquished after construction is complete.

(3) A project easement is subject to the following conditions:

(i) The rights granted will not prevent the granting of other rights by the United States, either before or after the granting of the project easement, provided that any subsequent authorization issued by BOEM in the area of a previously issued project easement may not unreasonably interfere with activities approved or impede existing operations under the project easement; and

(ii) If the project easement is granted in an area where a lease or ROW or RUE grant has previously been issued, the project easement holder must agree that its activities will not interfere with or impede existing operations under the lease or ROW or RUE grant.

■ 105. Amend § 585.634 by revising paragraphs (a) and (c) to read as follows:

**§ 585.634 What activities require a revision to my COP, and when will BOEM approve the revision?**

(a) You must notify BOEM in writing before conducting any activities not described in your approved COP. Your notice must describe in detail the type of activities you propose to conduct. We will determine whether the activities you propose require a revision to your COP. We may request additional information from you, if necessary, to make this determination.

\* \* \* \* \*

(c) Activities for which a proposed revision to your COP likely will be necessary include:

(1) Activities not described in your approved COP;

(2) Modifications to the number, size, or type of facilities or equipment you will use;

(3) Material changes in the geographical location or layout of bottom disturbances, offshore facilities, or onshore support bases beyond the range of possible locations described in your approved COP;

(4) Structural failure of any facility;

(5) Submission of an FDR or FIR that contains new information or that is inconsistent with the COP that has been previously submitted; or

(6) Change in any other activity specified by BOEM.

\* \* \* \* \*

■ 106. Amend § 585.637 by revising paragraph (a) to read as follows:

**§ 585.637 When may I commence commercial operations on my commercial lease?**

(a) If you are conducting activities on your lease that do not require a FERC license (*i.e.*, wind power projects), then you may commence commercial operations 30 calendar days after:

(1) Your project verification report, described in §§ 585.704 and 585.708(a)(5), is deemed submitted by BOEM;

(2) BOEM has confirmed receipt of critical safety systems commissioning

records, as described in § 585.708(a)(6); and

(3) BOEM has not notified you within that timeframe of any objections to the verification report or the commissioning records.

(b) If you are conducting activities on your lease that do require a FERC license or exemption, then you may commence commercial operations when permitted by the terms of your license or exemption.

(c) You must notify BOEM within 10 business days after you commence commercial operations.

■ 107. Amend § 585.638 by revising the first sentence of paragraph (a) to read as follows:

**§ 585.638 What must I do upon completion of my commercial operations as approved in my COP or FERC license?**

(a) Upon completion of your approved activities under your COP, you must decommission your project as set forth in subpart J of this part. \* \* \*

\* \* \* \* \*

■ 108. Amend § 585.640 by revising paragraph (b) to read as follows:

**§ 585.640 What is a General Activities Plan (GAP)?**

\* \* \* \* \*

(b) You must receive BOEM approval of your GAP before you can begin any of the proposed activities on your lease or grant.

■ 109. Revise § 585.641 to read as follows:

**§ 585.641 What must I demonstrate in my GAP?**

Your GAP must demonstrate that you have planned and are prepared to conduct the proposed activities in a manner that:

(a) Conforms to your responsibilities listed in § 585.105(a);

(b) Conforms to all applicable laws, regulations, and provisions of your limited lease or grant;

(c) Is safe;

(d) Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;

(e) Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human

environment; or sites, structures, or objects of historical or archaeological significance;

(f) Uses best available and safest technology;

(g) Uses best management practices; and

(h) Uses properly trained personnel.

■ 110. Amend § 585.642 by revising paragraph (a) to read as follows:

**§ 585.642 How do I submit my GAP?**

(a) You must submit your GAP to BOEM pursuant to § 585.110.

\* \* \* \* \*

■ 111. Amend § 585.645 by revising paragraphs (a) through (c) to read as follows:

**§ 585.645 What must I include in my GAP?**

(a) Project information may be provided using a PDE. When you provide a range of parameters using a PDE, BOEM reserves the right to determine what range of values for any given parameter are acceptable. Your GAP must include the following project-specific information, as applicable:

Project information:	Including:
(1) Contact information .....	The name, address, e-mail address, and phone number of an authorized representative.
(2) Designation of operator, if applicable.	As provided in § 585.405.
(3) The site assessment or technology testing concept.	A discussion of the objectives; description of the proposed activities, including the technology you will use; and proposed schedule from start to completion.
(4) ROW or RUE grant, or limited lease stipulations, if known.	A description of the measures you took, or will take, to satisfy the conditions of any grant or lease stipulations related to your proposed activities.
(5) A location plat, or indicative layout.	The range of surface locations and associated water depths for proposed structures, facilities, and appurtenances located both offshore and onshore, including all anchor and mooring data; and the location and associated water depths of all existing structures.
(6) General structural and project design, fabrication, and installation.	Preliminary design information for each facility associated with your project.
(7) Deployment activities .....	A description of the safety, prevention, and environmental protection features or measures that you will use.
(8) Your proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.	A description of the measures you will use to avoid or minimize adverse effects and any potential incidental take before you conduct activities on your lease, and how you will mitigate environmental impacts from your proposed activities, including a description of the measures you will use as required by subpart I of this part.
(9) A list of solid and liquid wastes generated.	Disposal methods and locations.
(10) A listing of chemical products used (if stored volume exceeds EPA reportable quantities).	A list of chemical products used; the volume stored on location; their treatment, discharge, or disposal methods used; and the name and location of the onshore waste receiving, treatment, and/or disposal facility. A description of how these products would be brought onsite, the number of transfers that may take place, and the quantity that will be transferred each time.
(11) A description of any vessels, vehicles, and aircraft you will use to support your activities.	An estimate of the frequency and duration of vessel/vehicle/aircraft traffic.
(12) Reference information .....	A bibliographic list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans you previously submitted or that are otherwise readily available to BOEM.
(13) Decommissioning and site clearance procedures.	A discussion of general concepts and methodologies.
(14) Air quality information .....	As described in § 585.659.
(15) A listing of all Federal, State, and local authorizations or approvals required to conduct activities on your grant or limited lease.	A statement indicating whether you have applied for or obtained such authorization or approval from the U.S. Coast Guard, U.S. Army Corps of Engineers, and any other applicable Federal, State or local authorizers pertaining to your activities.

