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Title 30: Mineral Resources

PART 285—RENEWABLE ENERGY ALTERNATE USES OF EXISTING FACILITIES ON THE OUTER CONTINENTAL SHELF

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Authority: 43 U.S.C. 1331 *et seq.*, 43 U.S.C. 1337.

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Subpart A—General Provisions



§ 285.100 Authority.



The authority for this part derives from amendments to subsection 8 of the Outer Continental Shelf Lands Act (OCS Lands Act) (43 U.S.C. 1337), as set forth in section 388(a) of the Energy Policy Act of 2005 (EPAAct) (Pub. L. 109–58). The Secretary of the Interior delegated to the Minerals Management Service (MMS) the authority to regulate activities under section 388(a) of the EPAAct. These regulations specifically apply to activities that:

- (a) Produce or support production, transportation, or transmission of energy from sources other than oil and gas; or
- (b) Use, for energy-related purposes or for other authorized marine-related purposes, facilities currently or previously used for activities authorized under the OCS Lands Act.

§ 285.101 What is the purpose of this part?



The purpose of this part is to:

- (a) Establish procedures for issuance and administration of leases, right-of-way (ROW) grants, and right-of-use and easement (RUE) grants for renewable energy production on the Outer Continental Shelf (OCS) and RUEs for the alternate use of OCS facilities for energy or marine-related purposes;
- (b) Inform you and third parties of your obligations when you undertake activities authorized in this part; and
- (c) Ensure that renewable energy activities on the OCS and activities involving the alternate use of OCS facilities for energy or marine-related purposes are conducted in a safe and environmentally sound manner, in conformance with the requirements of subsection 8(p) of the OCS Lands Act, other applicable laws and regulations, and the terms of your lease, ROW grant, RUE grant, or Alternate Use RUE grant.
- (d) This part will not convey access rights for oil, gas, or other minerals.

§ 285.102 What are MMS's responsibilities under this part?



- (a) The MMS will ensure that any activities authorized in this part are carried out in a manner that provides for:

- (1) Safety;
 - (2) Protection of the environment;
 - (3) Prevention of waste;
 - (4) Conservation of the natural resources of the OCS;
 - (5) Coordination with relevant Federal agencies (including, in particular, those agencies involved in planning activities that are undertaken to avoid conflicts among users and maximize the economic and ecological benefits of the OCS, including multifaceted spatial planning efforts);
 - (6) Protection of national security interests of the United States;
 - (7) Protection of the rights of other authorized users of the OCS;
 - (8) A fair return to the United States;
 - (9) Prevention of interference with reasonable uses (as determined by the Secretary or Director) of the exclusive economic zone, the high seas, and the territorial seas;
 - (10) Consideration of the location of and any schedule relating to a lease or grant under this part for an area of the OCS, and any other use of the sea or seabed;
 - (11) Public notice and comment on any proposal submitted for a lease or grant under this part; and
 - (12) Oversight, inspection, research, monitoring, and enforcement of activities authorized by a lease or grant under this part.
- (b) The MMS will require compliance with all applicable laws, regulations, other requirements, and the terms of your lease or grant under this part and approved plans. The MMS will approve, disapprove, or approve with conditions any plans, applications, or other documents submitted to MMS for approval under the provisions of this part.
- (c) Unless otherwise provided in this part, MMS may give oral directives or decisions whenever prior MMS approval is required under this part. The MMS will document in writing any such oral directives within 10 business days.
- (d) The MMS will establish practices and procedures to govern the collection of all payments due to the Federal Government, including any cost recovery fees, rents, operating fees, and other fees or payments. The MMS will do this in accordance with the terms of this part, the leasing notice, the lease or grant under this part, and applicable Minerals Revenue Management regulations or guidance.
- (e) The MMS will provide for coordination and consultation with the Governor of any State or the executive of any local government or Indian tribe that may be affected by a lease, easement, or ROW under this subsection. The MMS may invite any affected State Governor, representative of an affected Indian tribe, and affected local government executive to join in establishing a task force or other joint planning or coordination agreement in carrying out our responsibilities under this part.

§ 285.103 When may MMS prescribe or approve departures from these regulations?



- (a) The MMS may prescribe or approve departures from these regulations when departures are necessary to:
- (1) Facilitate the appropriate activities on a lease or grant under this part;
 - (2) Conserve natural resources;

(3) Protect life (including human and wildlife), property, or the marine, coastal, or human environment; or

(4) Protect sites, structures, or objects of historical or archaeological significance.

(b) Any departure approved under this section and its rationale must:

(1) Be consistent with subsection 8(p) of the OCS Lands Act;

(2) Protect the environment and the public health and safety to the same degree as if there was no approved departure from the regulations;

(3) Not impair the rights of third parties; and

(4) Be documented in writing.

§ 285.104 Do I need an MMS 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 will be 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 under and in accordance with the terms of a lease, easement, or ROW issued pursuant to the OCS Lands Act.

§ 285.105 What are my responsibilities under this part?



As a lessee, applicant, operator, or holder of a ROW grant, RUE grant, or Alternate Use RUE grant, you must:

(a) Design your projects and conduct all activities in a manner that ensures safety and will not cause undue harm or damage to natural resources, including their physical, atmospheric, and biological components to the extent practicable; and take measures to prevent unauthorized discharge of pollutants including marine trash and debris into the offshore environment.

(b) Submit requests, applications, plans, notices, modifications, and supplemental information to MMS as required by this part;

(c) Follow up, in writing, any oral request or notification you made, within 3 business days;

(d) Comply with the terms, conditions, and provisions of all reports and notices submitted to MMS, and of all plans, revisions, and other MMS approvals, as provided in this part;

(e) Make all applicable payments on time;

(f) Comply with the DOI's nonprocurement debarment regulations at 2 CFR part 1400;

(g) Include the requirement to comply with 2 CFR part 1400 in all contracts and transactions related to a lease or grant under this part;

(h) Conduct all activities authorized by the lease or grant in a manner consistent with the provisions of subsection 8(p) of the OCS Lands Act;

(i) Compile, retain, and make available to MMS representatives, within the time specified by MMS, any data and information

related to the site assessment, design, and operations of your project; and

(j) Respond to requests from the Director in a timely manner.

§ 285.106 Who can hold a lease or grant under this part?



(a) You may 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):

(1) Citizen or national of the United States;

(2) Alien lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20);

(3) Private, public, or municipal corporations organized under the laws of any State of the United States, the District of Columbia, or any territory or insular possession subject to U.S. jurisdiction;

(4) Association of such citizens, nationals, resident aliens, or corporations;

(5) Executive Agency of the United States as defined in section 105 of Title 5 of the U.S. Code;

(6) State of the United States; and

(7) Political subdivision of States of the United States.

(b) You may not hold a lease or grant under this part or acquire an interest in a lease or grant under this part if:

(1) You or your principals are excluded or disqualified from participating in transactions covered by the Federal nonprocurement debarment and suspension system (2 CFR part 1400), unless MMS explicitly has approved an exception for this transaction;

(2) The MMS determines or has previously determined after notice and opportunity for a hearing that you or your principals have failed to meet or exercise due diligence under any OCS lease or grant; or

(3) The MMS determines or has previously determined after notice and opportunity for a hearing that you:

(i) Remained in violation of the terms and conditions of any lease or grant issued under the OCS Lands Act for a period extending longer than 30 days (or such other period MMS allowed for compliance) after MMS directed you to comply; and

(ii) You took no action to correct the noncompliance within that time period.

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



(a) You must demonstrate your technical and financial capability to construct, operate, maintain, and terminate/decommission projects for which you are requesting authorization. Documentation can include:

(1) Descriptions of international or domestic experience with renewable energy projects or other types of electric-energy-related projects; and

(2) Information establishing access to sufficient capital to carry out development.

(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 individual. A resident alien may submit a photocopy of the Immigration and Naturalization Service form evidencing legal status of the resident alien.

(c) A corporation or association must submit evidence, as specified in the table in paragraph (d) of this section, acceptable to MMS that:

(1) It is qualified to hold leases or grants under this part;

(2) It is authorized to conduct business under the laws of its State;

(3) It is authorized to hold leases or grants on the OCS under the operating rules of its business; and

(4) The persons holding the titles listed are authorized to bind the corporation or association when conducting business with MMS.

(d) Acceptable evidence under paragraph (c) of this section includes, but is not limited to the following:

(e) A local, state, or Federal executive entity must submit a written statement that:

(1) It is qualified to hold leases or grants under this part; and

(2) The person(s) acting on behalf of the entity is authorized to bind the entity when conducting business with us.

(f) The MMS may require you to submit additional information at any time considering your bid or request for a noncompetitive lease.

§ 285.108 When must I notify MMS if an action has been filed alleging that I am insolvent or bankrupt?



You must notify MMS within 3 business days after you learn of any action filed alleging that you are insolvent or bankrupt.

§ 285.109 When must I notify MMS of mergers, name changes, or changes of business form?



You must notify MMS in writing of any merger, name change, or change of business form. You must notify MMS as soon as practicable following the merger, name change, or change in business form, but no later than 120 days after the earliest of either the effective date, or the date of filing the change or action with the Secretary of the State or other authorized official in the State of original registry.

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



(a) You must submit all plans, applications, reports, or notices required by this part to MMS at the following address: Associate Director, OEMM, Minerals Management Service, MS-4001, 381 Elden Street, Herndon, VA 20170.

(b) Unless otherwise stated, you must submit one paper copy and one electronic copy of all plans, applications, reports, or notices required by this part.

§ 285.111 When and how does MMS charge me processing fees on a case-by-case basis?



(a) The MMS will charge a processing fee on a case-by-case basis under the procedures in this section with regard to any application or request under this part if we decide at any time that the preparation of a particular document or study is necessary for the application or request and it will have a unique processing cost, such as the preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

(1) Processing costs will include contract oversight and efforts to review and approve documents prepared by contractors, whether the contractor is paid directly by the applicant or through MMS.

(2) We may apply a standard overhead rate to direct processing costs.

(b) We will assess the ongoing processing fee for each individual application or request according to the following procedures:

(1) Before we process your application or request, we will give you a written estimate of the proposed fee based on reasonable processing costs.

(2) You may comment on the proposed fee.

(3) You may:

(i) Ask for our approval to perform, or to directly pay a contractor to perform, all or part of any document, study, or other activity according to standards we specify, thereby reducing our costs for processing your application or request; or

(ii) Ask to pay us to perform, or contract for, all or part of any document, study, or other activity.

(4) We will then give you the final estimate of the processing fee amount with payment terms and instructions after considering your comments and any MMS-approved work you will do.

(i) If we encounter higher or lower processing costs than anticipated, we will re-estimate our reasonable processing costs following the procedures in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section, but we will not s ongoing processing unless you do not pay in accordance with paragraph (b)(5) of this section.

(ii) Once processing is complete, we will refund to you the amount of money that we did not spend on processing costs.

(5)(i) Consistent with the payment and billing terms provided in the final estimate, we will periodically estimate what our reasonable processing costs will be for a specific period and will bill you for that period. Payment is due to us 30 days after you receive your bill. We will s processing your document if you do not pay the bill by the date payment is due.

(ii) If a periodic payment turns out to be more or less than our reasonable processing costs for the period, we will adjust the next billing accordingly or make a refund. Do not deduct any amount from a payment without our prior written approval.

(6) You must pay the entire fee before we will issue the final document or take final action on your application or request.

(7) You may appeal our estimated processing costs in accordance with the regulations in 43 CFR part 4. We will not process the document further until the appeal is resolved, unless you pay the fee under protest while the appeal is pending. If the appeal results in a decision changing the proposed fee, we will adjust the fee in accordance with paragraph (b)(5)(ii) of this section. If we adjust the fee downward, we will not pay interest.

§ 285.112 Definitions.



Terms used in this part have the meanings as defined in this section:

Affected local government means with respect to any activities proposed, conducted, or approved under this part, any locality—

(1) That is, or is proposed to be, the site of gathering, transmitting, or distributing electricity or other energy product, or is otherwise receiving, processing, refining, or transshipping product, or services derived from activities approved under this part;

(2) That is used, or is proposed to be used, as a support base for activities approved under this part; or

(3) In which there is a reasonable probability of significant effect on land or water uses from activities approved under this part.

Affected State means with respect to any activities proposed, conducted, or approved under this part, any coastal State—

(1) That is, or is proposed to be, the site of gathering, transmitting, or distributing energy or is otherwise receiving, processing, refining, or transshipping products, or services derived from activities approved under this part;

(2) That is used, or is scheduled to be used, as a support base for activities approved under this part; or

(3) In which there is a reasonable probability of significant effect on land or water uses from activities approved under this part.

Alternate Use refers to the energy- or marine-related use of an existing OCS facility for activities not otherwise authorized by this subchapter or other applicable law.

Alternate Use RUE means a right-of-use and easement issued for activities authorized under subpart J of this part.

Archaeological resource means any material remains of human life or activities that are at least 50 years of age and that are of archaeological interest (*i.e.* , which are capable of providing scientific or humanistic understanding of past human behavior, cultural adaptation, and related ics through the application of scientific or scholarly techniques, such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation).

Best available and safest technology means the best available and safest technologies that MMS determines to be economically feasible wherever failure of equipment would have a significant effect on safety, health, or the environment.

Best management practices mean practices recognized within their respective industry, or by Government, as one of the best for achieving the desired output while reducing undesirable outcomes.

Certified Verification Agent (CVA) means an individual or organization, experienced in the design, fabrication, and installation of offshore marine facilities or structures, who will conduct specified third-party reviews, inspections, and verifications in accordance with this part.

Coastline means the same as the term "coast line" in section 2 of the Submerged Lands Act (43 U.S.C. 1301(c)).

Commercial activities mean, for 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 for which 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 to technology-testing activities on a limited lease. This term also includes activities associated with all stages of development, including initial site characterization and assessment, facility construction, and project decommissioning.

Commercial lease means a lease issued under this part that specifies the terms and conditions under which a person can conduct commercial activities.

Commercial operations mean the generation of electricity or other energy product for commercial use, sale, or distribution on

a commercial lease.

Decommissioning means removing MMS-approved facilities and returning the site of the lease or grant to a condition that meets the requirements under subpart I of this part.

Director means the Director of MMS of the U.S. Department of the Interior, or an official authorized to act on the Director's behalf.

Distance means the minimum great circle distance.

Eligible State means a coastal State having a coastline (measured from the nearest point) no more than 15 miles from the geographic center of a qualified project area.

Facility means an installation that is permanently or temporarily attached to the seabed of the OCS. Facilities include any structures; devices; appurtenances; gathering, transmission, and distribution cables; pipelines; and permanently moored vessels. Any group of OCS installations interconnected with walkways, or any group of installations that includes a central or primary installation with one or more satellite or secondary installations, is a single facility. The MMS may decide that the complexity of the installations justifies their classification as separate facilities.

Geographic center of a project means the centroid (geometric center point) of a qualified project area. The centroid represents the point that is the weighted average of coordinates of the same dimension within the mapping system, with the weights determined by the density function of the system. For example, in the case of a project area shaped as a rectangle or other parallelogram, the geographic center would be that point where lines between opposing corners intersect. The geographic center of a project could be outside the project area itself if that area is irregularly shaped.

Governor means the Governor of a State or the person or entity lawfully designated by or under State law to exercise the powers granted to a Governor.

Grant means a right-of-way, right-of-use and easement, or alternate use right-of-use and easement issued under the provisions of this part.

Human environment means the physical, social, and economic components, conditions, and factors that interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

Income, unless clearly specified to the contrary, refers to the money received by the project owner or holder of the lease or grant issued under this part. The term does not mean that project receipts exceed project expenses.

Lease means an agreement authorizing the use of a designated portion of the OCS for activities allowed under this part. The term also means the area covered by that agreement, when the context requires.

Lessee means the holder of a lease, an MMS-approved assignee, and, when describing the conduct required of parties engaged in activities on the lease, it also refers to the operator and all persons authorized by the holder of the lease or operator to conduct activities on the lease.

Limited lease means a lease issued under this part that specifies the terms and conditions under which a person may conduct activities on the OCS that support the production of energy, but do not result in the production of electricity or other energy product for sale, distribution, or other commercial use exceeding a limit specified in the lease.

Marine environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the marine ecosystem. These include the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

Miles mean nautical miles, as opposed to statute miles.

MMS means the Minerals Management Service of the Department of the Interior.

Natural resources include, without limiting the generality thereof, renewable energy, oil, gas, and all other minerals (as

defined in section 2(q) of the OCS Lands Act), and marine animal and marine plant life.

Operator means the individual, corporation, or association having control or management of activities on the lease or grant under this part. The operator may be a lessee, grant holder, or a contractor designated by the lessee or holder of a grant under this part.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301), whose subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person means, in addition to a natural person, an association (including partnerships and joint ventures); a Federal agency; a State; a political subdivision of a State; a Native American tribal government; or a private, public, or municipal corporation.

Project, for the purposes of defining the source of revenues to be shared, means a lease ROW, RUE, or Alternate Use RUE on which the activities authorized under this part are conducted on the OCS. The term "project" may be used elsewhere in this rule to refer to these same authorized activities, the facilities used to conduct these activities, or to the geographic area of the project, *i.e.*, the project area.

Project area means the geographic surface leased, or granted, for the purpose of a specific project. If OCS acreage is granted for a project under some form of agreement other than a lease (*i.e.*, a ROW, RUE, or Alternate Use RUE issued under this part), the Federal acreage granted would be considered the project area. To avoid distortions in the calculation of the geometric center of the project area, project easements issued under this part are not considered part of the qualified project's area.

Project easement means an easement to which, upon approval of your Construction and Operations Plan (COP) or General Activities Plan (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.

Renewable Energy means energy resources other than oil and gas and minerals as defined in 30 CFR part 280. Such resources include, but are not limited to, wind, solar, and ocean waves, tides, and current.

Revenues mean bonuses, rents, operating fees, and similar payments made in connection with a project or project area. It does not include administrative fees such as those assessed for cost recovery, civil penalties, and forfeiture of financial assurance.

Right-of-use and easement (RUE) grant means an easement issued by MMS under this part that authorizes use of a designated portion of the OCS to support activities on a lease or other use authorization for renewable energy activities. The term also means the area covered by the authorization.

Right-of-way (ROW) grant means an authorization issued by MMS under this part to use a portion of the OCS for the construction and use of a cable or pipeline for the purpose of gathering, transmitting, distributing, or otherwise transporting electricity or other energy product generated or produced from renewable energy, but does not constitute a project easement under this part. The term also means the area covered by the authorization.

Secretary means the Secretary of the Interior or an official authorized to act on the Secretary's behalf.

Significant archaeological resource means an archaeological resource that meets the criteria of significance for eligibility for listing in the National Register of Historic Places, as defined in 36 CFR 60.4 or its successor.

Site assessment activities mean those initial activities conducted to characterize a site on the OCS, such as resource assessment surveys (e.g., meteorological and oceanographic) or technology testing, involving the installation of bottom-founded facilities.

You and your refer to an applicant, lessee, the operator, a designated agent of the lessee(s) or designated operator, ROW grant holder, RUE grant holder, or Alternate Use RUE grant holder under this part, or the possessive of each, depending on the context.

We, us, and our refer to the Minerals Management Service of the Department of the Interior, or its possessive, depending on

the context.

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



(a) The MMS will make data and information available in accordance with the requirements and subject to the limitations of the Freedom of Information Act (FOIA) (5 U.S.C. 552), the regulations contained in 43 CFR part 2 (Records and Testimony).

(b) The MMS will not release such data and information that we have determined is exempt from disclosure under exemption 4 of FOIA. We will review such data and information and objections of the submitter by the following schedule to determine whether release at that time will result in substantial competitive harm or disclosure of trade secrets.



(c) After considering any objections from the submitter, if we determine that release of such data and information will result in:

(1) No substantial competitive harm or disclosure of trade secrets, then the data and information will be released.

(2) Substantial competitive harm or disclosure of trade secrets, then the data and information will not be released at that time but will be subject to further review every 3 years thereafter.

§ 285.114 Paperwork Reduction Act statements—information collection.



(a) The Office of Management and Budget (OMB) has approved the information collection requirements in 30 CFR part 285 under 44 U.S.C. 3501, *et seq.*, and assigned OMB Control Number 1010–0176. The table in paragraph (e) of this section lists the subpart in the rule requiring the information and its title, summarizes the reasons for collecting the information, and summarizes how MMS uses the information.

(b) Respondents are primarily renewable energy applicants, lessees, ROW grant holders, RUE grant holders, Alternate Use RUE grant holders, and operators. The requirement to respond to the information collection in this part is mandated under subsection 8(p) of the OCS Lands Act. Some responses are also required to obtain or retain a benefit, or may be voluntary.

(c) The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires us to inform the public that an agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(d) Comments regarding any aspect of the collections of information under this part, including suggestions for reducing the burden should be sent to the Information Collection Clearance Officer, Minerals Management Service, Mail S 5438, 1849 C Street, NW., Washington, DC 20240.

(e) The MMS is collecting this information for the reasons given in the following table:



§ 285.115 Documents incorporated by reference.



(a) The MMS is incorporating by reference the documents listed in the table in paragraph (e) of this section. The Director of the Federal Register has approved this incorporation by reference according to 5 U.S.C. 552(a) and 1 CFR part 51.

(1) The MMS will publish, as a rule, any changes in the documents incorporated by reference in the Federal Register.

(2) The MMS may amend by rule the list of industry standards incorporated by reference of the document effective without prior opportunity for public comment when MMS determines that the revisions to a document result in safety improvements or represent new industry standard technology and do not impose undue costs on the affected parties; and

(3) The MMS may make a rule, effective immediately, amending the list of industry standards incorporated by reference if it determines good cause exists for doing so under 5 U.S.C. 553.

(b) The MMS is incorporating each document or specific portion by reference in the sections noted. The entire document is incorporated by reference, unless the text of the corresponding sections in this part calls for compliance with specific portions of the listed documents. In each instance, the applicable document is the specific edition, or specific edition and supplement, or specific addition and addendum cited in this section.

(c) You may comply with a later edition of a specific document incorporated by reference, only if:

(1) You show that complying with the later edition provides a degree of protection, safety, or performance equal to or better than what would be achieved by compliance with the listed edition; and

(2) You obtain the prior written approval for alternative compliance from the authorized MMS official.

(d) You may inspect these documents at the Minerals Management Service, 381 Elden Street, Room 3313, Herndon, Virginia, 703-787-1605; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html You may obtain the documents from the publishing organizations at the addresses given in the following table:



(e) This paragraph lists documents incorporated by reference. To easily reference text of the corresponding sections with the list of documents incorporated by reference, the list is in alphanumerical order by organization and document.



§ 285.116 Requests for information on the state of the offshore renewable energy industry.



(a) The Director may, from time to time, and at his discretion, solicit information from industry and other relevant stakeholders (including State and local agencies), as necessary, to evaluate the state of the offshore renewable energy industry, including the identification of potential challenges or obstacles to its continued development. Such requests for information 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. From the information received, the Director may evaluate potential refinements to the OCS Alternative Energy Program that promote development of the industry in a safe and environmentally responsible manner, and that ensure fair value for use of the Nation's OCS.

(b) The MMS may make such requests for information on a regional basis, and may tailor the requests to specific types of renewable energy technologies.

(c) The MMS will publish such requests for information by the Director in the Federal Register.

§ 285.117 [Reserved]



§ 285.118 What are my appeal rights?



(a) Any party adversely affected by an MMS official's final decision or order issued under the regulations of this part may appeal that decision or order to the Interior Board of Land Appeals. The appeal must conform with the procedures found in 30 CFR part 290 and 43 CFR part 4, subpart E. Appeal of a final decision for bid acceptance is covered under paragraph (c) of this section.

(b) A decision will remain in full force and effect during the period in which an appeal may be filed and during an appeal, unless a stay is granted pursuant to 43 CFR part 4.

(c) Our decision on a bid is the final action of the Department, except that an unsuccessful bidder may apply for reconsideration by the Director.

(1) A bidder whose bid we reject may file a written request for reconsideration with the Director within 15 days of the date of the receipt of the notice of rejection, accompanied by a statement of reasons, with one copy to us. The Director will respond in writing either affirming or reversing the decision.

(2) The delegation of review authority given to the Office of Hearings and Appeals does not apply to decisions on high bids for leases or grants under this part.

Subpart B—Issuance of OCS Renewable Energy Leases



General Lease Information



§ 285.200 What rights are granted with a lease issued under this part?



(a) A lease issued under this part grants the lessee the right, subject to obtaining the necessary approvals, including but not limited to those required under the FERC hydrokinetic licensing process, and complying with all provisions of this part, to occupy, and install and operate facilities on, a designated portion of the OCS for the purpose of conducting:

(1) Commercial activities; or

(2) Other limited activities that support, result from, or relate to the production of energy from a renewable energy source.

(b) A lease issued under this part confers on the lessee the right to one or more project easements without further competition 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.

- (1) You must apply for the project easement as part of your COP or GAP, as provided under subpart F of this part; and
- (2) The MMS will incorporate your approved project easement in your lease as an addendum.
- (c) A commercial lease issued under this part may be developed in phases, with MMS approval as provided in §285.629.

§ 285.201 How will MMS issue leases?



The MMS will issue leases on a competitive basis, as provided under §§285.210 through 285.225. However, if we determine after public notice of a proposed lease that there is no competitive interest, we will issue leases noncompetitively, as provided under §§285.230 and 285.232. We will issue leases on forms approved by MMS and will include terms, conditions, and stipulations identified and developed through the process set forth in §§285.211 and 285.231.

§ 285.202 What types of leases will MMS issue?



The MMS may issue leases on the OCS for the assessment and production of renewable energy and may authorize a combination of specific activities. We may issue commercial leases or limited leases.

§ 285.203 With whom will MMS consult before issuance of a lease?



For leases issued under this part, through either the competitive or noncompetitive process, MMS 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 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 us to consult with or respond to findings include the Endangered Species Act (ESA), and the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

§ 285.204 What areas are available for leasing consideration?



The MMS may offer any appropriately platted area of the OCS, as provided in §285.205, for a renewable energy lease, except any area within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, National Marine Sanctuary System, or any National Monument.

§ 285.205 How will leases be mapped?



The MMS will prepare leasing maps and official protraction diagrams of areas of the OCS. The areas included in each lease will be in accordance with the appropriate leasing map or official protraction diagram.

§ 285.206 What is the lease size?



(a) The MMS will determine the size for each lease based on the area required to accommodate the anticipated activities. The processes leading to both competitive and noncompetitive issuance of leases will provide public notice of the lease size adopted. We will delineate leases by using mapped OCS blocks or portions, or aggregations of blocks.

(b) The lease size includes the minimum area that will allow the lessee sufficient space to develop the project and manage activities in a manner that is consistent with the provisions of this part. The lease may include whole lease blocks or portions of a lease block.

§§ 285.207--285.209 [Reserved]



Competitive Lease Process



§ 285.210 How does MMS initiate the competitive leasing process?



The MMS may publish in the Federal Register a public notice of Request for Interest to assess interest in leasing all or part of the OCS for activities authorized in this part. The MMS will consider information received in response to a Request for Interest to determine whether there is competitive interest for scheduling sales and issuing leases. We may prepare and issue a national, regional, or more specific schedule of lease sales pertaining to one or more types of renewable energy.

§ 285.211 What is the process for competitive issuance of leases?



The MMS will use auctions to award leases on a competitive basis. We will publish details of the process to be employed for each lease sale auction in the Federal Register. For each lease sale, we will publish a Proposed Sale Notice and a Final Sale Notice. Individual lease sales will include steps such as:

(a) *Call for Information and Nominations (Call)*. The MMS will publish in the Federal Register Calls for Information and Nominations for leasing in specified areas. The comment period following issuance of a Call will be 45 days. In this document, we may:

(1) Request comments on areas which should receive special consideration and analysis;

(2) Request comments concerning geological conditions (including bottom hazards); archaeological sites on the seabed or nearshore; multiple uses of the proposed leasing area (including navigation, recreation, and fisheries); and other socioeconomic, biological, and environmental information; and

(3) Suggest areas to be considered by the respondents for leasing.

(b) *Area Identification*. The MMS will identify areas for environmental analysis and consideration for leasing. We will do this in consultation with appropriate Federal agencies, States, local governments, affected Indian tribes, and other interested parties.

(1) We may consider for lease those areas nominated in response to the Call for Information and Nominations, together with

other areas that MMS determines are appropriate for leasing.

(2) We will evaluate the potential effect of leasing on the human, marine, and coastal environments, and develop measures to mitigate adverse impacts, including lease stipulations.

(3) We will consult to develop measures, including lease stipulations and conditions, to mitigate adverse impacts on the environment; and

(4) We may hold public hearings on the environmental analysis after appropriate notice.

(c) *Proposed Sale Notice.* The MMS will publish the Proposed Sale Notice in the Federal Register and send it to the Governor of any affected State and the executive of any local government that might be affected. The comment period following issuance of a Proposed Sale Notice will be 60 days.

(d) *Final Sale Notice.* The MMS will publish the Final Sale Notice in the Federal Register at least 30 days before the date of the sale.

§ 285.212 What is the process MMS will follow if there is reason to believe that competitors have withdrawn before the Final Sale Notice is issued?



The MMS may decide to end the competitive process before the Final Sale Notice if we have reason to believe that competitors have withdrawn and competition no longer exists. We will issue a second public notice of Request for Interest and consider comments received to confirm that there is no competitive interest.

(a) If, after reviewing comments in response to the notice of Request for Interest, MMS determines that there is no competitive interest in the lease area, and one party wishes to acquire a lease, we will discontinue the competitive process and will proceed with the noncompetitive process set forth in §285.231(d) through (i). Under the noncompetitive process, the acquisition fee specified in §285.502(a) must be submitted with the Site Assessment Plan (SAP) or GAP.

(b) If, after reviewing comments in response to the notice of Request for Interest, MMS determines that competitive interest in the lease area continues to exist, we will continue with the competitive process set forth in §285.211 through 285.225.

§ 285.213 What must I submit in response to a Request for Interest or a Call for Information and Nominations?



If you are a potential lessee, when you respond to a Request for Interest or a Call, your response must include the following items:

(a) The area of interest for a possible lease.

(b) A general description of your objectives and the facilities that you would use to achieve those objectives.

(c) A general schedule of proposed activities, including those leading to commercial operations.

(d) Available and pertinent data and information concerning renewable energy and environmental conditions in the area of interest, including energy and resource data and information used to evaluate the area of interest. The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and as provided in §285.113.

(e) Documentation showing that you are qualified to hold a lease, as specified in §285.107.

(f) Any other information requested by MMS in the Federal Register notice.

§ 285.214 What will MMS do with information from the Requests for Information or Calls for Information and Nominations?



The MMS will use the information received in response to the Requests or Calls to:

- (a) Identify the lease area;
- (b) Develop options for the environmental analysis and leasing provisions (stipulations, payments, terms, and conditions); and
- (c) Prepare appropriate documentation to satisfy applicable Federal requirements, such as NEPA, CZMA, the ESA, and the MSA.

§ 285.215 What areas will MMS offer in a lease sale?



The MMS will offer the areas for leasing determined through the process set forth in §285.211 of this part. We will not accept nominations after the Call for Information and Nominations closes.

§ 285.216 What information will MMS publish in the Proposed Sale Notice and Final Sale Notice?



For each competitive lease sale, MMS will publish a Proposed Sale Notice and a Final Sale Notice in the Federal Register. In the Proposed Sale Notice, we will request public comment on the items listed in this section. We will consider all public comments received in developing the final lease sale terms and conditions. We will publish the final terms and conditions in the Final Sale Notice. The Proposed Sale Notice and Final Sale Notice will include, or describe the availability of, information pertaining to:

- (a) The area available for leasing.
- (b) Proposed and final lease provisions and conditions, including, but not limited to:
 - (1) Lease size;
 - (2) Lease term;
 - (3) Payment requirements;
 - (4) Performance requirements; and
 - (5) Site-specific lease stipulations.
- (c) Auction details, including:
 - (1) Bidding procedures and systems;

- (2) Minimum bid;
 - (3) Deposit amount;
 - (4) The place and time for filing bids and the place, date, and hour for opening bids;
 - (5) Lease award method; and
 - (6) Bidding or application instructions.
- (d) The official MMS lease form to be used or a reference to that form.
- (e) Criteria MMS will use to evaluate competing bids or applications and how the criteria will be used in decision-making for awarding a lease.
- (f) Award procedures, including how and when MMS will award leases and how MMS will handle unsuccessful bids or applications.
- (g) Procedures for appealing the lease issuance decision.
- (h) Execution of the lease instrument.

§§ 285.217-285.219 [Reserved]



Competitive Lease Award Process



§ 285.220 What auction format may MMS use in a lease sale?



(a) Except as provided in §285.231, we will hold competitive auctions to award renewable energy leases and will use one of the following auction formats, as determined through the lease sale process and specified in the Proposed Sale Notice and in the Final Sale Notice:



(b) You must submit your bid and a deposit as specified in §§285.500 and 285.501 to cover the bid for each lease area, according to the terms specified in the Final Sale Notice.

§ 285.221 What bidding systems may MMS use for commercial leases and limited leases?



(a) For commercial leases, we will specify minimum bids in the Final Sale Notice and use one of the following bidding systems, as specified in the Proposed Sale Notice and in the Final Sale Notice:



(b) For limited leases, the bid variable will be a cash bonus, with a minimum bid as we specify in the Final Sale Notice.

§ 285.222 What does MMS do with my bid?



(a) If sealed bidding is used:

(1) We open the sealed bids at the place, date, and hour specified in the Final Sale Notice for the sole purpose of publicly announcing and recording the bids. We do not accept or reject any bids at that time.

(2) We reserve the right to reject any and all high bids, including a bid for any proposal submitted under the multiple-factor bidding format, regardless of the amount offered or bidding system used. The reasons for the rejection of a winning bid may include, but are not necessarily limited to, insufficiency, illegality, anti-competitive behavior, administrative error, and the presence of unusual bidding patterns. We intend to accept or reject all high bids within 90 days, but we may extend that time if necessary.

(b) If we use ascending bidding, we may, in the Final Sale Notice, reserve the right to accept the winning bid solely based on its being the highest bid submitted by a qualified bidder (qualified to be an OCS lessee under §285.107).

(c) If we use two-stage bidding and the auction concludes with

(i) an ascending bidding stage, the winning bid will be determined as stated in paragraph (b) of this section; or

(ii) a sealed bidding stage, the winning bid will be determined as stated in paragraph (a) of this section.

(d) If we use multiple-factor bidding, determination of the winning bid for any proposal submitted will be made by a panel composed of members selected by MMS. The details of the process will be described in the Final Sale Notice.

(e) We will send a written notice of our decision to accept or reject bids to all bidders whose deposits we hold.

§ 285.223 What does MMS do if there is a tie for the highest bid?



(a) Unless otherwise specified in the Final Sale Notice, except in the first stage of a two-stage bidding auction, if more than one bidder on a lease submits the same high bid amount, the winning bidder will be determined by a further round or stage of bidding as described in the Final Sale Notice.

(b) The winning bidder will be subject to final confirmation following determination of bid adequacy.

§ 285.224 What happens if MMS accepts my bid?



If we accept your bid, we will send you a notice with three copies of the lease form.

(a) Within 10 business days after you receive the lease copies, you must:

(1) Execute the lease;

- (2) File financial assurance as required under §§285.515 through 285.537; and
- (3) Pay the balance of the bonus bid as specified in the lease sale notice.
- (b) Within 45 days after you receive the lease copies, you must pay the first 6 months rent as required in §285.503.
- (c) When you execute three copies of the lease and return the copies to us, we will execute the lease on behalf of the United States and send you one fully executed copy.
- (d) You will forfeit your deposit if you do not execute and return the lease within 10 business days of receipt, or otherwise fail to comply with applicable regulations or terms of the Final Sale Notice.
- (e) We may extend the 10 business day time period for executing and returning the lease if we determine the delay to be caused by events beyond your control.
- (f) We reserve the right to withdraw an OCS area in which we have held a lease sale before you and MMS execute the lease in that area. If we exercise this right, we will refund your bid deposit, without interest.
- (g) 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.
- (h) The MMS will consider the highest submitted qualified bid to be the winning bid when bidding occurs under the systems described in §§285.221(a)(1) through (5). We will determine the winning bid for proposals submitted under the multiple-factor bidding format on the basis of selection by the panel as specified in §285.222(d) when the bidding system under §285.221(a)(6) is used. We will refund the deposit on all other bids.

§ 285.225 What happens if my bid is rejected, and what are my appeal rights?



- (a) If we reject your bid, we will provide a written statement of the reasons and refund any money deposited with your bid, without interest.
- (b) You may ask the MMS Director for reconsideration, in writing, within 15 business days of bid rejection, under §285.118(c)(1). We will send you a written response either affirming or reversing the rejection.

§§ 285.226-285.229 [Reserved]



Noncompetitive Lease Award Process



§ 285.230 May I request a lease if there is no Call?



You may submit an unsolicited request for a commercial lease or a limited lease under this part. Your unsolicited request must contain the following information:

- (a) The area you are requesting for lease.
- (b) A general description of your objectives and the facilities that you would use to achieve those objectives.
- (c) A general schedule of proposed activities including those leading to commercial operations.
- (d) Available and pertinent data and information concerning renewable energy and environmental conditions in the area of interest, including energy and resource data and information used to evaluate the area of interest. The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and as provided in §285.113.
- (e) If available from the appropriate State or local government authority, a statement that the proposed activity conforms with State and local energy planning requirements, initiatives, or guidance.
- (f) Documentation showing that you meet the qualifications to become a lessee, as specified in §285.107.
- (g) An acquisition fee, as specified in §285.502(a).

§ 285.231 How will MMS process my unsolicited request for a noncompetitive lease?