Project information:	Including:
(16) A list of agencies and persons with whom you have communicated, or with whom you will communicate, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.
(17) Financial assurance information.	Statements attesting that the activities and facilities proposed in your GAP are, or an explanation of how they will be, covered by an appropriate bond or other approved security, as required in §§ 585.520 and 585.521.
(18) Project verification strategy .....	An analysis supporting your recommendation as to whether your activities should be determined complex or significant. If your recommendation supports a complex or significant determination, describe your strategy for compliance with §§ 585.705 through 585.714.
(19) Information you incorporate by reference.	A list of the documents you have incorporated by reference and where they may be publicly accessed; for confidential information, you may reference information and data discussed in other plans previously submitted or that are otherwise readily available to BOEM.
(20) Other information .....	Additional information as required by BOEM.

(b) You must include reports that document the results of surveys and investigations that characterize and model the site of your proposed activities. Your reports must cover the following topics:

Topic:	Purpose of report:	Including:
(1) Geological and geotechnical.	To define the baseline geological conditions of the seabed and provide sufficient data to develop a geologic model, assess geologic hazards, and determine the feasibility of the proposed facility.	<ul style="list-style-type: none"> <li>(i) Desktop studies to collect available data from published sources and nearby sites.</li> <li>(ii) Geophysical surveys of the proposed area with sufficient areal coverage, depth penetration, and resolution to define the geological conditions of the seabed at the site that could impact, or be impacted by, the proposed project.</li> <li>(iii) Geotechnical investigations of sufficient scope and detail to: ground truth the geophysical surveys; support development of a geological model; assess potential geological hazards that could impact the proposed development; and provide geotechnical data for preliminary design of the facility, including type and approximate dimensions of the foundation.</li> <li>(iv) An overall site characterization report for your facility that integrates the findings of your studies, surveys, and investigations; describes the geological model; contains supporting data and findings; and states your recommendations.</li> </ul>
(2) Biological .....	To determine the presence of biological features and marine resources.	A description of the results of biological surveys used to determine the presence of live bottoms, hard bottoms, topographic features, and other marine resources, including migratory populations, such as fish, marine mammals, sea turtles, and sea birds.
(3) Archaeological resources and other historic properties.	To provide BOEM with required information to conduct review of the GAP under NHPA.	Archaeological resource and other historic property identification surveys with supporting data.
(4) Meteorological and oceanographic (metocean).	To provide an overall understanding of the meteorological and oceanographic conditions at the site of the proposed facility, and to identify conditions that may pose a significant risk to the facility.	Desktop studies to collect available data from hindcast or re-analysis models and field measurements in sufficient detail to support preliminary design of the facility and support the analysis of wake effects, sediment mobility and scour, and navigation risks.

(c) If you are applying for a project easement, or constructing a facility or a combination of facilities deemed by BOEM to be complex or significant, you must provide the following additional information and comply with the requirements of subpart H of this part:

Project information:	Including:
(1) The construction and operation concept.	A discussion of the objectives, description of the proposed activities, and tentative schedule from start to completion.
(2) All cables and pipelines, including cables on project easements.	The location, design, installation methods, testing, maintenance, repair, safety devices, exterior corrosion protection, inspections, and decommissioning.
(3) A general description of the operating procedures and systems.	<ul style="list-style-type: none"> <li>(i) Under normal conditions.</li> <li>(ii) In the case of accidents or emergencies, including those that are natural or manmade.</li> </ul>
(4) Construction schedule .....	A reasonable schedule of construction activity showing significant milestones leading to the commencement of activities consistent with the requirements of subpart H of this part.
(5) Other information .....	Additional information as requested by BOEM.

\* \* \* \* \*

■ 112. Amend § 585.646 by revising the section heading, introductory text, and paragraphs (b)(2), (5), and (6) through (9) to read as follows:

**§ 585.646 What information and certifications must I submit with my GAP to assist BOEM in complying with NEPA and other applicable laws?**

You must submit, with your GAP, detailed information and analysis to

assist BOEM in complying with NEPA and other applicable laws.  
\* \* \* \* \*  
(b) \* \* \*

- \* \* \* \* \*
- (2) Water quality ..... Turbidity and total suspended solids from construction; impact from vessel discharges.
- (5) Sensitive biological resources or habitats. Essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, marine protected areas, including State and Federal coastal and marine protected areas, as well as nearby national marine sanctuaries and nearby marine national monuments, rookeries, hard bottom habitat, chemosynthetic communities, calving grounds, barrier islands, beaches, dunes, and wetlands.
- (6) Archaeological resources use, other historic property use, Indigenous traditional cultural use, or use pertaining to treaty and reserved rights with Native Americans or other Indigenous peoples. To provide BOEM with required information to conduct review of the COP under the NHPA or other applicable laws or policies, including treaty and reserved rights with Native Americans or other Indigenous peoples.
- (7) Social and economic conditions Employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, coastal zone management programs, and a visual impact assessment.
- (8) Coastal and marine uses ..... Military activities, vessel traffic, fisheries, and exploration and development of other natural resources. This includes a navigational safety risk assessment that provides a description of the predicted impacts of the project to navigation, and the measures you will use to avoid or minimize such adverse impacts. This document also must be submitted to the U.S. Coast Guard to assist with its analysis if your proposal identifies potential impediments to safe navigation.
- (9) Consistency Certification ..... If required by CZMA, under:  
(i) 15 CFR part 930, subpart D, if the GAP is submitted before lease or grant issuance;  
(ii) 15 CFR part 930, subpart E, if the GAP is submitted after lease or grant issuance.
- \* \* \* \* \*

■ 113. Amend § 585.647 by revising paragraphs (a) and (b) to read as follows:

**§ 585.647 How will my GAP be processed for Federal consistency under the Coastal Zone Management Act?**

\* \* \* \* \*

- \* \* \* \* \*
- (a) Before lease or grant issuance You will furnish a copy of your GAP, consistency certification, and necessary data and information to the applicable State CZMA agencies if required by 15 CFR part 930, subpart D. Submit a copy to BOEM pursuant to § 585.110.
- (b) After lease or grant issuance .... You will submit a copy of your GAP, consistency certification, and necessary data and information to BOEM if required by 15 CFR part 930, subpart E. BOEM will forward to the applicable State CZMA agency or agencies one copy of your GAP, consistency certification, and necessary data and information required under 15 CFR part 930, subpart E, after BOEM has determined that all information requirements for the GAP are met.