- (a) The MMS will consider unsolicited requests for a lease on a case-by-case basis and may issue a lease noncompetitively in accordance with this part. We will not consider an unsolicited request for a lease under this part that is proposed in an area of the OCS that is scheduled for a lease sale under this part.
- (b) The MMS will issue a public notice of a request for interest relating to your proposal and consider comments received to determine if competitive interest exists.
- (c) If MMS determines that competitive interest exists in the lease area:
 - (1) The MMS will proceed with the competitive process set forth in §§285.210 through 285.225;
 - (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, MMS will not refund your acquisition fee.
- (d) If MMS determines that there is no competitive interest in a lease:
 - (1) We will publish a notice, in the Federal Register, of such determination; and
 - (2) You must submit within 60 days of the date of the notice to MMS:
 - (i) For a commercial lease, a SAP, as described in §§285.605 through 285.613; or
 - (ii) For a limited lease, a GAP, as described in §§285.640 through 285.648.
- (e) The MMS will coordinate and consult with affected Federal agencies, State, and local governments, and affected Indian tribes in the review of noncompetitive lease requests and associated plans.
- (f) If we approve or approve with conditions your SAP or GAP, we may offer you a noncompetitive lease.
- (g) If you accept the terms and conditions of the lease, then we will issue the lease, and you must comply with all terms and conditions of your lease and all applicable provisions of this part. If we issue you a lease, we 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 the lease;

(ii) File financial assurance as required under §§285.515 through 285.537; and

(2) Within 45 days after you receive the lease copies, you must pay the first 6-months rent, as required in §285.503.

(h) The MMS will publish in the Federal Register a notice announcing the issuance of your lease.

(i) If you do not accept the terms and conditions, MMS will not issue a lease, and we will not refund your acquisition fee.

§ 285.232 May I acquire a lease noncompetitively after responding to a Request for Interest or Call for Information and Nominations under §285.213?



(a) If you submit an area of interest for a possible lease and MMS receives no competing submissions in response to the RFI or Call, we may inform you that there does not appear to be competitive interest, and ask if you wish to proceed with acquiring a lease.

(b) If you wish to proceed with acquiring a lease, you must submit your acquisition fee as specified in §285.502(a).

(c) After receiving the acquisition fee, MMS will follow the process outlined in §285.231(b) through (i).

§§ 285.233-285.234 [Reserved]



Commercial and Limited Lease Terms



§ 285.235 If I have a commercial lease, how long will my lease remain in effect?



(a) For commercial leases, the lease terms and applicable automatic extensions are as shown in the following table:



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(b) If you do not timely submit a SAP, COP, or SAP/COP, as appropriate, you may request additional time to extend the preliminary or site assessment term of your commercial lease that includes a revised schedule for submission of the plan, as appropriate.

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



(a) For limited leases, the lease terms are as shown in the following table:



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(b) If you do not timely submit a GAP, you may request additional time to extend the preliminary term of your limited lease that includes a revised schedule for submission of a GAP.

§ 285.237 What is the effective date of a lease?



(a) A lease issued under this part must be dated and becomes effective as of the first day of the month following the date a lease is signed by the lessor.

(b) If the lessee submits a written request and MMS approves, a lease may be dated and become effective the first day of the month in which it is signed by the lessor.

§ 285.238 Are there any other renewable energy research activities that will be allowed on the OCS?



(a) The Director may issue OCS leases, ROW grants, and RUE grants to a Federal agency or a State for renewable energy research activities that support the future production, transportation, or transmission of renewable energy.

(b) In issuing leases, ROW grants, and RUE grants to a Federal agency or a State on the OCS for renewable energy research activities under this provision, MMS will coordinate and consult with other relevant Federal agencies, any other affected State(s), affected local government executives, and affected Indian tribes.

(c) The MMS may issue leases, RUEs, and ROWs for research activities managed by a Federal agency or a State only in areas for which the Director has determined, after public notice and opportunity to comment, that no competitive interest exists.

(d) The Director and the head of the Federal agency or the Governor of a requesting State, or their authorized representatives, will negotiate the terms and conditions of such renewable energy leases, RUEs, or ROWs under this provision on a case-by-case basis. The framework for such negotiations, and standard terms and conditions of such leases, RUEs, or ROWs may be set forth in a memorandum of agreement (MOA) or other agreement between MMS and a Federal agency or a State. The MOA must include the agreement of the head of the Federal agency or the Governor to assure that all subcontractors comply with these regulations, other applicable laws, and terms and conditions of such leases or grants.

(e) Any lease, RUE, or ROW that MMS issues to a Federal agency or to a State that authorizes access to an area of the OCS for research activities managed by a Federal agency or a State must include:

(1) Requirements to comply with all applicable Federal laws; and

(2) Requirements to comply with these regulations, except as otherwise provided in the lease or grant.

(f) The MMS will issue a public notice of any lease, RUE, ROW issued to a Federal agency or to a State, or an approved

MOA for such research activities.

(g) The MMS will not charge any fees for the purpose of ensuring a fair return for the use of such research areas on the OCS.

Subpart C—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Renewable Energy Activities



ROW Grants and RUE Grants



§ 285.300 What types of activities are authorized by ROW grants and RUE grants issued under this part?



(a) An ROW grant authorizes the holder to install on the OCS cables, pipelines, and associated facilities that involve the transportation or transmission of electricity or other energy product from renewable energy projects.

(b) An RUE grant authorizes the holder to construct and maintain facilities or other installations on the OCS that support the production, transportation, or transmission of electricity or other energy product from any renewable energy resource.

(c) You do not need an ROW grant or RUE grant for a project easement authorized under §285.200(b) to serve your lease.

§ 285.301 What do ROW grants and RUE grants include?



(a) An ROW grant:

(1) Includes the full length of the corridor on which a cable, pipeline, or associated facility is located;

(2) Is 200 feet (61 meters) in width, centered on the cable or pipeline, unless safety and environmental factors during construction and maintenance of the associated cable or pipeline require a greater width; and

(3) For the associated facility, is limited to the area reasonably necessary for a power or pumping station or other accessory facility.

(b) An RUE grant includes the site on which a facility or other structure is located and the areal extent of anchors, chains, and other equipment associated with a facility or other structure. The specific boundaries of an RUE will be determined by MMS on a case-by-case basis and set forth in each RUE grant.

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



(a) To acquire an ROW grant or RUE grant you must provide evidence that you meet the qualifications as required in

§285.107.

(b) An ROW grant or RUE grant is subject to the following conditions:

(1) The rights granted will not prevent the granting of other rights by the United States, either before or after the granting of the ROW or RUE, provided that any subsequent authorization issued by MMS in the area of a previously issued ROW grant or RUE grant may not unreasonably interfere with activities approved or impede existing operations under such a grant; and

(2) The holder agrees that the United States, its lessees, or other ROW grant or RUE grant holders may use or occupy any part of the ROW grant or RUE grant not actually occupied or necessarily incident to its use for any necessary activities.

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



Your ROW grant or RUE grant will remain in effect for as long as the associated activities are properly maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant.

§ 285.304 [Reserved]



Obtaining ROW Grants and RUE Grants



§ 285.305 How do I request an ROW grant or RUE grant?



You must submit to MMS one paper copy and one electronic copy of a request for a new or modified ROW grant or RUE grant. You must submit a separate request for each ROW grant or RUE grant you are requesting. The request must contain the following information:

(a) The area you are requesting for a ROW grant or RUE grant.

(b) A general description of your objectives and the facilities that you would use to achieve those objectives.

(c) A general schedule of proposed activities.

(d) Pertinent information concerning environmental conditions in the area of interest.

§ 285.306 What action will MMS take on my request?



The MMS will consider requests for ROW grants and RUE grants on a case-by-case basis and may issue a grant competitively, as provided in §285.308, or noncompetitively if we determine after public notice that there is no competitive interest. The MMS will coordinate and consult with relevant Federal agencies, with the Governor of any affected State, and

the executive of any affected local government.

(a) In response to an unsolicited request for a ROW grant or RUE grant, the MMS will first determine if there is competitive interest, as provided in §285.307.

(b) If MMS determines that there is no competitive interest in a ROW grant or RUE grant, we will:

(1) In consultation with you, establish the terms and conditions for the grant;

(2) Require you to submit a GAP, as described in §§285.640 through 285.648, within 60 days of the determination of no competitive interest; and

(3) Evaluate your request for a noncompetitive grant and GAP simultaneously.

(c) If we award your ROW grant or RUE grant competitively, you must submit and receive MMS approval of your GAP, as provided in §§285.640 through 285.648.

§ 285.307 How will MMS determine whether competitive interest exists for ROW grants and RUE grants?



To determine whether or not there is competitive interest:

(a) We will publish a public notice, describing the parameters of the project, to give affected and interested parties an opportunity to comment on the proposed ROW grant or RUE grant area.

(b) We will evaluate any comments received on the notice and make a determination of the level of competitive interest.

§ 285.308 How will MMS conduct an auction for ROW grants and RUE grants?



(a) If MMS determines that there is competitive interest, we will:

(1) Publish a notice of each grant auction in the Federal Register describing auction procedures, allowing interested persons 30 days to comment; and

(2) Conduct a competitive auction for issuing the ROW grant or RUE grant. The auction process for ROW grants and RUE grants will be conducted following the same process for leases set forth in §§285.211 through 285.225.

(b) If you are the successful bidder in an auction, you must pay the first year's rent, as provided in §285.316.

§ 285.309 When will MMS issue a noncompetitive ROW grant or RUE grant?



If we approve or approve with conditions your GAP, we may offer you a noncompetitive grant.

(a) If you accept the terms and conditions of the grant, then we will issue the grant, and you must comply with all terms and conditions of your grant and all applicable provisions of this part.

(b) If you do not accept the terms and conditions, MMS will not issue a grant.

§ 285.310 What is the effective date of an ROW grant or RUE grant?



Your ROW grant or RUE grant becomes effective on the date established by MMS on the ROW grant or RUE grant instrument.

§§ 285.311-285.314 [Reserved]



Financial Requirements for ROW Grants and RUE Grants



§ 285.315 What deposits are required for a competitive ROW grant or RUE grant?



(a) You must make a deposit, as required in §285.501(a), regardless of whether the auction is a sealed-bid, oral, electronic, or other auction format. The MMS will specify in the sale notice the official to whom you must submit the payment, the time by which the official must receive the payment, and the forms of acceptable payment.

(b) If your high bid is rejected, we will provide a written statement of reasons.

(c) For all rejected bids, we will refund, without interest, any money deposited with your bid.

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



Before we issue the ROW grant or RUE grant, you must pay:

(a) Any balance on accepted high bids to MMS, as provided in the sale notice.

(b) An annual rent for the first year of the grant, as specified in §285.508.

Subpart D—Lease and Grant Administration



Noncompliance and Cessation Orders



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



- (a) The MMS may take appropriate corrective action under this part if you fail to comply with applicable provisions of Federal law, the regulations in this part, other applicable regulations, any order of the Director, the provisions of a lease or grant issued under this part, or the requirements of an approved plan or other approval under this part.
- (b) The MMS may issue to you a notice of noncompliance if we determine that there has been a violation of the regulations in this part, any order of the Director, or any provision of your lease, grant or other approval issued under this part. When issuing a notice of noncompliance, MMS will serve you at your last known address.
- (c) A notice of noncompliance will tell you how you failed to comply with this part, any order of the Director, and/or the provisions of your lease, grant or other approval, and will specify what you must do to correct the noncompliance and the time limits within which you must act.
- (d) Failure of a lessee, operator, or grant holder under this part to take the actions specified in a notice of noncompliance within the time limit specified provides the basis for MMS to issue a cessation order as provided in §285.401, and/or a cancellation of the lease or grant as provided in §285.437.
- (e) If the MMS determines that any incident of noncompliance poses an imminent threat of serious or irreparable 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, MMS may include with its notice of noncompliance an order directing you to take immediate remedial action to alleviate threats and to abate the violation and, when appropriate, a cessation order.
- (f) The MMS 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. Civil penalties will be determined and assessed in accordance with the procedures set forth in 30 CFR part 250, subpart N.
- (g) You may be subject to criminal penalties as authorized by section 24 of the OCS Lands Act.

§ 285.401 When may MMS issue a cessation order?



- (a) The MMS may issue a cessation order during the term of your lease or grant when you fail to comply with an applicable law; regulation; order; or provision of a lease, grant, plan, or other MMS approval under this part. Except as provided in §285.400(e), MMS will allow you a period of time to correct any noncompliance before issuing an order to cease activities.
- (b) A cessation order will set forth what measures you are required to take, including reports you are required to prepare and submit to MMS, to receive approval to resume activities on your lease or grant.

§ 285.402 What is the effect of a cessation order?



- (a) Upon receiving a cessation order, you must cease all activities on your lease or grant, as specified in the order. The MMS may authorize certain activities during the period of the cessation order.
- (b) A cessation order will last for the period specified in the order or as otherwise specified by MMS. If MMS determines that the circumstances giving rise to the cessation order cannot be resolved within a reasonable time period, the Secretary may initiate cancellation of your lease or grant, as provided in §285.437.

(c) A cessation order does not extend the term of your lease or grant for the period you are prohibited from conducting activities.

(d) You must continue to make all required payments on your lease or grant during the period a cessation order is in effect.

§§ 285.403-285.404 [Reserved]



Designation of Operator



§ 285.405 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 §285.610(a)(3)), COP (under §285.626(b)(2)), or GAP (under §285.645(b)(3)), as applicable. If no operator is designated in a SAP, COP, or GAP, MMS will deem the lessee or grant holder to be the operator.

(b) An operator must be designated in any SAP, COP, or GAP if there is more than one lessee or grant holder for any individual lease or grant.

(c) Once approved in your plan, the designated operator is authorized to act on your behalf and required to perform activities necessary to comply with the OCS Lands Act, the lease or grant, and the regulations in this part.

(d) You, or your designated operator, must immediately provide MMS with a written notification of change of address of the lessee or operator.

(e) If there is a change in the designated operator, you must provide written notice to MMS and identify the new designated operator within 72 hours on a form approved by MMS. The lessee(s) or grantee(s) is the operator and responsible for compliance until MMS approves designation of the new operator.

(f) Designation of an operator under any lease or grant issued under this part does not relieve the lessee or grant holder of its obligations under this part or its lease or grant.

(g) A designated operator performing activities on the lease must comply with all regulations governing those activities and may be held liable or penalized for any noncompliance during the time it was operator, notwithstanding its subsequent resignation.

§ 285.406 Who is responsible for fulfilling lease and grant obligations?



(a) When you are not the sole lessee or grantee, you and your co-lessee(s) or co-grantee(s) are jointly and severally responsible for fulfilling your obligations under the lease or grant and the provisions of this part, unless otherwise provided in these regulations.

(b) If your designated operator fails to fulfill any of your obligations under the lease or grant and this part, MMS may require you or any or all of your co-lessees or co-grantees to fulfill those obligations or other operational obligations under the OCS

Lands Act, the lease, grant, or the regulations.

(c) Whenever the regulations in this part require the lessee or grantee to conduct an activity in a prescribed manner, the lessee or grantee and operator (if one has been designated) are jointly and severally responsible for complying with the regulations.

§ 285.407 [Reserved]



Lease or Grant Assignment



§ 285.408 May I assign my lease or grant interest?



(a) You may assign all or part of your lease or grant interest, including record title, subject to MMS approval under this subpart. Each instrument that creates or transfers an interest must describe the entire tract or describe by officially designated subdivisions the interest you propose to create or transfer.

(b) You may assign a lease or grant interest by submitting one paper copy and one electronic copy of an assignment application to MMS. The assignment application must include:

- (1) The MMS-assigned lease or grant number;
- (2) A description of the geographic area or undivided interest you are assigning;
- (3) The names of both the assignor and the assignee, if applicable;
- (4) The names and telephone numbers of the contacts for both the assignor and the assignee;
- (5) The names, titles, and signatures of the authorizing officials for both the assignor and the assignee;
- (6) A statement that the assignee agrees to comply with and to be bound by the terms and conditions of the lease or grant;
- (7) The qualifications of the assignee to hold a lease or grant under §285.107; and
- (8) A statement on how the assignee will comply with the financial assurance requirements of §§285.515 through 285.537. No assignment will be approved until the assignee provides the required financial assurance.

(c) If you submit an application to assign a lease or grant, you will continue to be responsible for payments that are or become due on the lease or grant until the date MMS approves the assignment.

(d) The assignment takes effect on the date MMS approves your application.

(e) You do not need to request an assignment for mergers, name changes, or changes of business form. You must notify MMS of these events under §285.109.

§ 285.409 How do I request approval of a lease or grant assignment?



(a) You must request approval of each assignment on a form approved by MMS, and submit originals of each instrument that creates or transfers ownership of record title or certified copies thereof within 90 days after the last party executes the transfer agreement.

(b) Any assignee will be subject to all the terms and conditions of your original lease or grant, including the requirement to furnish financial assurance in the amount required in §§285.515 through 285.537.

(c) The assignee must submit proof of eligibility and other qualifications specified in §285.107.

(d) Persons executing on behalf of the assignor and assignee must furnish evidence of authority to execute the assignment.

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



As assignor, you are liable for all obligations, monetary and nonmonetary, that accrued under your lease or grant before MMS approves your assignment. Our approval of the assignment does not relieve you of these accrued obligations. The MMS may require you to bring the lease or grant into compliance to the extent the obligation accrued before the effective date of your assignment if your assignee or subsequent assignees fail to perform any obligation under the lease or grant.

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



(a) As assignee, you are liable for all lease or grant obligations that accrue after MMS approves the assignment. As assignee, you must comply with all the terms and conditions of the lease or grant and all applicable regulations, remedy all existing environmental and operational problems on the lease or grant, and comply with all decommissioning requirements under subpart I of this part.

(b) Assignees are bound to comply with each term or condition of the lease or grant and the regulations in this subchapter. You are jointly and severally liable for the performance of all obligations under the lease or grant and under the regulations in this part with each prior and subsequent lessee who held an interest from the time the obligation accrued until it is satisfied, unless this part provides otherwise.

§§ 285.412-285.414 [Reserved]



Lease or Grant Suspension



§ 285.415 What is a lease or grant suspension?



(a) A suspension is an interruption of the term of your lease or grant that may occur:

(1) As approved by MMS at your request, as provided in §285.416; or

(2) As ordered by MMS, as provided in §285.417.

(b) A suspension extends the term of your lease or grant for the length of time the suspension is in effect.

(c) Activities may not be conducted on your lease or grant during the period of a suspension except as expressly authorized by MMS under the terms of the suspension.

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



You must submit a written request to MMS that includes the following information no later than 90 days prior to the expiration of your appropriate lease or grant term:

(a) The reasons you are requesting suspension of your lease or grant term, and the length of additional time requested.

(b) An explanation of why the suspension is necessary in order to ensure full enjoyment of your lease or grant and why it is in the lessor's or grantor's interest to approve the suspension.

(c) If you do not timely submit a SAP, COP, or GAP, as required, you may request a suspension to extend the preliminary or site assessment term of your lease or grant that includes a revised schedule for submission of a SAP, COP, or GAP, as appropriate.

(d) Any other information MMS may require.

§ 285.417 When may MMS order a suspension?



(a) The MMS may order a suspension under the following circumstances:

(1) When necessary to comply with judicial decrees prohibiting some or all activities under your lease;

(2) When continued activities pose an imminent threat of serious or irreparable 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; or

(3) When the suspension is necessary for reasons of national security or defense.

(b) If MMS orders a suspension under paragraph (a)(2) of this section, and if you wish to resume activities, we may require you to conduct a site-specific study that evaluates the cause of the harm, the potential damage, and the available mitigation measures. Other requirements and actions may occur:

(1) You may be required to pay for the study;

(2) You must furnish one paper copy and one electronic copy of the study and results to us;

(3) We will make the results available to other interested parties and to the public; and

(4) We will use the results of the study and any other information that become available:

(i) To decide if the suspension order can be lifted; and

(ii) To determine any actions that you must take to mitigate or avoid any 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.

§ 285.418 How will MMS issue a suspension?



(a) The MMS will issue a suspension order orally or in writing.