■ 114. Amend § 585.648 by revising paragraphs (a) introductory text and (e)(2) to read as follows:

**§ 585.648 How will BOEM process my GAP?**

(a) BOEM will review your submitted GAP, along with the information and certifications you submitted in compliance with § 585.646, to determine if it contains the information necessary to conduct our technical and environmental reviews.

\* \* \* \* \*

(e) \* \* \*

(2) If we disapprove your GAP, we will inform you of the reasons and allow you an opportunity to submit a revised plan addressing our concerns, and we may suspend your lease or grant, as appropriate, to give you a reasonable amount of time to resubmit the GAP.

■ 115. Amend § 585.652 by revising paragraph (a) to read as follows:

**§ 585.652 How long do I have to conduct activities under an approved GAP?**

\* \* \* \* \*

(a) For a limited lease, the time period established under § 585.236(a)(2), unless

we renew the term under §§ 585.425 through 585.429.

\* \* \* \* \*

■ 116. Amend § 585.655 by revising paragraphs (a) and (c) to read as follows:

**§ 585.655 What activities require a revision to my GAP, and when will BOEM approve the revision?**

(a) You must notify BOEM in writing before conducting any activities not described in your approved GAP, describing in detail the type of activities you propose to conduct. We will determine whether the activities you propose are authorized by your existing

GAP or require a revision to your GAP. We may request additional information from you, if necessary, to make this determination. Upon receipt of your revised GAP, BOEM will make a determination as to whether it deems the facility or combination of facilities described in your revised GAP to be complex or significant.

(1) If BOEM determines that your revised GAP is not complex or significant, you may conduct your approved activities in accordance with § 585.650.

(2) If BOEM determines that your revised GAP is complex or significant, then you must comply with the requirements of § 585.651.

\* \* \* \* \*

(c) Activities for which a proposed revision to your GAP will likely be necessary include:

(1) Activities not described in your approved GAP;

(2) Modifications to the number, size, or type of facilities or equipment you will use;

(3) Changes in the geographical location or layout of bottom disturbances, offshore facilities, or onshore support bases beyond the range of possible locations described in your approved GAP;

(4) Structural failure of any facility; or

(5) Change to any other activity specified by BOEM.

\* \* \* \* \*

■ 117. Amend § 585.657 by revising the first sentence to read as follows:

**§ 585.657 What must I do upon completion of approved activities under my GAP?**

Upon completion of your approved activities under your GAP, you must decommission your project as set forth in subpart J of this part. \* \* \*

■ 118. Amend § 585.659 by revising paragraphs (a) introductory text and (a)(1) and the second sentence of paragraph (b) to read as follows:

**§ 585.659 What requirements must I include in my SAP, COP, or GAP regarding air quality?**

(a) Your SAP, COP, or GAP must address air quality as follows:

(1) In the Gulf of Mexico west of 87.5° west longitude (western Gulf of Mexico) or offshore of the North Slope Borough of Alaska, include in your plan any information required for BOEM to make the appropriate air quality determinations for your project.

\* \* \* \* \*

(b) \* \* \* In the western Gulf of Mexico (west of 87.5° west longitude) and offshore of the North Slope Borough of Alaska, you must submit to BOEM three copies of the modeling report and three sets of digital files as supporting information. \* \* \*

**Subpart H—Facility Design, Fabrication, and Installation**

■ 119. Revise § 585.700 to read as follows:

**§ 585.700 What reports must I submit to BOEM before installing facilities described in my approved SAP, COP, or GAP?**

(a) You must submit the following reports to BOEM before installing facilities described in your approved COP (§ 585.632(a)) and, when required by this part, your SAP (§ 585.614(b)) or GAP (§ 585.651):

(1) A Facility Design Report (FDR); and

(2) A Fabrication and Installation Report (FIR).

(b) You may submit separate FDRs and FIRs for the major components of your project as agreed to by BOEM on a case-by-case basis. If you submit separate FDRs and FIRs by major components, you must explain to BOEM how all major components detailed in the reports will function together effectively in an integrated manner in accordance with your project design,

and you must demonstrate that such integration has been verified by your CVA.

(c) You may submit your FDRs and FIRs before or after SAP, COP, or GAP approval.

(d) Subject to the requirements in paragraph (b) of this section, you may commence fabrication and installation of the facilities on the OCS as described in each report:

(1) If BOEM deems your report submitted before SAP, COP, or GAP approval and notifies you of its non-objection to the FDR and FIR or does not respond with objections within 60 calendar days of SAP, COP, or GAP approval; or

(2) If BOEM deems your report submitted after SAP, COP, or GAP approval and notifies you of its non-objection to the FDR and FIR or does not respond with objections within 60 calendar days of the report being deemed submitted.

(e) You may commence procurement of discrete parts of the project that are commercially available in standardized form and type-certified components, or fabrication activities that do not take place on the OCS (e.g., manufacturing), prior to the submittal of the reports required under paragraph (a) of this section or any plans required under this part. The procurement and fabrication of facility components allowed under

this subsection are subject to verification by your CVA, and BOEM may object to the installation of said components on the OCS if it considers that the components or their fabrication is inconsistent with accepted industry or engineering standards, the approved SAP, COP, or GAP, the FDR or FIR, or BOEM's regulations.