(b) The MMS will send you a written suspension order as soon as practicable after issuing an oral suspension order.

(c) The written order will explain the reasons for its issuance and describe the effect of the suspension order on your lease or grant and any associated activities. The MMS may authorize certain activities during the period of the suspension, as set forth in the suspension order.

§ 285.419 What are my immediate responsibilities if I receive a suspension order?



You must comply with the terms of a suspension order upon receipt and take any action prescribed within the time set forth therein.

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



(a) While MMS evaluates your request for a suspension under §285.416, you must continue to fulfill your payment obligation until the end of the original term of your lease or grant. If our evaluation goes beyond the end of the original term of your lease or grant, the term of your lease or grant will be extended for the period of time necessary for MMS to complete its evaluation of your request, but you will not be required to make payments during the time of the extension.

(b) If MMS approves your request for a suspension, as provided in §285.416, we may suspend your payment obligation, as appropriate for the term that is suspended, depending on the reasons for the requested suspension.

(c) If MMS orders a suspension, as provided in §285.417, your payments, as appropriate for the term that is suspended, will be waived during the suspension period.

§ 285.421 How long will a suspension be in effect?



A suspension will be in effect for the period specified by MMS.

(a) The MMS will not approve a suspension request pursuant to §285.416 for a period longer than 2 years.

(b) If MMS determines that the circumstances giving rise to a suspension ordered under §285.417 cannot be resolved within 5 years, the Secretary may initiate cancellation of the lease or grant, as provided in §285.437.

§§ 285.422-285.424 [Reserved]



Lease or Grant Renewal



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



You may request renewal of the operations term of your lease or the original authorized term of your grant. The MMS, at its discretion, may approve a renewal request to conduct substantially similar activities as were originally authorized under the lease or grant. The MMS will not approve a renewal request that involves development of a type of renewable energy not originally authorized in the lease or grant. The MMS may revise or adjust payment terms of the original lease, as a condition of lease renewal.

§ 285.426 When must I submit my request for renewal?



(a) You must request a renewal from MMS:

- (1) No later than 180 days before the termination date of your limited lease or grant.
- (2) No later than 2 years before the termination date of the operations term of your commercial lease.

(b) You must submit to MMS all information we request pertaining to your lease or grant and your renewal request.

§ 285.427 How long is a renewal?



The MMS will set the term of a renewal at the time of renewal on a case-by-case basis.

(a) For commercial leases, a renewal term will not exceed the original operations term unless a longer term is negotiated by the applicable parties.

(b) For limited leases, a renewal term will not exceed the original operations term.

(c) For RUE and ROW grants, a renewal will continue for as long as the associated activities are conducted and facilities properly maintained and used for the purpose for which the grant was made, unless otherwise expressly stated.

§ 285.428 What effect does applying for a renewal have on my activities and payments?



If you timely request a renewal:

- (a) You may continue to conduct activities approved under your lease or grant under the original terms and conditions for as long as your request is pending decision by MMS.
- (b) You may request a suspension of your lease or grant, as provided in §285.416, while we consider your request.
- (c) For the period MMS considers your request for renewal, you must continue to make all payments in accordance with the original terms and conditions of your lease or grant.

§ 285.429 What criteria will MMS consider in deciding whether to renew a lease or grant?



The MMS will consider the following criteria in deciding whether to renew a lease or grant:

- (a) Design life of existing technology.
- (b) Availability and feasibility of new technology.
- (c) Environmental and safety record of the lessee or grantee.
- (d) Operational and financial compliance record of the lessee or grantee.
- (e) Competitive interest and fair return considerations.
- (f) Effects of the lease or grant on generation capacity and reliability within the regional electrical distribution and transmission system.

§§ 285.430-285.431 [Reserved]



Lease or Grant Termination



§ 285.432 When does my lease or grant terminate?



Your lease or grant terminates on whichever of the following dates occurs first:

- (a) The expiration of the applicable term of your lease or grant, unless your term is automatically extended under §§285.235 or 285.236, a request for renewal of your lease or grant is pending a decision by MMS, or your lease or grant is suspended or renewed as provided in this subpart;
- (b) A cancellation, as set forth in §285.437; or
- (c) Relinquishment, as set forth in §285.435.

§ 285.433 What must I do after my lease or grant terminates?



(a) After your lease or grant terminates, you must:

- (1) Make all payments due, including any accrued rentals and deferred bonuses; and
- (2) Perform any other outstanding obligations under the lease or grant within 6 months.

(b) Within 2 years following termination of a lease or grant, you must remove or dispose of all facilities, installations, and other devices permanently or temporarily attached to the seabed on the OCS in accordance with a plan or application approved by MMS under subpart I of this part.

(c) If you fail to comply with your approved decommissioning plan or application:

- (1) The MMS may call for the forfeiture of your financial assurance; and
- (2) You remain liable for removal or disposal costs and responsible for accidents or damages that might result from such failure.

§ 285.434 [Reserved]



Lease or Grant Relinquishment



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



(a) You may surrender the lease or grant, or an officially designated subdivision thereof, by filing one paper copy and one electronic copy of a relinquishment application with MMS. A relinquishment takes effect on the date we approve your application, subject to the continued obligation of the lessee 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 lease or grant to be relinquished to the satisfaction of MMS; and
- (3) Perform any other outstanding obligations under the lease or grant.

(b) Your relinquishment application must include:

- (1) Name;
- (2) Contact name;
- (3) Telephone number;

- (4) Fax number;
 - (5) E-mail address;
 - (6) The MMS-assigned lease or grant number, and, if applicable, the name of any facility;
 - (7) A description of the geographic area you are relinquishing;
 - (8) The name, title, and signature of your authorizing official (the name, title, and signature must match exactly the name, title, and signature in MMS qualification records); and
 - (9) A statement that you will adhere to the requirements of subpart I of this part.
- (c) If you have submitted an application to relinquish a lease or grant, you will be billed for any outstanding payments that are due before the relinquishment takes effect, as provided in paragraph (a) of this section.

Lease or Grant Contraction



§ 285.436 Can MMS require lease or grant contraction?



At an interval no more frequent than every 5 years, the MMS may review your lease or grant area to determine whether the lease or grant area is larger than needed to develop the project and manage activities in a manner that is consistent with the provisions of this part. The MMS will notify you of our proposal to contract the lease or grant area.

- (a) The MMS will give you the opportunity to present orally or in writing information demonstrating that you need the area in question to manage lease or grant activities consistent with these regulations.
- (b) Prior to taking action to contract the lease or grant area, MMS will issue a decision addressing your contentions that the area is needed.
- (c) You may appeal this decision under §285.118 of this part.

Lease or Grant Cancellation



§ 285.437 When can my lease or grant be canceled?



- (a) The Secretary will cancel any lease or grant issued under this part upon proof that it was obtained by fraud or misrepresentation, and after notice and opportunity to be heard has been afforded to the lessee or grant holder.
- (b) The Secretary may cancel any lease or grant issued under this part when:
 - (1) The Secretary determines after notice and opportunity for a hearing that, with respect to the lease or grant that would be canceled, the lessee or grantee has failed to comply with any applicable provision of the OCS Lands Act or these regulations; any order of the Director; or any term, condition or stipulation contained in the lease or grant, and that the failure

to comply continued 30 days (or other period MMS specifies) after you receive notice from MMS. The Secretary will mail a notice by registered or certified letter to the lessee or grantee at its record post office address;

(2) The Secretary determines after notice and opportunity for a hearing that you have terminated commercial operations under your COP, as provided in §285.635, or other approved activities under your GAP, as provided in §285.656;

(3) Required by national security or defense; or

(4) The Secretary determines after notice and opportunity for a hearing that continued activity under the lease or grant:

(i) Would cause serious 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

(ii) That the threat of harm or damage would not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) The advantages of cancellation outweigh the advantages of continuing the lease or grant in force.

Subpart E—Payments and Financial Assurance Requirements



Payments



§ 285.500 How do I make payments under this part?



(a) For acquisition fees or the initial 6-months rent paid for the preliminary term of your lease, you must make credit card or automated clearing house payments through the *Pay.gov* Web site, and you must include one copy of the *Pay.gov* confirmation receipt page with your unsolicited request or signed lease instrument. You may access the *Pay.gov* Web site through links on the MMS Offshore Web site at: <http://www.mms.gov/offshore> or directly through *Pay.gov* at: <https://www.pay.gov/paygov/>.

(b) For rent during the preliminary term, subsequent to the first 6-months rent, or the site assessment term; or operating fees during the operations term, you must make your payments as required in §218.51 of this chapter.

(c) This table summarizes payments you must make for leases and grants, unless otherwise specified in the Final Sale Notice:



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



(a) For a competitive lease or grant that we offer through sealed bidding, you must submit a deposit of 20 percent of the total

bid amount, unless some other amount is specified in the Final Sale Notice.

(b) For a competitive lease that we offer through ascending bidding, you must submit a deposit as established in the Final Sale Notice.

(c) You must pay any balances on accepted high bids in accordance with the Final Sale Notice, this part, and your lease or grant instrument.

(d) The deposit will be forfeited for any successful bidder who fails to execute the lease within the prescribed time, or otherwise does not comply with the regulations concerning acquisition of a lease or grant or stipulations in the Final Sale Notice.

§ 285.502 What initial payment requirements must I meet to obtain a noncompetitive lease, ROW grant, or RUE grant?



When requesting a noncompetitive lease, you must meet the initial payment (acquisition fee) requirements of this section, unless specified otherwise in your lease instrument. No initial payment is required when requesting noncompetitive ROW grants and RUE grants.

(a) If you request a noncompetitive lease, you must submit an acquisition fee of \$0.25 per acre, unless otherwise set by the Director, as provided in §285.500.

(b) If MMS determines there is no competitive interest, we will then:

(1) Retain your acquisition fee if we issue you a lease; or

(2) Refund your acquisition fee, without interest, if we do not issue your requested lease.

(c) If we determine that there is a competitive interest in an area you requested, then we will proceed with a competitive lease sale process provided for in subpart B of this part, and we will:

(1) Apply your acquisition fee to the required deposit for your bid amount if you submit a bid;

(2) Apply your acquisition fee to your bonus bid if you acquire the lease; or

(3) Retain your acquisition fee if you do not bid for or acquire the lease.

§ 285.503 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 Final Sale Notice or lease.

(1) You must pay the first 6-months rent, as provided in §285.500, 45 days after we issue your lease.

(2) You must pay rent at the beginning of each subsequent 1-year period in accordance with the regulations at §218.51 of this chapter for the entire lease area until the facility begins to generate commercially, as specified in §285.506 or as otherwise specified in the Final Sale Notice or lease instrument:

(i) For leases issued competitively, the MMS will specify in the Final Sale Notice and lease any adjustment to the rent fee to take effect during the operations term and prior to the commercial generation.

(ii) For leases issued noncompetitively, the MMS will specify in the lease any adjustment to the rent fee to take effect during

the operations term and prior to the commercial generation.

(3) You must pay the rent for a project easement in addition to the lease rent, as provided in §285.507. You must commence rent payments for your project easement upon our approval of your COP or GAP.

(b) After your lease begins commercial generation of electricity or on the date specified by MMS, you must pay operating fees in the amount specified in §285.506:

(1) For leases issued competitively, MMS will specify in the Final Sale Notice and lease the date when operating fees commence; and

(2) For leases issued noncompetitively, MMS will specify in the lease the date when operating fee commences.

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



If you develop your commercial lease in phases, as approved by us in your COP under §285.629, you must pay:

(a) Rent on the portion of the lease that is not authorized for commercial operations.

(b) Operating fees on the portion of the lease that is authorized for commercial operations, in the amount specified in §285.506 and as described in §285.503(b).

(c) Rent for a project easement in addition to lease rent, as provided in §285.507. You must commence rent payments for your project easement upon our approval of your COP.

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



(a) The rent for a limited lease is \$3 per acre per year, unless otherwise established in the Final Sale Notice and your lease instrument.

(b) You must pay the first 6-months rent when MMS issues your limited lease, as provided in §285.500.

(c) You must pay rent at the beginning of each subsequent 1-year period on the entire lease area for the duration of your operations term in accordance with the regulations at §218.51 of this chapter.

(d) The MMS will not charge an operating fee for the authorized sale of power from a limited lease.

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



If you are generating electricity, you must pay operating fees on your commercial lease when you begin commercial generation, as described in §285.503.

(a) The MMS will determine the annual operating fee for activities relating to the generation of electricity on your lease based on the following formula,

$F = M * H * c * P * r$, where:

- (1) F is the dollar amount of the annual operating fee;
- (2) M is the nameplate capacity expressed in megawatts;
- (3) H is the number of hours in a year, equal to 8,760, used to calculate an annual payment;
- (4) c is the "capacity factor" representing the anticipated efficiency of the facility's operation expressed as a decimal between zero and one;
- (5) P is a measure of the annual average wholesale electric power price expressed in dollars per megawatt hour, as provided in paragraph (c)(2) of this section; and
- (6) r is the operating fee rate expressed as a decimal between zero and one.

(b) The annual operating fee formula relating to the value of annual electricity generation is restated as:

F (annual operating fee)	=	M (nameplate capacity)	*	H (hours per year)	*	c (capacity factor)	*	P (power price)	*	r (operating fee rate)

(c) The MMS will specify operating fee parameters in the Final Sale Notice for commercial leases issued competitively and in the lease for those issued noncompetitively.

(1) Unless MMS specifies otherwise, in the operating fee rate, (r) is 0.02 for each year the operating fee applies when you begin commercial generation of electricity. We may apply a different fee rate for new projects (*i.e.* , a new generation based on new technology) after considering factors such as program objectives, state of the industry, project type, and project potential. Also, we may agree to reduce or waive the fee rate under §285.510.

(2) The power price (P), for each year when the operating fee applies, will be determined annually. The process by which the power price will be determined will be specified in the Final Sale Notice and/or in the lease. The MMS:

(i) Will use the most recent annual average wholesale power price in the State in which a project's transmission cables make landfall, as published by the DOE, Energy Information Administration (EIA), or other publicly available wholesale power price indices; and

(ii) May adjust the published average wholesale power price to reflect documented variations by State or within a region and recent market conditions.

(3) The MMS will select the capacity factor (c) based upon applicable analogs drawn from present and future domestic and foreign projects that operate in comparable conditions and on comparable scales.

(i) Upon the completion of the first year of commercial operations on the lease, MMS may adjust the capacity factor as necessary (to accurately represent a comparison of actual production over a given period of time with the amount of power a facility would have produced if it had run at full capacity) in a subsequent year.

(ii) After the first adjustment, MMS may adjust the capacity factor (to accurately represent a comparison of actual generation over a given period of time with the amount of power a facility would have generated if it had run at full capacity) no earlier than in 5-year intervals from the most recent year that MMS adjusts the capacity factor.

(iii) The process by which MMS will adjust the capacity factor, including any calculations (incorporating an average capacity factor reflecting actual operating experience), will be specified in the lease. The operator or lessee may request review and adjustment of the capacity factor under §285.510.

(4) Ten days after the anniversary date of when you began to commercially generate electricity, you must submit to MMS documentation of the gross annual generation of electricity produced by the generating facility on the lease. You must use

the same information collection form as authorized by the EIA for this information.

(5) For the nameplate capacity (M), MMS will use the total installed capacity of the equipment you install, as specified in your approved COP.

(d) You must submit all operating fee payments to MMS in accordance with the provisions under §218.51 of this chapter.

(e) The MMS will establish the operating fee in the Final Sale Notice or in the lease on a case-by-case basis for:

(1) Activities that do not relate to the generation of electricity (e.g., hydrogen production), and

(2) Leases issued for hydrokinetic activities requiring a FERC license.

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



(a) You must pay MMS a rent fee for your project easement of \$5 per acre, subject to a minimum of \$450 per year, unless specified otherwise in the Final Sale Notice or lease:

(1) The size of the project easement area for a cable or a pipeline is the full length of the corridor and a width of 200 feet (61 meters), centered on the cable or pipeline; and

(2) The size of a project easement area for an accessory platform is limited to the aerial extent of anchor chains and other facilities and devices associated with the accessory.

(b) You must commence rent payments for your project easement upon our approval of your COP or GAP:

(1) You must make the first rent payment when the operations term begins, as provided in §285.500;

(2) You must submit all subsequent rent payments in accordance with the regulations at §218.51 of this chapter; and

(3) You must continue to pay annual rent for your project easement until your lease is terminated.

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



(a) For each ROW grant MMS approves under subpart C of this part, you must pay an annual rent as follows, unless specified otherwise in the Final Sale Notice:

(1) A fee of \$70 for each nautical mile or part of a nautical mile of the OCS that your ROW crosses; and

(2) An additional \$5 per acre, subject to a minimum of \$450 for use of the entire affected area, if you hold a ROW grant that includes a site outside the corridor of a 200-foot width (61 meters), centered on the cable or pipeline. The affected area includes the areal extent of anchor chains, risers, and other devices associated with a site outside the corridor.

(b) For each RUE grant MMS approves under subpart C of this part, you must pay a rent of:

(1) \$5 per acre per year; or

(2) A minimum of \$450 per year.

(c) You must make the rent payments required by paragraphs (a) and (b) of this section on:

- (1) An annual basis;
- (2) For a 5-year period; or
- (3) For multiples of 5 years.

(d) You must make the first annual rent payment upon approval of your ROW grant or RUE grant request, as provided in §285.500, and all subsequent rent payments to MMS in accordance with the regulations at §218.51 of this chapter.

§ 285.509 Who is responsible for submitting lease or grant payments to MMS?



(a) For each lease, ROW grant, or RUE grant issued under this part, you must identify one person who is responsible for all payments due and payable under the provisions of the lease or grant. The responsible person identified is designated as the payor, and you must document acceptance of such responsibilities, as provided in §218.52 of this chapter.

(b) All payors must submit payments and maintain auditable records in accordance with guidance we issue or any applicable regulations in subchapter A of this chapter. In addition, the lessee or grant holder must also maintain such auditable records.

§ 285.510 May MMS reduce or waive my lease or grant payments?



(a) The MMS Director may 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 it is necessary to encourage continued or additional activities.

(b) When requesting a reduction or waiver, you must submit an application to us that includes all of the following:

- (1) The number of the lease, ROW grant, or RUE grant involved;
- (2) Name of each lessee or grant holder of record;
- (3) Name of each operator;
- (4) A demonstration that:
 - (i) Continued activities would be uneconomic without the requested reduction or waiver, or
 - (ii) A reduction or waiver is necessary to encourage additional activities; and
- (5) Any other information required by the Director.

(c) No more than 6 years of your operations term will be subject to a full waiver of the operating fee.

§ 285.511-285.514 [Reserved]



Financial Assurance Requirements for Commercial Leases



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



(a) Before MMS will issue your commercial lease or approve an assignment of an existing commercial lease, you (or, for an assignment, the proposed assignee) must guarantee compliance with all terms and conditions of the lease by providing either:

(1) A \$100,000 minimum, lease-specific bond; or

(2) Another approved financial assurance instrument guaranteeing performance up to \$100,000, as specified in §§285.526 through 285.529.

(b) You meet the financial assurance requirements under this subpart if your designated lease operator provides a \$100,000 minimum, lease-specific bond or other approved financial assurance that guarantees compliance with all terms and conditions of the lease.