(f) If BOEM requires additional information or has objections, we will notify you in writing within 60 calendar days of the report being deemed submitted. Following initial notification of any objections, BOEM may follow up with written correspondence detailing its objections to the report and requesting that certain actions be undertaken. You cannot commence fabrication or installation activities on the OCS that are addressed in such reports until you resolve all objections to BOEM's satisfaction.

■ 120. Amend § 585.701 by:

■ a. Revising paragraphs (a)(1) through (10);

■ b. Adding paragraphs (a)(11) through (14);

■ d. Revising paragraphs (b) and (d); and

■ e. Removing paragraph (e).

The revisions read as follows:

**§ 585.701 What must I include in my Facility Design Report?**

(a) \* \* \*

Required documents	Required contents
(1) Cover letter .....	(i) Proposed facility designations; (ii) Lease, ROW grant or RUE grant number; (iii) Area; name and block numbers; and (iv) The type of facility.
(2) Location plat .....	(i) Latitude and longitude coordinates, Universal Mercator grid-system coordinates, state plane coordinates in the Lambert or Transverse Mercator Projection System; ii) Distances in feet from the nearest block lines. These coordinates must be based on the NAD (North American Datum) 83 datum plane coordinate system; and (iii) The location of any project easements.
(3) Front, Side, and Plan View drawings .....	(i) Facility dimensions and orientation; (ii) Elevations relative to Mean Lower Low Water; and (iii) Pile sizes and penetration.
(4) Complete set of structural drawings .....	The approved for construction fabrication drawings should be submitted including, <i>e.g.</i> , (i) Cathodic protections systems; (ii) Jacket design; (iii) Pile foundations; (iv) Mooring and tethering systems; (v) Foundations and anchoring systems; and (vi) Associated cable and pipeline designs.
(5) Summary of environmental data used for design.	A summary of the environmental data used in the design or analysis of the facility. Examples of relevant data include information on: (i) Extreme weather (ii) Seafloor conditions, and (iii) Waves, wind, current, tides, temperature, snow and ice effects, marine growth, and water depth.
(6) Summary of the engineering design data .....	(i) Loading information ( <i>e.g.</i> , live, dead, environmental); (ii) Structural information ( <i>e.g.</i> , design-life; material types; cathodic protection systems; design criteria; fatigue life; jacket design; deck design; production component design; foundation pilings and templates, and mooring or tethering systems; fabrication and installation guidelines); (iii) Location of foundation boreholes and foundation piles; (iv) Foundation information ( <i>e.g.</i> , soil stability, design criteria); and (v) For a floating facility, structural integrity, stability, and ballast information.
(7) A complete set of design calculations .....	Self-explanatory.
(8) Project-specific studies used in the facility design or installation.	All studies pertinent to facility design or installation <i>e.g.</i> , oceanographic and soil reports including the results of the survey required in §§ 585.610(b), 585.627(a), 585.645(a).
(9) Description of the loads imposed on the facility.	(i) Loads imposed by the jacket; (ii) Decks; (iii) Production components; (iv) Foundations, foundation pilings and templates, and anchoring systems; and (v) Mooring or tethering systems.
(10) Geotechnical and geophysical reports .....	All data from geotechnical and geophysical surveys, <i>in situ</i> explorations, laboratory tests, analyses, burial or drivability assessments, and recommended design parameters.
(11) Archaeological resources reports .....	All archaeological resource and historic property identification surveys with supporting data that BOEM has authorized you to submit with your FDR under § 585.626(b)(3).
(12) Design Standards .....	The industry standards you will apply to ensure the facilities are designed to meet § 585.105.
(13) Critical Safety System .....	A risk assessment that identifies the critical safety systems and description of the identified critical safety systems.
(14) Other information .....	Additional information required by BOEM.

(b) You must submit your Facility Design Report to BOEM pursuant to § 585.110.

\* \* \* \* \*

(d) If you are required to use a CVA, the FDR must include the following verification statement: “The design of this structure has been verified by a BOEM-approved CVA to be in accordance with accepted engineering practices and the approved SAP, GAP, or COP, as applicable, and has been

designed to provide for safety. The verified design and as-built plans and specifications will be on file at [provide location].”

- 121. Amend § 585.702 by:
- a. Revising paragraphs (a)(1) through (7);
- b. Adding paragraphs (a)(8) through (10);
- d. Removing paragraph (d);
- e. Redesignating paragraphs (b) and (c) as paragraphs (d) and (e), respectively;

■ f. Adding new paragraphs (b) and (c); and

■ g. Revising newly redesignated paragraph (e).

The revisions and additions read as follows:

**§ 585.702 What must I include in my Fabrication and Installation Report?**

(a) \* \* \*

Required documents	Required contents
(1) Cover letter .....	(i) Proposed facility designation, lease, ROW grant, or RUE grant number; (ii) Area, name, and block number; and (iii) The type of facility.
(2) Schedule .....	Fabrication and installation.
(3) Fabrication information .....	The industry standards you will use to ensure the facilities are fabricated to the design criteria identified in your Facility Design Report.



Required documents	Required contents
(4) Installation process information	Details associated with the deployment activities, equipment, and materials, including onshore and offshore equipment and support, and anchoring and mooring patterns.
(5) Federal, State, and local permits ( <i>e.g.</i> , EPA, Army Corps of Engineers).	Either 1 copy of the permit or information on the status of the application.
(6) Quality assurance .....	Certificates ensuring adherence to a recognized quality assurance standard. Alternate means of compliance must be approved on a case-by-case basis.
(7) Environmental information .....	(i) Water discharge; (ii) Waste disposal; (iii) Vessel information; (iv) Onshore waste receiving treatment or disposal facilities; and (v) If you submitted this data as part of your SAP, COP, or GAP, you may incorporate by reference.
(8) Commissioning procedures for critical safety systems.	Original equipment manufacturer procedures or other BOEM approved procedures for commissioning of critical safety systems as identified in § 585.701(a)(13).
(9) Project easement .....	Design of any cables, pipelines, or facilities. Information on burial methods and vessels.
(10) Other information .....	Additional information required by BOEM.