(1) The dollar amount of the minimum, lease-specific financial assurance in paragraphs (a)(1) and (b) of this section will be adjusted to reflect changes in the Consumer Price Index-All Urban Consumers (CPI-U) or a substantially equivalent index if the CPI-U is discontinued; and

(2) The first CPI-U-based adjustment can be made no earlier than the 5-year anniversary of the adoption of this rule. Subsequent CPI-U-based adjustments may be made every 5 years thereafter.

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



(a) The basic financial assurance requirements for each stage of your commercial lease are as follows:



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(b) Each bond or other financial assurance must guarantee compliance with all terms and conditions of the lease. You may provide a new bond or increase the amount of your existing bond, to satisfy any additional financial assurance requirements.

(c) For hydrokinetic commercial leases, supplemental financial assurance may be required in an amount determined by MMS before FERC issues a license.

§ 285.517 How will MMS determine the amounts of the supplemental and decommissioning financial assurance requirements associated with commercial leases?



(a) The MMS will base the determination for the amounts of the SAP, COP, and decommissioning financial assurance

requirements on estimates of the cost to meet all accrued lease obligations.

(b) We determine the amount of the supplemental and decommissioning financial assurance requirements on a case-by-case basis. The amount of the financial assurance must be no less than the amount required to meet all lease obligations, including:

- (1) The projected amount of rent and other payments due the Government 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 I of this part.

(c) If your cumulative potential obligations and liabilities increase or decrease, we may adjust the amount of supplemental or the decommissioning 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 continues to be greater than the sum of:

- (i) The projected amount of rent and other payments due the Government over the next 12 months;
- (ii) Any past due rent and other payments;
- (iii) Other monetary obligations; and
- (iv) The estimated cost of facility decommissioning.

§ 285.518-285.519 [Reserved]



Financial Assurance for Limited Leases, ROW Grants, and RUE Grants



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



(a) Before MMS will issue your limited lease, ROW grant, or RUE grant, you or a proposed assignee must guarantee compliance with all terms and conditions of the lease or grant by providing either:

- (1) A \$300,000 minimum, lease- or grant-specific bond; or
- (2) Another approved financial assurance instrument of such minimum level as specified in §§285.526 through 285.529.

(b) You meet the financial assurance requirements under this subpart if your designated lease or grant operator provides a minimum limited lease-specific or grant-specific bond in an amount sufficient to guarantee compliance with all terms and

conditions of the limited lease or grant.

(1) The dollar amount of the minimum, lease- or grant-specific financial assurance in paragraph (a)(1) of this section will be adjusted to reflect changes in the CPI-U or a substantially equivalent index if the CPI-U is discontinued; and

(2) The first CPI-U-based adjustment can be made no earlier than the 5-year anniversary of the adoption of this rule. Subsequent CPI-U-based adjustments may be made every 5 years thereafter.

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



(a) The MMS may require you to increase the level of your financial assurance as activities progress on your limited lease or grant. We will base the determination for the amount of financial assurance requirements on our estimate of the cost to meet all accrued lease or grant obligations, including:

(1) The projected amount of rent and other payments due the Government 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.

(b) You may satisfy the requirement for increased financial assurance levels for the limited lease or grant by increasing the amount of your existing bond or replacing your existing bond.

(c) The MMS will authorize you to establish a separate decommissioning bond or other financial assurance for your limited lease or grant.

(1) The separate decommissioning bond or other financial assurance instrument must meet the requirements specified in §§285.525 through 285.529.

(2) The MMS will allow you to provide your financial assurance for decommissioning in accordance with the number of facilities installed or being installed. The MMS must approve the schedule for providing the appropriate financial assurance coverage.

§§ 285.522-285.524 [Reserved]



Requirements for Financial Assurance Instruments



§ 285.525 What general requirements must a financial assurance instrument meet?



(a) Any bond or other acceptable financial assurance instrument that you provide must:

(1) Be payable to MMS upon demand; and

(2) Guarantee compliance of all lessees, grant holders, operators, and payors with all terms and conditions of the lease or grant, any subsequent approvals and authorizations, and all applicable regulations.

(b) All bonds and other forms of financial assurance must be on or in a form approved by MMS. You may submit this on an approved form that you have reproduced or generated by use of a computer. If the document you submit omits any terms and conditions that are included on the MMS-approved form, your bond is deemed to contain the omitted terms and conditions.

(c) Surety bonds must be issued by an approved surety listed in the current Treasury Circular 570, as required by 31 CFR 223.16. You may obtain a copy of Circular 570 from the Treasury Web site at <http://www.fms.treas.gov/c570/>.

(d) Your surety bond cannot exceed the underwriting limit listed in the current Treasury Circular 570, except as permitted therein.

(e) You and a qualified surety must execute your bond. When the surety is a corporation, an authorized corporate officer must sign the bond and attest to it over the corporate seal.

(f) You may not terminate the period of liability of your bond or cancel your bond, except as provided in this subpart. Bonds must continue in full force and effect even though an event has occurred that could diminish or terminate a surety's obligation under State law.

(g) Your surety must notify you and MMS within 5 business days after:

(1) It initiates any judicial or administrative proceeding alleging its insolvency or bankruptcy; or

(2) The Treasury decertifies the surety.

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



(a) You may use other types of security instruments, if MMS determines that such security protects MMS to the same extent as the surety bond. The MMS will consider pledges of the following:

(1) U.S. Department of Treasury securities identified in 31 CFR part 225;

(2) 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 by MMS;

(3) Certificates of deposit or savings accounts in a bank or financial institution organized or authorized to transact business in the United States with:

(i) Minimum net assets of \$500,000,000; and

(ii) Minimum Bankrate.com Safe & Sound rating of 3 Stars, and Capitalization, Assets, Equity and Liquidity (CAEL) rating of 3 or less;

(4) Negotiable U.S. Government, State, and municipal securities or bonds having a market value of not less than the required dollar amount of the financial assurance and maintained in a Securities Investors Protection Corporation insured trust account by a licensed securities brokerage firm for the benefit of the MMS;

(5) Investment-grade rated securities having a Standard and Poor's rating of AAA or an equivalent rating from a nationally recognized securities rating service having a market value of not less than the required dollar amount of the financial assurance and maintained in a Securities Investors Protection Corporation insured trust account by a licensed securities

brokerage firm for the benefit of MMS; and

(6) Insurance, if its form and function is such that the funding or enforceable pledges of funding are used to guarantee performance of regulatory obligations in the event of default on such obligations by the lessee. Insurance must have an A.M. Best rating of "superior" or an equivalent rating from a nationally recognized insurance rating service.

(b) If you use a Treasury security:

(1) You must post 115 percent of your financial assurance amount;

(2) You must monitor the collateral value of your security. If the collateral value of your security as determined in accordance with the 31 CFR part 203 Collateral Margins Table (which can be found at <http://www.treasurydirect.gov>) falls below the required level of coverage, you must pledge additional security to provide 115 percent of the required amount; and

(3) You must include with your pledge authority for us to sell the security and use the proceeds if we determine that you have failed to comply with any of the terms and conditions of your lease or grant, any subsequent approval or authorization, or applicable regulations.

(c) If you use the instruments described in paragraphs (a)(4) or (a)(5) of this section, you must provide MMS by the end of each calendar year a certified statement describing the nature and market value of the instruments maintained in that account, and including any current statements or reports furnished by the brokerage firm to the lessee concerning the asset value of the account.

§ 285.527 May I demonstrate financial strength and reliability to meet the financial assurance requirement for lease or grant activities?



The MMS may allow you to use your financial strength and reliability to meet financial assurance requirements. We will make this determination based on audited financial statements, business stability, reliability, and compliance with regulations.

(a) You must provide the following information if you want to demonstrate financial strength and reliability to meet your financial assurance requirements:

(1) Audited financial statements (including auditor's certificate, balance sheet, and profit and loss sheet) that show you have financial capacity substantially in excess of existing and anticipated lease and other obligations;

(2) Evidence that shows business stability based on 5 years of continuous operation and generation of renewable energy on the OCS or onshore;

(3) Evidence that shows reliability in meeting obligations based on credit ratings or trade references, including names and addresses of other lessees, contractors, and suppliers with whom you have dealt; and

(4) Evidence that shows a record of compliance with laws, regulations, and lease, ROW, or RUE terms.

(b) If we approve your request to use your financial strength and reliability to meet your financial assurance requirements, you must submit annual updates to the information required by paragraph (a) of this section. You must submit this information no later than March 31 of each year.

(c) If the annual updates to the information required by paragraph (a) of this section do not continue to demonstrate financial strength and reliability or MMS has reason to believe that you are unable to meet the financial assurance requirements of this section, after notice and opportunity for a hearing, MMS will terminate your ability to use financial strength and reliability for financial assurance and require you to provide another type of financial assurance. You must provide this new financial assurance instrument within 90 days after we terminate your use of financial strength and reliability.

§ 285.528 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 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. The agreement must guarantee compliance with the obligations of all lessees and operators and grant holders.

(b) The MMS will consider the following factors in deciding whether to accept an agreement:

(1) The length of time that your guarantor has been in continuous operation as a business entity. You may exclude periods of interruption that are beyond the guarantor's control by demonstrating, to the satisfaction of the Director, that the interruptions do not affect the likelihood of your guarantor remaining in business during the SAP, COP, and decommissioning stages of activities covered by the indemnity agreement.

(2) Financial information available in the public record or submitted by your guarantor in sufficient detail to show us that your guarantor meets the criterion stated in paragraph (b)(4) of this section. Such detail includes:

(i) The current rating for your guarantor's most recent bond issuance by a generally recognized bond rating service such as Moody's Investor Service or Standard and Poor's Corporation;

(ii) Your guarantor's net worth, taking into account liabilities for compliance with all terms and conditions of your lease, regulations, and other guarantees;

(iii) Your guarantor's ratio of current assets to current liabilities, taking into account liabilities for compliance with all terms and conditions of your lease, regulations, and other guarantees; and

(iv) Your guarantor's unencumbered domestic fixed assets.

(3) If the information in paragraph (b)(2) of this section is not publicly available, your guarantor must submit the information in the following table, to be updated annually within 90 days of the end of the fiscal year (FY) or as otherwise prescribed.



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(4) Your guarantor's total outstanding and proposed guarantees must not exceed 25 percent of its unencumbered domestic net worth.

(c) Your guarantor must submit an agreement executed by the guarantor and all parties bound by the agreement. All parties are bound jointly and severally and must meet the qualifications set forth in §285.107.

(1) When any party is a corporation, two corporate officers authorized to execute the guaranty agreement on behalf of the corporation must sign the agreement.

(2) When any party is a partnership, joint venture, or syndicate, the guaranty agreement must bind each party who has a beneficial interest in your guarantor and provide that, upon MMS demand under your guaranty, each party is jointly and severally liable for compliance with all terms and conditions of your lease(s) or grant(s) covered by the agreement.

(3) When forfeiture of the guaranty is called for, the agreement must provide that your guarantor will either bring your lease(s) or grant(s) into compliance or provide, within 7 days, sufficient funds to permit MMS to complete corrective action.

(4) The guaranty agreement must contain a confession of judgment, providing that, if we determine that you are, or your operator or operating rights owner is, in default, the guarantor must not challenge the determination and must remedy the

default.

(5) If you fail, or your operator or operating rights owner fails, to comply with any law, term, or regulation, your guarantor must either take corrective action or provide, within 7 days or other agreed upon time period, sufficient funds for MMS to complete corrective action. Such compliance must not reduce your guarantor's liability.

(6) If your guarantor wants to terminate the period of liability, your guarantor must notify you and us at least 90 days before the proposed termination date, obtain our approval for termination of all or a specified portion of the guarantee for liabilities arising after that date, and remain liable for all your work performed during the period the agreement is in effect.

(7) Each guaranty submitted pursuant to this section is deemed to contain all the above terms, even if they are not actually in the agreement.

(d) Before the termination of your guaranty, you must provide an acceptable replacement in the form of a bond or other security.

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



(a) In lieu of a surety bond, MMS may authorize you to establish a lease-, ROW grant-, or RUE grant-specific decommissioning account in a federally-insured institution. The funds may not be withdrawn from the account without our written approval.

(1) The funds must be payable to MMS and pledged to meet your lease or grant decommissioning and site clearance obligations; and

(2) You must fully fund the account within the time MMS prescribes to cover all costs of decommissioning including site clearance. The MMS will estimate the cost of decommissioning, including site clearance.

(b) Any interest paid on the account will be treated as account funds unless we authorize in writing that any interest be paid to the depositor.

(c) We may allow you to pledge Treasury securities, payable to MMS on demand, to satisfy your obligation to make payments into the account. Acceptable Treasury securities and their collateral value are determined in accordance with 31 CFR part 203, Collateral Margins Table (which can be found at <http://www.treasurydirect.gov>).

(d) We may require you to commit a specified stream of revenues as payment into the account so that the account will be fully funded, as prescribed in paragraph (a)(2) of this section. The commitment may include revenue from other operations.

Changes in Financial Assurance



§ 285.530 What must I do if my financial assurance lapses?



(a) If your surety is decertified by the Treasury, becomes bankrupt or insolvent, or if your surety's charter or license is suspended or revoked, or if any other approved financial assurance expires for any reason, you must:

(1) Inform MMS within 3 business days about the financial assurance lapse; and

(2) Provide new financial assurance in the amount set by MMS, as provided in this subpart.

(b) You must notify MMS within 3 business days after you learn of any action filed alleging that you, your surety, or third-party guarantor, is insolvent or bankrupt.

§ 285.531 What happens if the value of my financial assurance is reduced?



If the value of your financial assurance is reduced below the required financial assurance amount because of a default or any other reason, you must provide additional financial assurance sufficient to meet the requirements of this subpart within 45 days or within a different period as specified by MMS.

§ 285.532 What happens if my surety wants to terminate the period of liability of my bond?



(a) Terminating the period of liability of a bond ends the period during which surety liability continues to accrue. The surety continues to be responsible for obligations and liabilities that accrued during the period of liability and before the date on which MMS terminates the period of liability under paragraph (b) of this section. The liabilities that accrue during a period of liability include:

- (1) Obligations that started to accrue before the beginning of the period of liability and have not been met; and
- (2) Obligations that began accruing during the period of liability.

(b) Your surety must submit to MMS its request to terminate the period of liability under its bond and notify you of that request. If you intend to continue activities, or have not met all obligations of your lease or grant, you must provide a replacement bond or alternative form of financial assurance of equivalent or greater value. The MMS will terminate that period of liability within 90 days after MMS receives the request.

§ 285.533 How does my surety obtain cancellation of my bond?



(a) The MMS will release a bond or allow a surety to cancel a bond, and will relieve the surety from accrued obligations only if:

- (1) The MMS determines that there are no outstanding obligations covered by the bond; or
- (2) The following occurs:
 - (i) The MMS accepts a replacement bond or an alternative form of financial assurance in an amount equal to or greater than the bond to be cancelled to cover the terminated period of liability;
 - (ii) The surety issuing the new bond has expressly agreed to assume all outstanding liabilities under the original bond that accrued during the period of liability that was terminated; and
 - (iii) The surety issuing the new bond has agreed to assume that portion of the outstanding liabilities that accrued during the terminated period of liability that exceeds the coverage of the bond prescribed under §§285.515, 285.516, 285.520, or 285.521, and of which you were notified.

(b) When your lease or grant ends, your surety(ies) remain(s) responsible, and MMS will retain any financial assurance as

follows:

- (1) The period of liability ends when you cease all operations and activities under the lease or grant, including decommissioning and site clearance;
- (2) Your surety or collateral financial assurance will not be released until 7 years after the lease ends, or a longer period as necessary to complete any appeals or judicial litigation related to your bonded obligation, or for MMS to determine that all of your obligations under the lease or grant have been satisfied; and
- (3) The MMS will reduce the amount of your bond or return a portion of your financial assurance if we determine that we need less than the full amount of the bond or financial assurance to meet any possible future obligations.

§ 285.534 When may MMS cancel my bond?



When your lease or grant ends, your surety(ies) remain(s) responsible, and MMS will retain any pledged security as shown in the following table:



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§ 285.535 Why might MMS call for forfeiture of my bond?



- (a) The MMS may call for forfeiture of all or part of the bond, pledged security, or other form of guaranty if:
- (1) After notice and demand for performance by MMS, you refuse or fail, within the timeframe we prescribe, to comply with any term or condition of your lease or grant, other authorization or approval, or applicable regulations; or
 - (2) You default on one of the conditions under which we accepted your bond.
- (b) We may pursue forfeiture without first making demands for performance against any co-lessee or holder of an interest in your ROW or RUE, or other person approved to perform obligations under your lease or grant.

§ 285.536 How will I be notified of a call for forfeiture?



- (a) The MMS will notify you and your surety, including any provider of financial assurance, in writing of the call for forfeiture and provide the reasons for the forfeiture and the amount to be forfeited. We will base the amount upon an estimate of the total cost of corrective action to bring your lease or grant into compliance.
- (b) We will advise you and your surety that you may avoid forfeiture if, within 10 business days:
- (1) You agree to and demonstrate in writing to MMS that you will bring your lease or grant into compliance within the timeframe we prescribe, and you do so; or
 - (2) Your surety agrees to and demonstrates that it will bring your lease or grant into compliance within the timeframe we

prescribe, even if the cost of compliance exceeds the face amount of the bond.

§ 285.537 How will MMS proceed once my bond or other security is forfeited?



- (a) If MMS determines that your bond or other security is forfeited, we will collect the forfeited amount and use the funds to bring your lease or grant(s) into compliance and correct any default.
- (b) If the amount collected under your bond or other security is insufficient to pay the full cost of corrective action, MMS may take or direct action to obtain full compliance and recover all costs in excess of the forfeited bond from you or any co-lessee or co-grantee.
- (c) If the amount collected under your bond or other security exceeds the full cost of corrective action to bring your lease or grant(s) into compliance, we will return the excess funds to the party from whom the excess was collected.

§§ 285.538-285.539 [Reserved]



Revenue Sharing With States



§ 285.540 How will MMS equitably distribute revenues to States?



- (a) The MMS will distribute among the eligible coastal States 27 percent of the following revenues derived from qualified projects, where a qualified project and qualified project area is determined in §285.541 and an eligible State is determined in §285.542, with each term defined in §285.112. Revenues subject to distribution to eligible States include all bonuses, acquisition fees, rentals, and operating fees derived from the entire qualified project area and associated project easements not limited to revenues attributable to the portion of the project area within 3 miles of the seaward boundary of a coastal State. The revenues to be shared do not include administrative fees such as service fees and those assessed for civil penalties and forfeiture of bond or other surety obligations.
- (b) The project area is the area included within a single lease or grant. For each qualified project, MMS will determine and announce the project area and its geographic center at the time it grants or issues a lease, easement, or right-of-way on the OCS. If a qualified project lease or grant's boundaries change significantly due to actions pursuant to §§285.435 or 285.436, MMS will re-evaluate the project area to determine whether the geographic center has changed. If it has, MMS will re-determine State eligibility and shares accordingly.
- (c) To determine each eligible State's share of the 27 percent of the revenues for a qualified project, MMS will use the inverse distance formula, which apportions shares according to the relative proximity of the nearest point on the coastline of each eligible State to the geographic center of the qualified project area. If S_i is equal to the nearest distance from the geographic center of the project area to the $i = 1, 2, \dots$ nth eligible State's coastline, then eligible State i would be entitled to the fraction F_i of the 27-percent aggregate revenue share due to all the eligible States according to the formula:

$$F_i = (1/S_i) \div (\sum_{i=1 \dots n} (1/S_i)).$$

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



A qualified project for the purpose of revenue sharing with eligible coastal States is one authorized under subsection 8(p) of the OCS Lands Act, which includes acreage within the area extending 3 nautical miles seaward of State submerged lands. A qualified project is subject to revenue sharing with those States that are eligible for revenue sharing under §285.542. The entire area within a lease or grant for the qualified project, excluding project easements, is considered the qualified project area.

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



A State is eligible for payment of revenues if any part of the State's coastline is located within 15 miles of the announced geographic center of the project area of a qualified project. A State is not eligible for revenue sharing if all parts of that State's coastline are more than 15 miles from the announced geographic center of the qualified project area. This is the case even if the qualified project area is located wholly or partially within an area extending 3 nautical miles seaward of the submerged lands of that State or if there are no States with a coastline less than 15 miles from the announced geographic center of the qualified project area.

§ 285.543 Example of how the inverse distance formula works.



(a) Assume that the geographic center of the project area lies 12 miles from the closest coastline point of State A and 4 miles from the closest coastline point of State B. The MMS will round dollar shares to the nearest whole dollar. The proportional share due each State would be calculated as follows:

(1) State A's share = $[(1/12) \div (1/12+1/4)] = 1/4$.

(2) State B's share = $[1/4] \div (1/12+1/4) = 3/4$.

(b) Therefore, State B would receive a share of revenues that is three times as large as that awarded to State A, based on the finding that State B's nearest coastline is one-third the distance to the geographic center of the qualified project area as compared to State A's nearest coastline. Eligible States share the 27 percent of the total revenues from the qualified project as mandated under the OCS Lands Act. Hence, if the qualified project generates \$1,000,000 of Federal revenues in a given year, the Federal Government would distribute the States' 27-percent share as follows:

(1) State A's share = $\$270,000 \times 1/4 = \$67,500$.

(2) State B's share = $\$270,000 \times 3/4 = \$202,500$.

Subpart F—Plans and Information Requirements



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



You must submit a SAP, COP, or GAP and receive MMS approval as set forth in the following table:



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§ 285.601 When am I required to submit my plans to MMS?



Your plan submission requirements depend on whether your lease or grant was issued competitively or noncompetitively under subpart B or subpart C of this part.

- (a) If your lease or grant is issued competitively, you must submit your SAP or your GAP within 6 months of issuance.
 - (b) If you request that a lease or grant be issued noncompetitively, you must submit your SAP or your GAP within 60 days after the Director issues a determination that there is no competitive interest.
 - (c) If you intend to continue your commercial lease with an operations term, you must submit a COP, or a FERC license application, at least 6 months before the end of your site assessment term.
 - (d) You may submit your COP or FERC license application with your SAP.
- (1) You must provide sufficient data and information with your COP for MMS to complete the needed reviews and NEPA analysis; and
- (2) The MMS may need to conduct additional reviews, including NEPA analysis, if significant new information becomes available after you complete your site assessment activities or you revise your COP. As a result of the additional reviews, we may require modification of your COP.

§ 285.602 What records must I maintain?



Until MMS releases your financial assurance under §285.534, you must maintain and provide to MMS, upon request, all data and information related to compliance with required terms and conditions of your SAP, COP, or GAP.

§§ 285.603-285.604 [Reserved]



Site Assessment Plan and Information Requirements for Commercial Leases



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



(a) A SAP describes the activities (e.g., installation of meteorological towers, meteorological buoys) you plan to perform for the characterization of your commercial lease, including your project easement, or to test technology devices.

(1) Your SAP must describe how you will conduct your resource assessment (e.g., meteorological and oceanographic data collection) or technology testing activities; and

(2) The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and as provided in §285.113.

(b) Your SAP must include data from:

(1) Physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys); and

(2) Baseline environmental surveys (e.g., biological or archaeological surveys).

(c) You must receive MMS approval of your SAP before you can begin any of the approved activities on your lease, as provided in §285.613.

(d) If you propose to construct a facility or combination of facilities deemed by MMS to be complex or significant, as provided in §285.613(a)(1), you must also comply with the requirements of subpart G of this part and submit your Safety Management System as required by §285.810.

§ 285.606 What must I demonstrate in my SAP?



(a) Your SAP must demonstrate that you have planned and are prepared to conduct the proposed site assessment activities in a manner that conforms to your responsibilities listed in §285.105(a) and:

(1) Conforms to all applicable laws, regulations, and lease provisions of your commercial lease;

(2) Is safe;

(3) Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;

(4) 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;

(5) Uses best available and safest technology;

(6) Uses best management practices; and

(7) Uses properly trained personnel.

(b) You must also demonstrate that your site assessment activities will collect the necessary information and data required for your COP, as provided in §285.626(a).

§ 285.607 How do I submit my SAP?



You must submit one paper copy and one electronic version of your SAP to MMS at the address listed in §285.110(a).

§§ 285.608-285.609 [Reserved]



Contents of the Site Assessment Plan



§ 285.610 What must I include in my SAP?



Your SAP must include the following information, as applicable.

(a) For all activities you propose to conduct under your SAP, you must provide the following information:



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(b) You must provide the results of geophysical and geological surveys, hazards surveys, archaeological surveys (if required), and baseline collection studies (e.g., biological) with the supporting data in your SAP:



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(c) If you submit your COP or FERC license application with your SAP then:

(1) You must provide sufficient data and information with your COP or FERC license application for MMS and/or FERC to complete the needed reviews and NEPA analysis.

(2) You may need to revise your COP or FERC license application and MMS and/or FERC may need to conduct additional reviews, including NEPA analysis, if new information becomes available after you complete your site assessment activities.

§ 285.611 What information must I submit with my SAP to assist MMS in complying with NEPA and other relevant laws?



(a) You must submit with your SAP detailed information to assist MMS in complying with NEPA and other relevant laws, as appropriate. For a noncompetitive commercial lease, you must submit a SAP that describes those resources, conditions, and activities listed in the following table that could be affected by your proposed activities, or that could affect the activities proposed in your SAP.

(b) For competitively issued commercial leases, MMS will have prepared a NEPA document and consistency determination for the lease sale and site assessment activities. However, if you submit a SAP that shows changes in impacts from those identified in the NEPA document or consistency determination prepared for the lease, MMS may determine that your SAP is subject to a new NEPA/CZMA and other relevant Federal reviews. In that case, MMS will notify you of the determination, and you must submit a SAP that describes those resources, conditions, and activities listed in the following table that could be affected by your proposed activities, or that could affect the activities proposed in your SAP, including:



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



Your SAP will be processed based on how your commercial lease was issued:



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§ 285.613 How will MMS process my SAP?



(a) The MMS will review your submitted SAP, and additional information provided pursuant to §285.611, to determine if it contains the information necessary to conduct our technical and environmental reviews.

(1) We will notify you if we deem your proposed facility or combination of facilities to be complex or significant;

(2) We will notify you if your submitted SAP lacks any necessary information;

(b) The MMS will prepare NEPA analysis, as appropriate.

(c) As appropriate, we will coordinate and consult with relevant Federal and State agencies, executives of relevant local governments, and affected Indian tribes and will provide to other Federal, State, and local agencies and affected Indian tribes relevant nonproprietary data and information pertaining to your proposed activities.

(d) During the review process, we may request additional information if we determine that the information provided is not sufficient to complete the review and approval process. If you fail to provide the requested information, MMS may disapprove your SAP.

(e) Upon completion of our technical and environmental reviews and other reviews required by Federal laws (e.g., CZMA), MMS may approve, disapprove, or approve with modifications your SAP.

(1) If we approve your SAP, we will specify terms and conditions to be incorporated into your SAP. You must certify compliance with those terms and conditions required under §285.615(c); and

(2) If we disapprove your SAP, we will inform you of the reasons and allow you an opportunity to submit a revised plan making the necessary corrections, and may suspend the term of your lease, as appropriate, to allow this to occur.

Activities Under an Approved SAP



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



(a) You may begin conducting the activities approved in your SAP following MMS approval of your SAP.

(b) If you are installing a facility or a combination of facilities deemed by MMS to be complex or significant, as provided in §285.613(a)(1), you must comply with the requirements of subpart G of this part and submit your Safety Management System required by §285.810 before construction may begin.

§ 285.615 What other reports or notices must I submit to MMS under my approved SAP?



(a) You must notify MMS in writing within 30 days of completing installation activities approved in your SAP.

(b) You must prepare and submit to MMS a report annually on November 1 of each year that summarizes your site assessment activities and the results of those activities. The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and as provided in §285.113.

(c) You must submit a certification of compliance annually (or other frequency as determined by MMS) with certain terms and conditions of your SAP that MMS identifies under §285.613(e)(1). Together with your certification, you must submit:

(1) Summary reports that show compliance with the terms and conditions which require certification; and

(2) A statement identifying and describing any mitigation measures and monitoring methods and their effectiveness. If you identified measures that were not effective, you must include your recommendations for new mitigation measures or monitoring methods.

§ 285.616 [Reserved]



§ 285.617 What activities require a revision to my SAP, and when will MMS approve the revision?



(a) You must notify MMS in writing before conducting any activities not described in your approved SAP, describing in detail the type of activities you propose to conduct. We will determine whether the activities you propose are authorized by your existing SAP or require a revision to your SAP. We may request additional information from you, if necessary, to make this determination.

(b) The MMS 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.

(c) Activities for which a proposed revision to your SAP will likely be necessary include:

(1) Activities not described in your approved SAP;

(2) Modifications to the size or type of facility or equipment you will use;

(3) Changes in the surface location of a facility or structure;

(4) Addition of a facility or structure not contemplated in your approved SAP;

- (5) Changes in the location of your onshore support base from one State to another, or to a new base requiring expansion;
- (6) Changes in the location of bottom disturbances (anchors, chains, etc.) by 500 feet (152 meters) or greater from the approved locations. If a specific anchor pattern was approved as a mitigation measure to avoid contact with bottom features, any change in the proposed bottom disturbances would likely trigger the need for a revision;
- (7) Structural failure of one or more facilities; or
- (8) Changes to any other activity specified by MMS.

(d) 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.

(e) 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 subsection 8(p) of the OCS Lands Act.

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



- (a) If, prior to the expiration of your site assessment term, you timely submit a COP meeting the requirements of this subpart, or a complete FERC license application, that 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 MMS reviews your COP for approval or FERC reviews your license application for approval.
- (b) You are not required to initiate the decommissioning process for facilities that are authorized to remain in place under your approved COP or approved FERC license.
- (c) If, following the technical and environmental review of your submitted COP, MMS determines that such facilities may not remain in place, you must initiate the decommissioning process, as provided in subpart I of this part.
- (d) If FERC determines that such facilities may not remain in place, you must initiate the decommissioning process as provided in subpart I of this part.
- (e) You must initiate the decommissioning process, as set forth in subpart I of this part, upon the termination of your lease.

§ 285.619 [Reserved]



Construction and Operations Plan for Commercial Leases



§ 285.620 What is a Construction and Operations Plan (COP)?



The COP describes your construction, operations, and conceptual decommissioning plans under your commercial lease, including your project easement. The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of §285.113.

- (a) Your COP must describe all planned facilities that you will construct and use for your project, including onshore and support facilities and all anticipated project easements.
- (b) Your COP must describe all proposed activities including your proposed construction activities, commercial operations, and conceptual decommissioning plans for all planned facilities, including onshore and support facilities.
- (c) You must receive MMS approval of your COP before you can begin any of the approved activities on your lease.

§ 285.621 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 conforms to your responsibilities listed in §285.105(a) and:

- (a) Conforms to all applicable laws, implementing regulations, lease provisions, and stipulations or conditions of your commercial lease;
- (b) Is safe;
- (c) Does not unreasonably interfere with other uses of the OCS, including those involved with National security or defense;
- (d) 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;
- (e) Uses best available and safest technology;
- (f) Uses best management practices; and
- (g) Uses properly trained personnel.

§ 285.622 How do I submit my COP?



- (a) You must submit one paper copy and one electronic version of your COP to MMS at the address listed in §285.110(a).
- (b) You may submit information and a request for any project easement as part of your original COP submission or as a revision to your COP.

§§ 285.623-285.625 [Reserved]



Contents of the Construction and Operations Plan



§ 285.626 What must I include in my COP?



(a) You must submit the results of the following surveys for the proposed site(s) of your facility(ies). Your COP must include the following information:



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(b) Your COP must include the following project-specific information, as applicable.



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§ 285.627 What information and certifications must I submit with my COP to assist the MMS in complying with NEPA and other relevant laws?



(a) You must submit with your COP detailed information to assist MMS in complying with NEPA and other relevant laws. Your COP must describe those resources, conditions, and activities listed in the following table that could be affected by your proposed activities, or that could affect the activities proposed in your COP, including:



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(b) You must submit one paper copy and one electronic copy of your consistency certification. Your consistency certification must include:

(1) One copy of your consistency certification under subsection 307(c)(3)(B) of the CZMA (16 U.S.C. 1456(c)(3)(B)) and 15 CFR 930.76 stating that the proposed activities described in detail in your plans comply with the State(s) approved coastal

management program(s) and will be conducted in a manner that is consistent with such program(s); and

(2) "Information," as required by 15 CFR 930.76(a) and 15 CFR 930.58(a)(2), and "Analysis," as required by 15 CFR 930.58(a)(3).

(c) You must submit your oil spill response plan, as required by part 254 of this subchapter.

(d) You must submit your Safety Management System as required by §285.810.

§ 285.628 How will MMS process my COP?



(a) The MMS will review your submitted COP, and the information provided pursuant to §285.627, to determine if it contains all the required information necessary to conduct our technical and environmental reviews. We will notify you if your submitted COP lacks any necessary information.

(b) The MMS will prepare an appropriate NEPA analysis.

(c) The MMS will forward one copy of your COP, consistency certification, and associated data and information under the CZMA to the State's CZM agency after all information requirements for the COP are met.

(d) As appropriate, MMS will coordinate and consult with relevant Federal, State, and local agencies and affected Indian tribes, and provide to them relevant nonproprietary data and information pertaining to your proposed activities.

(e) During the review process, we may request additional information if we determine that the information provided is not sufficient to complete the review and approval process. If you fail to provide the requested information, MMS may disapprove your COP.

(f) Upon completion of our technical and environmental reviews and other reviews required by Federal law (e.g., CZMA), MMS may approve, disapprove, or approve with modifications your COP.

(1) If we approve your COP, we will specify terms and conditions to be incorporated into your COP. You must certify compliance with certain of those terms and conditions, as required under §285.633(b); and

(2) If we disapprove your COP, we will inform you of the reasons and allow you an opportunity to resubmit a revised plan addressing the concerns identified, and may suspend the term of your lease, as appropriate, to allow this to occur.

(g) If MMS approves your project easement, MMS will issue an addendum to your lease specifying the terms of the project easement. A project easement may include off-lease areas that:

(1) Contain the sites on which cable, pipeline, or associated facilities are located;

(2) 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; and

(3) For associated facilities, are limited to the area reasonably necessary for power or pumping stations or other accessory facilities.

§ 285.629 May I develop my lease in phases?



In your COP, you may request development of your commercial lease in phases. In support of your request, you must provide details as to what portions of the lease will be initially developed for commercial operations and what portions of the

lease will be reserved for subsequent phased development.

§ 285.630 [Reserved]



Activities Under an Approved COP



§ 285.631 When must I initiate activities under an approved COP?



After your COP is approved, you must commence construction by the date given in the construction schedule required by §285.626(b)(21), and included as a part of your approved COP, unless MMS approves a deviation from your schedule.

§ 285.632 What documents must I submit before I may construct and install facilities under my approved COP?



(a) You must submit to MMS the documents listed in the following table:



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(b) You must submit your Safety Management System, as required by §285.810 of this part.

(c) These activities must fall within the scope of your approved COP. If they do not fall within the scope of your approved COP, you will be required to submit a revision to your COP, under §285.634, for MMS approval before commencing the activity.

§ 285.633 How do I comply with my COP?



(a) Based on MMS's environmental and technical reviews, we will specify terms and conditions to be incorporated into your COP.

(b) You must submit a certification of compliance annually (or other frequency as determined by MMS) with certain terms and conditions of your COP that MMS identifies. Together with your certification, you must submit:

(1) Summary reports that show compliance with the terms and conditions which require certification; and

(2) A statement identifying and describing any mitigation measures and monitoring methods, and their effectiveness. If you identified measures that were not effective, then you must make recommendations for new mitigation measures or

monitoring methods.

(c) As provided at §285.105(i), MMS may require you to submit any supporting data and information.

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



(a) You must notify MMS in writing before conducting any activities not described in your approved COP, describing in detail the type of activities you propose to conduct. We will determine whether the activities you propose are authorized by your existing COP or require a revision to your COP. We may request additional information from you, if necessary, to make this determination.

(b) The MMS will periodically review the activities conducted under an approved COP. 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 COP. If the review indicates that the COP should be revised to meet the requirement of this part, we will require you to submit the needed revisions.

(c) Activities for which a proposed revision to your COP will likely be necessary include:

- (1) Activities not described in your approved COP;
- (2) Modifications to the size or type of facility or equipment you will use;
- (3) Change in the surface location of a facility or structure;
- (4) Addition of a facility or structure not described in your approved COP;
- (5) Change in the location of your onshore support base from one State to another or to a new base requiring expansion;
- (6) Changes in the location of bottom disturbances (anchors, chains, etc.) by 500 feet (152 meters) or greater from the approved locations (e.g., if a specific anchor pattern was approved as a mitigation measure to avoid contact with bottom features, any change in the proposed bottom disturbances would likely trigger the need for a revision);
- (7) Structural failure of one or more facilities; or
- (8) Change in any other activity specified by MMS.

(d) We may begin the appropriate NEPA analysis and 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.

(e) 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 subsection 8(p) of the OCS Lands Act.

§ 285.635 What must I do if I cease activities approved in my COP before the end of my commercial

lease?



You must notify the MMS, within 5 business days, any time you cease commercial operations, without an approved suspension, under your approved COP. If you cease commercial operations for an indefinite period which extends longer than 6 months, we may cancel your lease under §285.437, and you must initiate the decommissioning process, as set forth in subpart I of this part.

§ 285.636 What notices must I provide MMS following approval of my COP?



You must notify MMS in writing of the following events, within the time periods provided:

- (a) No later than 30 days after commencing activities associated with the placement of facilities on the lease area under a Fabrication and Installation Report.
- (b) No later than 30 days after completion of construction and installation activities under a Fabrication and Installation Report.
- (c) At least 7 days before commencing commercial operations.

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



If you are conducting activities on your lease that:

- (a) Do not require a FERC license (*i.e.* , wind), then you may commence commercial operations 30 days after the CVA or project engineer has submitted to MMS the final Fabrication and Installation Report for the fabrication and installation review, as provided in §285.708.
- (b) Require a FERC license or exemption, then you may commence commercial operations when permitted by the terms of your license or exemption.

§ 285.638 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 initiate the decommissioning process as set forth in subpart I of this part. You must submit your decommissioning application as provided in §§285.905 and 285.906.
- (b) Upon completion of your approved activities under your FERC license, the terms of your FERC license will govern your decommissioning activities.

§ 285.639 [Reserved]



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



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



(a) A GAP describes your proposed construction, activities, and conceptual decommissioning plans for all planned facilities, including testing of technology devices and onshore and support facilities that you will construct and use for your project, including any project easements for the assessment and development of your limited lease or grant.