(b) You must submit your FIR to BOEM pursuant to § 585.110.

(c) You may submit a request for any project easement and supporting information as part of your original FIR submission or as a revision to it.

\* \* \* \* \*

(e) If you are required to use a CVA, the FIR must include the following verification statement: “The fabrication and installation of this structure has been verified by a BOEM-approved CVA to be in accordance with accepted engineering practices, the FDR, and the approved SAP, GAP, or COP, as applicable. The verified design and as-built plans and specifications will be on file at [provide location].”

■ 122. Amend § 585.703 by revising paragraphs (a) and (c) to read as follows:

**§ 585.703 What reports must I submit for project modifications and repairs?**

(a) You must demonstrate in a report to us that major repairs and major modifications to a completed project conform to accepted engineering practices.

(1) A “major repair” is a corrective action involving structural members affecting the structural integrity of all or a portion of the facility or substantial repair of a critical safety system(s), including those identified in your FDR.

(2) A “major modification” is an alteration involving structural members affecting the structural integrity of all or a portion of the facility or substantial alteration of a critical safety system(s), including those as identified in your FDR.

\* \* \* \* \*

(c) If you are required to use a CVA, the report described in paragraph (a) of this section must include the following verification statement: “The [modification or repair] of this [structure or critical safety system] has been verified by a BOEM-approved CVA to be in accordance with accepted engineering practices, the FDR, and the approved SAP, GAP, or COP as applicable.”

■ 123. Add § 585.704 to read as follows:

**§ 585.704 After receiving the FDR, FIR, or project verification reports, what will BOEM do?**

(a) *Determine whether the report is deemed submitted.* Within 20 calendar days after receiving your proposed FDR, FIR, or project verification report, BOEM will review your submission and deem your FDR, FIR, or project verification report submitted provided that your submission is sufficiently complete and accurate to fulfill the applicable requirements of § 585.701, § 585.702, or § 585.712.

(b) *Identify problems and deficiencies.* If BOEM determines that you have not met the conditions in paragraph (a) of this section, BOEM will notify you of the problem or deficiency within 20 calendar days after BOEM receives your FDR, FIR, or project verification report. BOEM will not deem your FDR, FIR, or project verification report submitted until you have corrected all problems or deficiencies identified in the notice.

(c) *Notify you when the report is deemed submitted.* BOEM will notify you when the FDR, FIR, or project verification report is deemed submitted.

If BOEM has not notified you within 20 calendar days that your report has problems or deficiencies, you may consider it deemed submitted.

■ 124. Revise § 585.705 to read as follows:

**§ 585.705 When must I use a Certified Verification Agent (CVA)?**

(a) Unless BOEM waives this requirement under paragraph (c) of this section, you must use one or more CVAs to review and verify your FDRs, FIRs, and the Project Modification and Repair Reports.

(b) The purpose of a CVA is to:

(1) Ensure that your facilities are designed, fabricated, and installed in conformance with accepted engineering practices and the Facility Design Report and Fabrication and Installation Report;

(2) Ensure critical safety systems are commissioned in accordance with the procedures identified in § 585.702(a)(8);

(3) Ensure that major repairs and major modifications are completed in conformance with accepted engineering practices; and

(4) Provide BOEM and you with immediate reports of all incidents that affect the facility design, fabrication, and installation, including commissioning of critical safety systems, for the project and its components.

(c) BOEM may waive in whole or in part the requirement that you use a CVA if you can demonstrate the following:

If you demonstrate that . . .	Then BOEM may waive the requirement for a CVA for the following:
(1) The facility design conforms to a standard design that has been used successfully in a similar environment, and the installation design conforms to accepted engineering practices.	The design of your structure(s).

If you demonstrate that . . .	Then BOEM may waive the requirement for a CVA for the following:
(2) The relevant fabricator has successfully fabricated similar facilities, and the facility will be fabricated in conformance with accepted engineering practices and to a recognized quality assurance standard. Alternate means of quality assurance compliance must be approved on a case-by-case basis.	The fabrication of your structure(s).
(3) The relevant installation companies have successfully installed similar facilities in a similar offshore environment, and your structures will be installed in conformance with accepted engineering practices.	The installation of your structure(s).
(4) Major repairs or major modifications will be completed in conformance with accepted engineering practices and to a recognized quality assurance standard. Alternate means of quality assurance compliance must be approved on a case-by-case basis.	The major repair or major modification of your structure(s).

(d) You must submit a request to waive, in whole or in part, the requirement to use a CVA to BOEM in writing.

(1) BOEM will review your request to waive, in whole or in part, the use of the CVA and notify you of its decision.

(2) If BOEM does not waive, in whole or in part, the requirement for a CVA, you may file an appeal under § 585.118.

(3) If BOEM waives, in whole or in part, the requirement that you use a CVA, your project engineer must perform the same duties and responsibilities as would have the CVA, except as otherwise provided.

■ 125. Amend § 585.706 by revising paragraphs (a), (b)(2) and (7), and (c) through (e) to read as follows:

**§ 585.706 How do I nominate a CVA for BOEM approval?**

(a) A CVA must be nominated and approved by BOEM before conducting any verification activities for which it has been nominated. If you intend to use multiple CVAs, you must nominate a general project CVA who will manage the project verification strategy and who will ensure consistency and oversight among the CVAs, especially in transition areas between different CVAs. The general project CVA must be nominated no later than COP submission.

(b) \* \* \*

(2) Technical capabilities of the individual or the primary staff for the specific project, including relevant professional licenses, certifications, and accreditations;

\* \* \* \* \*

(7) The scope and level of work to be performed by the CVA, including all relevant reports and facilities that the CVA will verify.