(b) You must receive MMS approval of your GAP before you can begin any of the approved activities on your lease or grant. For a ROW grant or RUE grant issued competitively, you must submit your GAP within 6 months of issuance.

§ 285.641 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 all applicable laws, implementing regulations, lease provisions and stipulations;
- (b) Is safe;
- (c) Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;
- (d) 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;
- (e) Uses best available and safest technology;
- (f) Uses best management practices; and
- (g) Uses properly trained personnel.

§ 285.642 How do I submit my GAP?



(a) You must submit one paper copy and one electronic version of your GAP to MMS at the address listed in §285.110(a).

(b) If you have a limited lease, you may submit information on any project easement as part of your original GAP submission or as a revision to your GAP.

§§ 285.643-285.644 [Reserved]



Contents of the General Activities Plan



§ 285.645 What must I include in my GAP?



(a) You must provide the following results of geophysical and geological surveys, hazards surveys, archaeological surveys (if required), and baseline collection studies (e.g., biological) with the supporting data in your GAP:



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(b) For all activities you propose to conduct under your GAP, you must provide the following information:



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(c) If you are applying for a project easement or constructing a facility, or a combination of facilities deemed by MMS to be complex or significant, you must provide the following information in addition to what is required in paragraphs (a) and (b) of this section and comply with the requirements of subpart G of this part:



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(d) The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure in accordance with the terms of §285.113.

§ 285.646 What information and certifications must I submit with my GAP to assist MMS in complying with NEPA and other relevant laws?



You must submit with your GAP detailed information to assist MMS in complying with NEPA and other relevant laws. Your GAP must describe those resources, conditions, and activities listed in the following table that could be affected by your proposed activities, or that could affect the activities proposed in your GAP, including:



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



Your GAP will be processed based on how your limited lease, ROW grant, or RUE grant was issued:



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§ 285.648 How will MMS process my GAP?



(a) The MMS will review your submitted GAP, along with the information and certifications provided pursuant to §285.646, to determine if it contains all the required information necessary to conduct our technical and environmental reviews.

(1) We will notify you if we deem your proposed facility or combination of facilities to be complex or significant; and

(2) We will notify you if your submitted GAP lacks any necessary information.

(b) The MMS will prepare appropriate NEPA analysis.

(c) When appropriate, we will coordinate and consult with relevant State and Federal agencies and affected Indian tribes and provide to other local, State, and Federal agencies and affected Indian tribes relevant nonproprietary data and information pertaining to your proposed activities.

(d) During the review process, we may request additional information if we determine that the information provided is not sufficient to complete the review and approval process. If you fail to provide the requested information, MMS may disapprove your GAP.

(e) Upon completion of our technical and environmental reviews and other reviews required by Federal law (e.g., CZMA), MMS may approve, disapprove, or approve with modifications your GAP.

(1) If we approve your GAP, we will specify terms and conditions to be incorporated into your GAP. You must certify compliance with certain of those terms and conditions, as required under §285.653(c); and

(2) If we disapprove your GAP, we will inform you of the reasons and allow you an opportunity to resubmit a revised plan making the necessary corrections, and may suspend the term of your lease or grant, as appropriate, to allow this to occur.

§ 285.649 [Reserved]



Activities Under an Approved GAP



§ 285.650 When may I begin conducting activities under my GAP?



After MMS approves your GAP, you may begin conducting the approved activities that do not involve a project easement or

the construction of facilities on the OCS that MMS has deemed to be complex or significant.

§ 285.651 When may I construct complex or significant OCS facilities on my limited lease or any facilities on my project easement proposed under my GAP?



If you are applying for a project easement, or installing a facility or a combination of facilities on your limited lease deemed by MMS to be complex or significant, as provided in §285.648(a)(1), you also must comply with the requirements of subpart G of this part and submit your Safety Management System required by §285.810 before construction may begin.

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



After MMS approves your GAP, you have:

- (a) For a limited lease, 5 years to conduct your approved activities, unless we renew the term under §§285.425 through 285.429.
- (b) For a ROW grant or RUE grant, the time provided in the terms of the grant.

§ 285.653 What other reports or notices must I submit to MMS under my approved GAP?



- (a) You must notify MMS in writing within 30 days after completing installation activities approved in your GAP.
- (b) You must prepare and submit to MMS annually a report that summarizes the findings from any activities you conduct under your approved GAP and the results of those activities. We will protect the information from public disclosure as provided in §285.113.
- (c) You must annually (or other frequency as determined by MMS) submit a certification of compliance with those terms and conditions of your GAP that MMS identifies under §285.648(e)(1). Together with your certification, you must submit:
 - (1) Summary reports that show compliance with the terms and conditions which require certification; and
 - (2) A statement identifying and describing any mitigation measures and monitoring methods and their effectiveness. If you identified measures that were not effective, you must include your recommendations for new mitigation measures or monitoring methods.

§ 285.654 [Reserved]



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



- (a) You must notify MMS 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.

(b) The MMS will periodically review the activities conducted under an approved GAP. 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 GAP. If the review indicates that the GAP should be revised to meet the requirement of this part, we will require you to submit the needed revisions.

(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 size or type of facility or equipment you will use;
- (3) Change in the surface location of a facility or structure;
- (4) Addition of a facility or structure not contemplated in your approved GAP;
- (5) Change in the location of your onshore support base from one State to another or to a new base requiring expansion;
- (6) Changes in the locations of bottom disturbances (anchors, chains, etc.) by 500 feet (152 meters) or greater from the approved locations. If a specific anchor pattern was approved as a mitigation measure to avoid contact with bottom features, any change in the proposed bottom disturbances would likely trigger the need for a revision;
- (7) Structural failure of one or more facilities; or
- (8) Change to any other activity specified by MMS.

(d) We may begin the appropriate NEPA analysis and any 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.

(e) 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 subsection 8(p) of the OCS Lands Act.

§ 285.656 What must I do if I cease activities approved in my GAP before the end of my term?



You must notify the MMS any time you cease activities under your approved GAP without an approved suspension. If you cease activities for an indefinite period that exceeds 6 months, MMS may cancel your lease or grant under §285.437, as applicable, and you must initiate the decommissioning process, as set forth in subpart I of this part.

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



Upon completion of your approved activities under your GAP, you must initiate the decommissioning process as set forth in subpart I of this part. You must submit your decommissioning application as provided in §§285.905 and 285.906.

Cable and Pipeline Deviations



§ 285.658 Can my cable or pipeline construction deviate from my approved COP or GAP?



(a) You must make every effort to ensure that all cables and pipelines are constructed in a manner that minimizes deviations from the approved plan under your lease or grant.

(b) If MMS determines that a significant change in conditions has occurred that would necessitate an adjustment to your ROW, RUE or lease before the commencement of construction of the cable or pipeline on the grant or lease, MMS will consider modifications to your ROW grant, RUE grant, or your lease addendum for a project easement in connection with your COP or GAP.

(c) If, after construction, it is determined that a deviation from the approved plan has occurred, you must:

(1) Notify the operators of all leases (including mineral leases issued under this subchapter) and holders of all ROW grants or RUE grants (including all grants issued under this subchapter) which include the area where a deviation has occurred and provide MMS with evidence of such notification;

(2) Relinquish any unused portion of your lease or grant; and

(3) Submit a revised plan for MMS approval as necessary.

(d) Construction of a cable or pipeline that substantially deviates from the approved plan may be grounds for cancellation of the lease or grant.

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



(a) You must comply with the Clean Air Act (42 U.S.C. 7409) and its implementing regulations, according to the following table.



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(b) For air quality modeling that you perform in support of the activities proposed in your plan, you should contact the appropriate regulatory agency to establish a modeling protocol to ensure that the agency's needs are met and that the meteorological files used are acceptable before initiating the modeling work. In the western Gulf of Mexico (west of 87.5° west longitude), you must submit to MMS three copies of the modeling report and three sets of digital files as supporting information. The digital files must contain the formatted meteorological files used in the modeling runs, the model input file, and the model output file.

Subpart G—Facility Design, Fabrication, and Installation



Reports



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



(a) You must submit the following reports to MMS before installing facilities described in your approved COP (§285.632(a)) and, when required by this part, your SAP (§285.614(b)) or GAP (§285.651):

(1) A Facility Design Report; and

(2) A Fabrication and Installation Report.

(b) You may begin to fabricate and install the approved facilities after MMS notifies you that it has received your reports and has no objections. If MMS receives the reports, but does not respond with objections within 60 days of receipt or 60 days after we approve your SAP, COP, or GAP, if you submitted your report with the plan, MMS is deemed not to have objections to the reports, and you may commence fabrication and installation of your facility or facilities.

(c) If MMS has any objections, we will notify you verbally or in writing within 60 days of receipt of the report. Following initial notification of objections, MMS may follow up with written correspondence outlining its specific objections to the report and request that certain actions be undertaken. You cannot commence activities addressed in such report until you resolve all objections to MMS's satisfaction.

§ 285.701 What must I include in my Facility Design Report?



(a) Your Facility Design Report provides specific details of the design of any facilities, including cables and pipelines, that are outlined in your approved SAP, COP, or GAP. Your Facility Design Report must demonstrate that your design conforms to your responsibilities listed in §285.105(a). You must include the following items in your Facility Design Report:



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(b) For any floating facility, your design must meet the requirements of the U.S. Coast Guard for structural integrity and stability (e.g., verification of center of gravity). The design must also consider:

(1) Foundations, foundation pilings and templates, and anchoring systems; and

(2) Mooring or tethering systems.

(c) You must provide the location of records, as required in §285.714(c).

(d) If you are required to use a CVA, the Facility Design Report must include one paper copy of the following certification statement: "The design of this structure has been certified by a MMS approved CVA to be in accordance with accepted engineering practices and the approved SAP, GAP, or COP as appropriate. The certified design and as-built plans and specifications will be on file at (given location)."

(e) The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of §285.113.

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



(a) Your Fabrication and Installation Report must describe how your facilities will be fabricated and installed in accordance with the design criteria identified in the Facility Design Report; your approved SAP, COP, or GAP; and generally accepted industry standards and practices. Your Fabrication and Installation Report must demonstrate how your facilities will be fabricated and installed in a manner that conforms to your responsibilities listed in §285.105(a). You must include the following items in your Fabrication and Installation Report:



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(b) You must provide the location of records, as required in §285.714(c).

(c) If you are required to use a CVA, the Fabrication and Installation Report must include one paper copy of the following certification statement: "The fabrication and installation of this structure has been certified by a MMS approved CVA to be in accordance with accepted engineering practices and the approved SAP, GAP, or COP as appropriate. The certified design and as-built plans and specifications will be on file at (given location)."

(d) The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of §285.113.

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



(a) You must verify and, in a report to us, certify that major repairs and major modifications to the project conform to accepted engineering practices.

(1) A major repair is a corrective action involving structural members affecting the structural integrity of a portion of or all the facility.

(2) A major modification is an alteration involving structural members affecting the structural integrity of a portion of or all the facility.

(b) The report must also identify the location of all records pertaining to the major repairs or major modifications, as required in §285.714(c).

(c) The MMS may require you to use a CVA for project modifications and repairs.

§ 285.704 [Reserved]



Certified Verification Agent



§ 285.705 When must I use a Certified Verification Agent (CVA)?



You must use a CVA to review and certify the Facility Design Report, the Fabrication and Installation Report, and the Project Modifications and Repairs Report.

(a) You must use a CVA 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 that repairs and major modifications are completed in conformance with accepted engineering practices; and
- (3) Provide MMS immediate reports of all incidents that affect the design, fabrication, and installation of the project and its components.

(b) The MMS may waive the requirement that you use a CVA if you can demonstrate the following:



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(c) You must submit a request to waive the requirement to use a CVA to MMS in writing, along with your SAP under §285.610(a)(9), COP under §285.626(b)(20), or GAP under §285.645(c)(5).

- (1) The MMS will review your request to waive the use of the CVA and notify you of our decision along with our decision on your SAP, COP, or GAP.
- (2) If MMS does not waive the requirement for a CVA, you may file an appeal under §285.118.
- (3) If MMS waives the requirement that you use a CVA, your project engineer must perform the same duties and responsibilities as the CVA, except as otherwise provided.

§ 285.706 How do I nominate a CVA for MMS approval?



(a) As part of your COP (as provided in §285.626(b)(20) and, when required by this part, your SAP (§285.610(a)(9)) or GAP (§285.645(c)(5)), you must nominate a CVA for MMS approval. You must specify whether the nomination is for the Facility

Design Report, Fabrication and Installation Report, Modification and Repair Report, or for any combination of these.

(b) For each CVA that you nominate, you must submit to MMS a list of documents used in your design that you will forward to the CVA and a qualification statement that includes the following:

(1) Previous experience in third-party verification or experience in the design, fabrication, installation, or major modification of offshore energy facilities;

(2) Technical capabilities of the individual or the primary staff for the specific project;

(3) Size and type of organization or corporation;

(4) In-house availability of, or access to, appropriate technology (including computer programs, hardware, and testing materials and equipment);

(5) Ability to perform the CVA functions for the specific project considering current commitments;

(6) Previous experience with MMS requirements and procedures, if any; and

(7) The level of work to be performed by the CVA.

(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.

(d) The verification must be conducted by or under the direct supervision of registered professional engineers.

(e) The MMS will approve or disapprove your CVA as part of its review of the COP or, when required, of your SAP or GAP.

(f) You must nominate a new CVA for MMS approval if the previously approved CVA:

(1) Is no longer able to serve in a CVA capacity for the project; or

(2) No longer meets the requirements for a CVA set forth in this subpart.

§ 285.707 What are the CVA's primary duties for facility design review?



If you are required to use a CVA:

(a) The CVA must use good engineering judgment and practices in conducting an independent assessment of the design of the facility. The CVA must certify in the Facility Design Report to MMS that the facility is designed to withstand the environmental and functional load conditions appropriate for the intended service life at the proposed location.

(b) The CVA must conduct an independent assessment of all proposed:

(1) Planning criteria;

(2) Operational requirements;

(3) Environmental loading data;

(4) Load determinations;

(5) Stress analyses;

(6) Material designations;

(7) Soil and foundation conditions;

(8) Safety factors; and

(9) Other pertinent parameters of the proposed design.

(c) For any floating facility, the CVA must ensure that any requirements of the U.S. Coast Guard for structural integrity and stability (e.g., verification of center of gravity), have been met. The CVA must also consider:

(1) Foundations, foundation pilings and templates, and anchoring systems; and

(2) Mooring or tethering systems.

§ 285.708 What are the CVA's or project engineer's primary duties for fabrication and installation review?



(a) The CVA or project engineer must do all of the following:

(1) Use good engineering judgment and practice in conducting an independent assessment of the fabrication and installation activities;

(2) Monitor the fabrication and installation of the facility as required by paragraph (b) of this section;

(3) Make periodic onsite inspections while fabrication is in progress and verify the items required by §285.709;

(4) Make periodic onsite inspections while installation is in progress and satisfy the requirements of §295.710; and

(5) Certify in a report that project components are fabricated and installed in accordance with accepted engineering practices; your approved COP, SAP, or GAP (as applicable); and the Fabrication and Installation Report.

(i) The report must also identify the location of all records pertaining to fabrication and installation, as required in §285.714(c); and

(ii) You may commence commercial operations or other approved activities 30 days after MMS receives that certification report, unless MMS notifies you within that time period of its objections to the certification report.

(b) To comply with paragraph (a)(5) of this section, the CVA or project engineer must monitor the fabrication and installation of the facility to ensure that it has been built and installed according to the Facility Design Report and Fabrication and Installation Report.

(1) If the CVA or project engineer finds that fabrication and installation procedures have been changed or design specifications have been modified, the CVA or project engineer must inform you; and

(2) If you accept the modifications, then you must also inform MMS.

§ 285.709 When conducting onsite fabrication inspections, what must the CVA or project engineer verify?



(a) To comply with §285.708(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 the Fabrication and Installation Report, 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 any floating facilities, the CVA or project engineer must ensure that any requirements of the U.S. Coast Guard for structural integrity and stability (e.g., verification of center of gravity) have been met. The CVA or project engineer must also consider:

- (1) Foundations, foundation pilings and templates, and anchoring systems; and
- (2) Mooring or tethering systems.

§ 285.710 When conducting onsite installation inspections, what must the CVA or project engineer do?



To comply with §285.708(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) 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, and review 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; and
- (8) Installation at the approved location according to the Facility Design Report and the Fabrication and Installation Report.

(b) 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; and
- (2) The actual installation of the facility or major modification and the related installation activities.

(c) 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.

(d) The CVA or project engineer must conduct an onsite survey of the facility after transportation to the approved location.

(e) 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.

§ 285.711 [Reserved]



§ 285.712 What are the CVA's or project engineer's reporting requirements?



(a) The CVA or project engineer must prepare and submit to you and MMS all reports required by this subpart. The CVA or project engineer must also submit interim reports to you and MMS, as requested by the MMS.

(b) For each report required by this subpart, the CVA or project engineer must submit one electronic copy and one paper copy of each final report to MMS. In each report, the CVA or project engineer must:

- (1) Give details of how, by whom, and when the CVA or project engineer activities were conducted;
- (2) Describe the CVA's or project engineer's activities during the verification process;
- (3) Summarize the CVA's or project engineer's findings; and

(4) Provide any additional comments that the CVA or project engineer deems necessary.

§ 285.713 What must I do after the CVA or project engineer confirms conformance with the Fabrication and Installation Report on my commercial lease?



After the CVA or project engineer files the certification report, you must notify MMS within 10 business days after commencing commercial operations.

§ 285.714 What records relating to SAPs, COPs, and GAPs must I keep?



(a) Until MMS releases your financial assurance under §285.534, you must compile, retain, and make available to MMS representatives, within the time specified by MMS, all of the following:

- (1) The as-built drawings;
- (2) The design assumptions and analyses;
- (3) A summary of the fabrication and installation examination records;
- (4) The inspection results from the inspections and assessments required by §§285.820 through 285.825; and
- (5) Records of repairs not covered in the inspection report submitted under §285.824(b)(3).

(b) You must record and retain the original material test results of all primary structural materials during all stages of construction until MMS releases your financial assurance under §285.534. Primary material is material that, should it fail, would lead to a significant reduction in facility safety, structural reliability, or operating capabilities. Items such as steel brackets, deck stiffeners and secondary braces or beams would not generally be considered primary structural members (or materials).

(c) You must provide MMS with the location of these records in the certification statement, as required in §§285.701(c), 285.703(b), and 285.708(a)(5)(i).

Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs and GAPs



§ 285.800 How must I conduct my activities to comply with safety and environmental requirements?



(a) You must conduct all activities on your lease or grant under this part in a manner that conforms with your responsibilities in §285.105(a), and using:

- (1) Trained personnel; and
- (2) Technologies, precautions, and techniques that will not cause undue harm or damage to natural resources, including

their physical, atmospheric, and biological components.

(b) You must certify compliance with those terms and conditions identified in your approved SAP, COP, or GAP, as required under §§285.615(c), 285.633(b), or 285.653(c).

§ 285.801 How must I conduct my approved activities to protect marine mammals, threatened and endangered species, and designated critical habitat?