(c) Individuals or organizations acting as CVAs must not function in any capacity that will create a conflict of interest or the appearance of a conflict of interest. The CVA must not have prepared, or been directly involved in, any original work related to the preparation of design, fabrication, installation, modification, or repair

plans for which it will provide verification services.

(d) The verification must be conducted by or under the direct supervision of a registered professional engineer.

(e) BOEM will approve or disapprove your CVA.

\* \* \* \* \*

■ 126. Amend § 585.707 by:

■ a. Revising the second sentence of paragraph (a);

■ b. Removing “and” from paragraph (b)(8);

■ c. Redesignating paragraph (b)(9) as paragraph (b)(11);

■ d. Adding new paragraph (b)(9) and paragraph (b)(10); and

■ e. Removing paragraph (c).

The revisions and additions read as follows:

**§ 585.707 What are the CVA’s primary duties for facility design review?**

(a) \* \* \* The CVA must verify to BOEM that the facility is designed to withstand the environmental and functional load conditions appropriate for the intended service life at the proposed location and has been designed to provide for safety.

(b) \* \* \*

(9) Design for human safety and accident prevention;

(10) For a floating facility, structural integrity, stability, and ballast; and

\* \* \* \* \*

■ 127. Amend § 585.708 by revising paragraphs (a)(1), (2), and (5), adding paragraphs (a)(6) and (7), and revising paragraph (b) to read as follows:

**§ 585.708 What are the CVA’s or project engineer’s primary duties for fabrication and installation review?**

(a) \* \* \*

(1) Use good engineering judgment and practice in conducting an independent assessment of the fabrication and installation activities and of the commissioning of critical safety systems;

(2) Monitor the fabrication and installation of the facility and the commissioning of critical safety systems

as required by paragraph (b) of this section;

\* \* \* \* \*

(5) Verify in a report that project components are fabricated and installed in accordance with accepted engineering practices and to a recognized quality assurance standard or to an equivalent alternate means of quality assurance considered on a case-by-case basis, your approved SAP, COP, or GAP (as applicable), and your FIR. If multiple CVAs are involved in your project, the general project CVA must submit the final report containing such verification for the project.

(i) The report must identify the location of all records pertaining to facility fabrication and installation as required in § 585.714(c); and

(ii) You may commence commercial operations or other approved activities 30 days after BOEM receives that verification report, unless BOEM notifies you within that time period of its objections to the verification report.

(6) Provide records documenting that critical safety systems are commissioned in accordance with the procedures identified in § 585.702(a)(8); and

(7) Identify the location of all records pertaining to commissioning of critical safety systems, as required in § 585.714(c).

(b) To comply with paragraph (a)(5) of this section, the CVA or project engineer must monitor the fabrication and installation of the facility and the commissioning of critical safety systems to verify that it has been built and installed according to your FDRs and FIRs.

(1) If the CVA or project engineer finds that either fabrication and installation procedures or safety system commissioning procedures, or both, have been changed or design specifications have been modified, the CVA or project engineer must inform you; and

(2) If you accept the modifications, you must also inform BOEM.

■ 128. Revise § 585.709 to read as follows:

**§ 585.709 When conducting onsite fabrication inspections, what must the CVA or project engineer verify?**

(a) To comply with § 585.708(a)(3), the CVA or project engineer must make periodic onsite inspections while fabrication is in progress and must verify the following fabrication items, as appropriate:

- (1) Quality control by lessee (or grant holder) and builder;
- (2) Fabrication site facilities;
- (3) Material quality and identification methods;
- (4) Fabrication procedures specified in your FIRs and adherence to such procedures;
- (5) Welder and welding procedure qualification and identification;
- (6) Structural tolerances specified, and adherence to those tolerances;
- (7) Nondestructive examination requirements and evaluation results of the specified examinations;
- (8) Destructive testing requirements and results;
- (9) Repair procedures;
- (10) Installation of corrosion-protection systems and splash-zone protection;
- (11) Erection procedures to ensure that overstressing of structural members does not occur;
- (12) Alignment procedures;
- (13) Dimensional check of the overall structure, including any turrets, turret-and-hull interfaces, any mooring line and chain and riser tensioning line segments; and
- (14) Status of quality-control records at various stages of fabrication.

(b) For a floating facility, the CVA or project engineer must verify the structural integrity, stability, and ballast.

■ 129. Revise § 585.710 to read as follows:

**§ 585.710 When conducting onsite installation inspections, what must the CVA or project engineer do?**

To comply with § 585.708(a)(4), the CVA or project engineer must make periodic onsite inspections while installation is in progress and must, as appropriate, verify, witness, survey, or check the installation items required by this section.

(a) To comply with § 585.708(a)(4), the CVA or project engineer must make periodic onsite inspections while installation is in progress and must verify the installation and commissioning items required by this section.

(b) The CVA or project engineer must verify, as appropriate, all of the following:

- (1) Loadout and initial flotation procedures;

(2) Towing operation procedures to the specified location, including a review of the towing records;

(3) Launching and uprighting activities;

(4) Submergence activities;

(5) Pile or anchor installations;

(6) Installation of mooring and tethering systems;

(7) Final deck and component installations;

(8) Installation at the locations set forth in your FDR(s) and FIR(s); and

(9) Commissioning of critical safety systems.

(c) For a fixed or floating facility, the CVA or project engineer must verify that proper procedures were used during the following:

(1) The loadout of the jacket, decks, piles, or structures from each fabrication site;

(2) The actual installation of the facility or major modification and the related installation activities; and

(3) Commissioning of critical safety systems.

(d) For a floating facility, the CVA or project engineer must verify that proper procedures were used during the following:

(1) The loadout of the facility;

(2) The installation of foundation pilings and templates, and anchoring systems; and

(3) The installation of the mooring and tethering systems.

(e) The CVA or project engineer must conduct an onsite inspection of the installed facility.

(f) The CVA or project engineer must make periodic onsite inspections to witness the commissioning of critical safety systems in order to verify that:

(1) The systems and equipment function as designed; and

(2) The final commissioning records are complete.

(g) The CVA or project engineer must spot-check the equipment, procedures, and recordkeeping as necessary to determine compliance with the applicable documents incorporated by reference and the regulations under this part.

■ 130. Amend § 585.712 by:

■ a. Revising paragraph (a) and the first sentence of paragraph (b) introductory text;

■ c. Removing “and” at the end of paragraph (b)(3);

■ d. Removing the period at the end of paragraph (b)(4) and adding in its place “; and”; and

■ e. Adding paragraph (b)(5).

The revisions and addition read as follows:

**§ 585.712 What are the CVA’s or project engineer’s reporting requirements?**

(a) The CVA or project engineer must prepare and submit to you and BOEM all reports and records required by this subpart. The CVA or project engineer must also submit interim reports to you and BOEM, as requested by BOEM.

(b) For each report required by this subpart, the CVA or project engineer must submit the final report to BOEM pursuant to § 585.110. \* \* \*

\* \* \* \* \*

(5) Summarize any issues with the design and any incidents during facility fabrication and installation, or critical safety system commissioning, and how those issues were resolved.

**§ 585.713 [Reserved and Reserved]**

■ 131. Remove and reserve § 585.713.

■ 132. Amend § 585.714 by:

■ a. Revising the section heading;

■ b. Redesignating paragraphs (a)(4) and (5) as paragraphs (a)(5) and (6), respectively;

■ c. Adding new paragraph (a)(4); and

■ d. Revising paragraph (c).

The revisions and addition read as follows:

**§ 585.714 What records relating to FDRs, FIRs, and Project Modification and Repair Reports must I keep?**

(a) \* \* \*

(4) The records of the commissioning of critical safety systems;

\* \* \* \* \*

(c) You must provide BOEM with the location of these records in the certification statement, as required in §§ 585.701(c), 585.703(b), and 585.708(a)(5)(i) and (a)(6).

**Subpart I—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs, and GAPs**

**§ 585.803 [Amended]**

■ 133. Amend § 585.803 in the first sentence of paragraph (b) by removing the word “affects” and adding in its place the word “effects”.

■ 134. Revise § 585.810 to read as follows:

**§ 585.810 When must I submit a Safety Management System (SMS) and what must I include in my SMS?**

You are required to use a Safety Management System (SMS) for activities conducted on the OCS to develop or operate a lease, from met buoy placement and site assessment work through decommissioning, and to provide your SMS to BOEM upon request. You must also submit a detailed description of the SMS with your COP (as provided under § 585.627(d)) and,

when required by this part, your SAP (as provided in § 585.614(b)) or GAP (as provided in § 585.651). Your SMS must address:

(a) How you will ensure the safety of your personnel or anyone else on or near your facilities, such as:

(1) Health and safety risks that anyone on or near your facilities are likely to face during activities covered by the SMS;

(2) Policies and strategies that will be used to control such risks;

(3) Procedures and published standards that will be followed to ensure the safety of the activities covered by the SMS;

(4) Tools that will be used to monitor the implementation of the SMS and maintain the safety of activities covered by the SMS, including management of change and stop work practices; and

(5) Procedures for personnel to report unsafe work conditions both to the lessee or its designated operator and to BOEM.

(b) Remote monitoring, control, and shut down capabilities, such as:

(1) Aspects of operations and mechanical and structural integrity that will be monitored remotely;

(2) Circumstances under which remote monitoring will be activated and how it will be maintained;

(3) Maintenance of the security of the remote sensing and control capabilities;

(4) Monitoring of conditions if remote sensing equipment fails; and

(5) Conditions that will result in the shut-down of one or more facilities.

(c) Emergency response procedures, such as:

(1) Types of incidents to be addressed (e.g., serious injury to workers during maintenance, unexploded ordnance encountered during construction, damage due to hurricane or allision by vessels or aircraft, unauthorized access into remote monitoring capabilities);

(2) Potential response activities, including contractor support, for each category of incident;

(3) Management controls, authorities, and reporting to be employed for each response;

(4) Locations from which emergency response will be controlled; and

(5) Resources available to assist in the response.

(d) Fire suppression equipment, such as a description of how and when it will be used, if needed;

(e) How and when you will test your SMS, such as:

(1) Plans, processes, and schedules for:

(i) Self or third-party auditing of the SMS; and

(ii) Regular testing of certain SMS components, including remote shut-

down capabilities and emergency response readiness; and

(2) Corrective action processes to improve the effectiveness of your SMS based on the results of audits, tests, investigations of incidents (including near-misses), feedback from the field, and other information sources.

(f) How you will ensure personnel who conduct activities on your facilities are properly trained and have the capability to safely perform duties, such as:

(1) Required training for personnel who conduct activities on your facilities; and

(2) Mechanisms to ensure that personnel have the required knowledge and skills to perform duties safely for the duration of activities.

■ 135. Revise § 585.811 to read as follows:

**§ 585.811 Am I required to obtain a certification of my SMS?**

You are not required to obtain a certification that your SMS meets acceptable health and safety standards (e.g., ANSI Z10, ISO/IEC 45001) from a recognized accreditation organization. However, BOEM will consider such certification in determining the frequency and scope of SMS-related inspections that it conducts under this subpart, as well as the scope and nature of its oversight over any audit-induced corrective actions.

■ 136. Add § 585.812 to read as follows:

**§ 585.812 How must I implement my SMS?**

(a) Your SMS must be functional before you begin, and must remain functional while you perform, any activity on the OCS pursuant to a lease, including met buoy placement and site assessment work, or for any activities described in your approved SAP, COP, or GAP. You must conduct all activities described in your approved SAP, COP, or GAP in accordance with the SMS you described under § 585.810.

(b) You must regularly demonstrate to BOEM that your SMS is being implemented effectively by submitting the following to BOEM in accordance with § 585.110:

(1) By March 31 of each year, summarize safety, work hour, and electric generation performance data for the prior calendar year in which you conducted site assessment, construction, operations, or decommissioning activities in accordance with your lease terms, using a form available on the BOEM website; and

(2) Once every 3 years or upon BOEM's request, provide a report to BOEM summarizing the results of your

most recent SMS audit, corrective actions implemented or being implemented as a result of that audit, and an updated description of your SMS highlighting changes that were made since the last such submission to BOEM.

■ 137. Amend § 585.815 by revising the second sentence of paragraph (a) to read as follows:

**§ 585.815 What must I do if I have facility damage or an equipment failure?**

(a) \* \* \* If you have a major repair, you must submit a report to BOEM under § 585.703.

\* \* \* \* \*

■ 138. Revise § 585.820 to read as follows:

**§ 585.820 Will BOEM conduct inspections?**

BOEM may inspect OCS facilities and any vessels engaged in activities authorized under this part. When we conduct these inspections, we will:

(a) Verify that you are conducting activities in compliance with subsection 8(p) of the OCS Lands Act; the regulations in this part; the terms, conditions, and stipulations of your lease or grant; approved plans; and other applicable laws and regulations.

(b) Determine whether proper safety equipment has been installed and is operating properly according to your SMS, as required in § 585.810.

■ 139. Revise § 585.821 to read as follows:

**§ 585.821 Will BOEM conduct scheduled and unscheduled inspections?**

BOEM may conduct both scheduled and unscheduled inspections.

■ 140. Amend § 585.822 by revising paragraphs (a)(1) and (b) to read as follows:

**§ 585.822 What must I do when BOEM conducts an inspection?**

(a) \* \* \*

(1) Provide access to all facilities on your lease (including your project easement) or grant and any vessels engaged in activities authorized under this part; and

\* \* \* \* \*

(b) You must retain the records referenced in paragraph (a)(2)(iii) of this section until BOEM releases your financial assurance under § 585.534, and provide them to BOEM upon request within the time period specified by BOEM.

\* \* \* \* \*

■ 143. Revise § 585.824 as follows:

**§ 585.824 How must I conduct self-inspections?**

(a) You must develop a comprehensive self-inspection plan

covering all of your facilities. You must keep this self-inspection plan wherever you keep your records and make it available to BOEM upon request. Your self-inspection plan must specify:

(1) The type, extent, and frequency of inspections that you will conduct for both the above-water and the below-water structures of all facilities and pertinent components of the mooring systems for any floating facilities;

(2) How you will monitor the corrosion protections for both above-water and below-water structures; and

(3) How you will fulfill the requirement for annual on-site inspection of all safety equipment designed to prevent or ameliorate fires, spillages, or other major accidents under paragraph (b) of this section.

(b) You must conduct an onsite inspection of each of your facilities at least once a year. This inspection must include, but is not limited to, all safety equipment designed to prevent or ameliorate fires, spillages, or other major accidents.

(1) You must develop and retain summary reports for all such inspections for each calendar year. The summary report must note any failures of operability, required maintenance of critical safety equipment, or required replacement of the critical safety equipment identified during inspection.

(2) You must retain records of inspections and summary reports for the previous 2 calendar years and make them available to BOEM on request.

(c) You must submit a report annually to us no later than November 1 that must include:

(1) A list of facilities inspected for structural condition and corrosion protection in the preceding 12 months;

(2) The type of inspection employed, (i.e., visual, magnetic particle, ultrasonic testing); and

(3) A summary of the inspection indicating what repairs, if any, were needed and the overall structural condition of the facility.

**§ 585.830 [Amended]**

■ 142. Amend § 585.830 in paragraph (d) by removing “30 CFR 254.46” and adding in its place “30 CFR 250.187(d)”.

**Subpart J—Decommissioning**

■ 143. Amend § 585.900 by adding paragraph (c) to read as follows:

**§ 585.900 Who must meet the decommissioning obligations in this subpart?**

\* \* \* \* \*

(c) If a lessee or grant holder has installed a facility on a lease or grant that was authorized by an authority other than BOEM and that approving authority has imposed a decommissioning obligation, such obligation will substitute for the requirements of this subpart. The decommissioning requirements in this subpart will apply to such a facility if the authorizing agency has not imposed or enforced a decommissioning obligation.

■ 144. Amend § 585.902 by revising paragraph (a) introductory text to read as follows:

**§ 585.902 What are the general requirements for decommissioning for facilities authorized under my SAP, COP, or GAP?**

(a) Except as otherwise authorized by BOEM under § 585.909, within 2 years following termination of a lease or grant, or earlier if BOEM determines a facility is no longer useful for operations, you must:

\* \* \* \* \*

■ 145. Amend § 585.905 by adding paragraph (e) to read as follows:

**§ 585.905 When must I submit my decommissioning application?**

\* \* \* \* \*

(e) Ninety (90) days after BOEM determines a facility is no longer useful for operations.

**Subpart K—Rights-of-Use and Easement for Energy- and Marine-Related Activities Using Existing OCS Facilities**

■ 146. Revise the heading of newly redesignated subpart K to read as set forth above.

■ 147. Amend § 585.1005 by revising paragraphs (a) and (b)(2) and (3) to read as follows:

**§ 585.1005 How do I request an Alternate Use RUE?**

\* \* \* \* \*

(a) The name, address, email address, and phone number of each owner and an authorized representative, if applicable.

(b) \* \* \*

(2) A description of the existing OCS facility, including a map providing its location on the OCS and the relevant lease block or lease area, as applicable;

(3) If the facility is an oil, gas, or sulfur facility, provide the name of each operator, lessee, and any owner of operating rights, as defined in 30 CFR 550.105; for any other type of facility, provide the name of any operators, a description of the facility, and its use;

\* \* \* \* \*

**§ 585.1018 [Amended]**

■ 148. Amend § 585.1018 in paragraph (b) by removing “30 CFR part 250” and adding in its place “30 CFR part 556”.

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