(a) You must not conduct any activity under your lease or grant that may affect threatened or endangered species or that may affect designated critical habitat of such species until the appropriate level of consultation is conducted, as required under the ESA, as amended (16 U.S.C. 1531 *et seq.*), to ensure that your actions are not likely to jeopardize a threatened or endangered species and are not likely to destroy or adversely modify designated critical habitat.

(b) You must not conduct any activity under your lease or grant that may result in an incidental taking of marine mammals until the appropriate authorization has been issued under the Marine Mammal Protection Act of 1972 (MMPA) as amended (16 U.S.C. 1361 *et seq.*).

(c) If there is reason to believe that a threatened or endangered species may be present while you conduct your MMS approved activities or may be affected by the direct or indirect effects of your actions:

(1) You must notify us that endangered or threatened species may be present in the vicinity of the lease or grant or may be affected by your actions; and

(2) We will consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, you may proceed.

(d) If there is reason to believe that designated critical habitat of a threatened or endangered species may be affected by the direct or indirect effects of your MMS approved activities:

(1) You must notify us that designated critical habitat of a threatened or endangered species in the vicinity of the lease or grant may be affected by your actions; and

(2) We will consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, you may proceed.

(e) If there is reason to believe that marine mammals may be incidentally taken as a result of your proposed activities:

(1) You must agree to secure an authorization from National Oceanic and Atmospheric Administration (NOAA) or the U.S. Fish and Wildlife Service (FWS) for incidental taking, including taking by harassment, that may result from your actions; and

(2) You must comply with all measures required by the NOAA or FWS, including measures to affect the least practicable impact on such species and its habitat and to ensure no unmitigable adverse impact on the availability of the species for subsistence use.

(f) Submit to us:

(1) Measures designed to avoid or minimize adverse effects and any potential incidental take of the endangered or threatened species or marine mammals;

(2) Measures designed to avoid likely adverse modification or destruction of designated critical habitat of such endangered or threatened species; and

(3) Your agreement to monitor for the incidental take of the species and adverse effects on the critical habitat, and provide the results of the monitoring to MMS as required; and

(4) Your agreement to perform any relevant terms and conditions of the Incidental Take Statement that may result from the ESA consultation.

(5) Your agreement to perform any relevant mitigation measures under an MMPA incidental take authorization.

§ 285.802 What must I do if I discover a potential archaeological resource while conducting my approved activities?



(a) If you, your subcontractors, or any agent acting on your behalf discovers a potential archaeological resource while conducting construction activities, or any other activity related to your project, you must:

(1) Immediately halt all seafloor-disturbing activities within the area of the discovery;

(2) Notify MMS of the discovery within 72 hours; and

(3) Keep the location of the discovery confidential and not take any action that may adversely affect the archaeological resource until we have made an evaluation and instructed you on how to proceed.

(b) We may require you to conduct additional investigations to determine if the resource is eligible for listing in the National Register of Historic Places under 36 CFR 60.4. We will do this if:

(1) The site has been impacted by your project activities; or

(2) Impacts to the site or to the area of potential effect cannot be avoided.

(c) If investigations under paragraph (b) of this section indicate that the resource is potentially eligible for listing in the National Register of Historic Places, we will tell you how to protect the resource, or how to mitigate adverse effects to the site.

(d) If we incur costs in protecting the resource, under section 110(g) of the NHPA, we may charge you reasonable costs for carrying out preservation responsibilities under the OCS Lands Act.

§ 285.803 How must I conduct my approved activities to protect essential fish habitats identified and described under the Magnuson-Stevens Fishery Conservation and Management Act?



(a) If, during the conduct of your approved activities, MMS finds that essential fish habitat or habitat areas of particular concern may be adversely affected by your activities, MMS must consult with National Marine Fisheries Service.

(b) Any conservation recommendations adopted by MMS to avoid or minimize adverse effects on Essential Fish Habitat will be incorporated as terms and conditions in the lease and must be adhered to by the applicant. The MMS may require additional surveys to define boundaries and avoidance distances.

(c) If required, MMS will specify the survey methods and instrumentations for conducting the biological survey and will specify the contents of the biological report.

§§ 285.804-285.809 [Reserved]



Safety Management Systems



§ 285.810 What must I include in my Safety Management System?



You must submit a description of the Safety Management System you will use with your COP (provided under §285.627(d)) and, when required by this part, your SAP (as provided in §285.614(b)) or GAP (as provided in §285.651). You must describe:

- (a) How you will ensure the safety of personnel or anyone on or near your facilities;
- (b) Remote monitoring, control, and shut down capabilities;
- (c) Emergency response procedures;
- (d) Fire suppression equipment, if needed;
- (e) How and when you will test your Safety Management System; and
- (f) How you will ensure personnel who operate your facilities are properly trained.

§ 285.811 When must I follow my Safety Management System?



Your Safety Management System must be fully functional when you begin activities described in your approved COP, SAP, or GAP. You must conduct all activities described in your approved COP, SAP, or GAP in accordance with the Safety Management System you described, as required by §285.810.

§ 285.812 [Reserved]



Maintenance and Shutdowns



§ 285.813 When do I have to report removing equipment from service?



- (a) The removal of any equipment from service may result in MMS applying remedies, as provided in this part, when such equipment is necessary for implementing your approved plan. Such remedies may include an order from MMS requiring you to replace or remove such equipment or facilities.
- (b)(1) You must report within 24 hours when equipment necessary for implementing your approved plan is removed from

service for more than 12 hours. If you provide an oral notification, you must submit a written confirmation of this notice within 3 business days, as required by §285.105(c);

(2) You do not have to report removing equipment necessary for implementing your plan if the removal is part of planned maintenance or repair activities; and

(3) You must notify MMS when you return the equipment to service.

§ 285.814 [Reserved]



Equipment Failure and Adverse Environmental Effects



§ 285.815 What must I do if I have facility damage or an equipment failure?



(a) If you have facility damage or the failure of a pipeline, cable, or other equipment necessary for you to implement your approved plan, you must make repairs as soon as practicable. If you have a major repair, you must submit a report of the repairs to MMS, as required in §285.711.

(b) If you are required to report any facility damage or failure under §285.831, MMS may require you to revise your SAP, COP, or GAP to describe how you will address the facility damage or failure as required by §285.634 (COP), §285.617 (SAP), §285.655 (GAP). You must submit a report of the repairs to MMS, as required in §285.703.

(c) The MMS may require that you analyze cable, pipeline, or facility damage or failure to determine the cause. If requested by MMS, you must submit a comprehensive written report of the failure or damage to MMS as soon as available.

§ 285.816 What must I do if environmental or other conditions adversely affect a cable, pipeline, or facility?



If environmental or other conditions adversely affect a cable, pipeline, or facility so as to endanger the safety or the environment, you must:

(a) Submit a plan of corrective action to MMS within 30 days of the discovery of the adverse effect.

(b) Take remedial action as described in your corrective action plan.

(c) Submit to the MMS a report of the remedial action taken within 30 days after completion.

§§ 285.817-285.819 [Reserved]



Inspections and Assessments



§ 285.820 Will MMS conduct inspections?



The MMS will inspect OCS facilities and any vessels engaged in activities authorized under this part. We conduct these inspections:

(a) To 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) To determine whether proper safety equipment has been installed and is operating properly according to your Safety Management System, as required in §285.810.

§ 285.821 Will MMS conduct scheduled and unscheduled inspections?



The MMS will conduct both scheduled and unscheduled inspections.

§ 285.822 What must I do when MMS conducts an inspection?



(a) When MMS conducts an inspection, you must:

(1) Provide access to all facilities on your lease (including your project easement) or grant; and

(2) Make the following available for MMS to inspect:

(i) The area covered under a lease, ROW grant, or RUE grant;

(ii) All improvements, structures, and fixtures on these areas; and

(iii) All records of design, construction, operation, maintenance, repairs, or investigations on or related to the area.

(b) You must retain these records in paragraph (a)(2)(iii) of this section until MMS releases your financial assurance under §285.534 and provide them to MMS upon request, within the time period specified by MMS.

(c) You must demonstrate to the inspector how you are in compliance with your Safety Management System.

§ 285.823 Will MMS reimburse me for my expenses related to inspections?



Upon request, MMS will reimburse you for food, quarters, and transportation that you provide for our representatives while

they inspect your lease or grant facilities and associated activities. You must send us your reimbursement request within 90 days of the inspection.

§ 285.824 How must I conduct self-inspections?



(a) You must develop a comprehensive annual self-inspection plan covering all of your facilities. You must keep this plan wherever you keep your records and make it available to MMS inspectors upon request. Your plan must specify:

(1) The type, extent, and frequency of in-place 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; and

(2) How you are monitoring the corrosion protection for both the above-water and below-water structures.

(b) You must submit a report annually to us no later than November 1 that must include:

(1) A list of facilities inspected 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.

§ 285.825 When must I assess my facilities?



(a) You must perform an assessment of the structure, when needed, based on the platform assessment initiators listed in sections 17.2.1–17.2.5 of API RP 2A–WSD, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms—Working Stress Design (incorporated by reference, as specified in §285.115).

(b) You must initiate mitigation actions for structures that do not pass the assessment process of API RP 2A–WSD.

(c) You must perform other assessments as required by MMS.

§§ 285.826-285.829 [Reserved]



Incident Reporting and Investigation



§ 285.830 What are my incident reporting requirements?



(a) You must report all incidents listed in §285.831 to MMS, according to the reporting requirements for these incidents in

§§285.832 and 285.833.

(b) These reporting requirements apply to incidents that occur on the area covered by your lease or grant under this part and that are related to activities resulting from the exercise of your rights under your lease or grant under this part.

(c) Nothing in this subpart relieves you from providing notices and reports of incidents that may be required by other regulatory agencies.

(d) You must report all spills of oil or other liquid pollutants in accordance with 30 CFR 254.46.

§ 285.831 What incidents must I report, and when must I report them?



(a) You must report the following incidents to us immediately via oral communication, and provide a written follow-up report (paper copy or electronically transmitted) within 15 business days after the incident:

(1) Fatalities;

(2) Incidents that require the evacuation of person(s) from the facility to shore or to another offshore facility;

(3) Fires and explosions;

(4) Collisions that result in property or equipment damage greater than \$25,000 (*Collision* means the act of a moving vessel (including an aircraft) striking another vessel, or striking a stationary vessel or object. *Property or equipment damage* means the cost of labor and material to restore all affected items to their condition before the damage, including, but not limited to, the OCS facility, a vessel, a helicopter, or the equipment. It does not include the cost of salvage, cleaning, dry docking, or demurrage);

(5) Incidents involving structural damage to an OCS facility that is severe enough so that activities on the facility cannot continue until repairs are made;

(6) Incidents involving crane or personnel/material handling activities, if they result in a fatality, injury, structural damage, or significant environmental damage;

(7) Incidents that damage or disable safety systems or equipment (including firefighting systems);

(8) Other incidents resulting in property or equipment damage greater than \$25,000; and

(9) Any other incidents involving significant environmental damage, or harm.

(b) You must provide a written report of the following incidents to us within 15 days after the incident:

(1) Any injuries that result in the injured person not being able to return to work or to all of their normal duties the day after the injury occurred; and

(2) All incidents that require personnel on the facility to muster for evacuation for reasons not related to weather or drills.

§ 285.832 How do I report incidents requiring immediate notification?



For an incident requiring immediate notification under §285.831(a), you must notify MMS verbally after aiding the injured and

stabilizing the situation. Your verbal communication must provide the following information:

- (a) Date and time of occurrence;
- (b) Identification and contact information for the lessee, grant holder, or operator;
- (c) Contractor, and contractor representative's name and telephone number (if a contractor is involved in the incident or injury/fatality);
- (d) Lease number, OCS area, and block;
- (e) Platform/facility name and number, or cable or pipeline segment number;
- (f) Type of incident or injury/fatality;
- (g) Activity at time of incident; and
- (h) Description of the incident, damage, or injury/fatality.

§ 285.833 What are the reporting requirements for incidents requiring written notification?



(a) For any incident covered under §285.831, you must submit a written report within 15 days after the incident to MMS. The report must contain the following information:

- (1) Date and time of occurrence;
- (2) Identification and contact information for each lessee, grant holder, or operator;
- (3) Name and telephone number of the contractor and the contractor's representative, if a contractor is involved in the incident or injury;
- (4) Lease number, OCS area, and block;
- (5) Platform/facility name and number, or cable or pipeline segment number;
- (6) Type of incident or injury;
- (7) Activity at time of incident;
- (8) Description of incident, damage, or injury (including days away from work, restricted work, or job transfer), and any corrective action taken; and
- (9) Property or equipment damage estimate (in U.S. dollars).

(b) You may submit a report or form prepared for another agency in lieu of the written report required by paragraph (a) of this section if the report or form contains all required information.

(c) The MMS may require you to submit additional information about an incident on a case-by-case basis.

Subpart I—Decommissioning



Decommissioning Obligations and Requirements



§ 285.900 Who must meet the decommissioning obligations in this subpart?



(a) Lessees are jointly and severally responsible for meeting decommissioning obligations for facilities on their leases, including all obstructions, as the obligations accrue and until each obligation is met.

(b) Grant holders are jointly and severally liable for meeting decommissioning obligations for facilities on their grant, including all obstructions, as the obligations accrue and until each obligation is met.

§ 285.901 When do I accrue decommissioning obligations?



You accrue decommissioning obligations when you are or become a lessee or grant holder, and you either install, construct, or acquire by an MMS-approved assignment a facility, cable, or pipeline, or you create an obstruction to other uses of the OCS.

§ 285.902 What are the general requirements for decommissioning for facilities authorized under my SAP, COP, or GAP?



(a) Except as otherwise authorized by MMS under §285.909, within 2 years following termination of a lease or grant, you must:

(1) Remove or decommission all facilities, projects, cables, pipelines, and obstructions;

(2) Clear the seafloor of all obstructions created by activities on your lease, including your project easement, or grant, as required by the MMS.

(b) Before decommissioning the facilities under your SAP, COP, or GAP, you must submit a decommissioning application and receive approval from the MMS.

(c) The approval of the decommissioning concept in the SAP, COP, or GAP is not an approval of a decommissioning application. However, you may submit your complete decommissioning application simultaneously with the SAP, COP, or GAP so that it may undergo appropriate technical and regulatory reviews at that time.

(d) Following approval of your decommissioning application, you must submit a decommissioning notice under §285.908 to MMS at least 60 days before commencing decommissioning activities.

(e) If you, your subcontractors, or any agent acting on your behalf discover any archaeological resource while conducting decommissioning activities, you must immediately halt bottom-disturbing activities within 1,000 feet of the discovery and report the discovery to us within 72 hours. We will inform you how to conduct investigations to determine if the resource is significant and how to protect it. You, your subcontractors, or any agent acting on your behalf must keep the location of the discovery confidential and must not take any action that may adversely affect the archaeological resource until we have made an evaluation and told you how to proceed.

(f) Provide MMS with documentation of any coordination efforts you have made with the affected States, local, and tribal

governments.

§ 285.903 What are the requirements for decommissioning FERC-licensed hydrokinetic facilities?



You must comply with the decommissioning requirements in your MMS-issued lease. If you fail to comply with the decommissioning requirements of your lease then:

- (a) The MMS may call for the forfeiture of your bond or other financial assurance;
- (b) You remain liable for removal or disposal costs and responsible for accidents or damages that might result from such failure; and
- (c) The MMS may take enforcement action under §285.400 of this part.

§ 285.904 Can I request a departure from the decommissioning requirements?



You may request a departure from the decommissioning requirements under §285.103.

Decommissioning Applications



§ 285.905 When must I submit my decommissioning application?



You must submit your decommissioning application upon the earliest of the following dates:

- (a) 2 years before the expiration of your lease.
- (b) 90 days after completion of your commercial activities on a commercial lease.
- (c) 90 days after completion of your approved activities under a limited lease on a ROW grant or RUE grant.
- (d) 90 days after cancellation, relinquishment, or other termination of your lease or grant.

§ 285.906 What must my decommissioning application include?



You must provide one paper copy and one electronic copy of the application. Include the following information in the application, as applicable.

- (a) Identification of the applicant including:

(1) Lease operator, ROW grant holder, or RUE grant holder;

(2) Address;

(3) Contact person and telephone number; and

(4) Shore base.

(b) Identification and description of the facilities, cables, or pipelines you plan to remove or propose to leave in place, as provided in §285.909.

(c) A proposed decommissioning schedule for your lease, ROW grant, or RUE grant, including the expiration or relinquishment date and proposed month and year of removal.

(d) A description of the removal methods and procedures, including the types of equipment, vessels, and moorings (*i.e.*, anchors, chains, lines, etc.) you will use.

(e) A description of your site clearance activities.

(f) Your plans for transportation and disposal (including as an artificial reef) or salvage of the removed facilities, cables, or pipelines and any required approvals.

(g) A description of those resources, conditions, and activities that could be affected by or could affect your proposed decommissioning activities. The description must be as detailed as necessary to assist MMS in complying with the NEPA and other relevant Federal laws.

(h) The results of any recent biological surveys conducted in the vicinity of the structure and recent observations of turtles or marine mammals at the structure site.

(i) Mitigation measures you will use to protect archaeological and sensitive biological features during removal activities.

(j) A description of measures you will take to prevent unauthorized discharge of pollutants, including marine trash and debris, into the offshore waters.

(k) A statement of whether or not you will use divers to survey the area after removal to determine any effects on marine life.

§ 285.907 How will MMS process my decommissioning application?



(a) Based upon your inclusion of all the information required by §285.906, MMS will compare your decommissioning application with the decommissioning general concept in your approved SAP, COP, or GAP to determine what technical and environmental reviews are needed.

(b) You will likely have to revise your SAP, COP, or GAP, and MMS will begin the appropriate NEPA analysis and other regulatory reviews as required, if MMS determines that your decommissioning application would:

(1) Result in a significant change in the impacts previously identified and evaluated in your SAP, COP, or GAP;

(2) Require any additional Federal permits; or

(3) Propose activities not previously identified and evaluated in your SAP, COP, or GAP.

(c) During the review process, we may request additional information if we determine that the information provided is not sufficient to complete the review and approval process.

(d) Upon completion of the technical and environmental reviews, we may approve, approve with conditions, or disapprove your decommissioning application.

(e) If MMS disapproves your decommissioning application, you must resubmit your application to address the concerns identified by MMS.

§ 285.908 What must I include in my decommissioning notice?



(a) The decommissioning notice is distinct from your decommissioning application and may only be submitted following approval of your decommissioning application, as described in §§285.905 through 285.907. You must submit a decommissioning notice at least 60 days before you plan to begin decommissioning activities.

(b) Your decommissioning notice must include:

(1) A description of any changes to the approved removal methods and procedures in your approved decommissioning application, including changes to the types of vessels and equipment you will use; and

(2) An updated decommissioning schedule.

(c) We will review your decommissioning notice and may require you to resubmit a decommissioning application if MMS determines that your decommissioning activities would:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional Federal permits; or

(3) Propose activities not previously identified and evaluated.

Facility Removal



§ 285.909 When may MMS authorize facilities to remain in place following termination of a lease or grant?



(a) In your decommissioning application, you may request that certain facilities authorized in your lease or grant remain in place for other activities authorized in this part, elsewhere in this subchapter, or by other applicable Federal laws.

(b) The MMS may approve such requests on a case-by-case basis considering the following:

(1) Potential impacts to the marine environment;

(2) Competing uses of the OCS;

(3) Impacts on marine safety and national defense;

(4) Maintenance of adequate financial assurance; and

(5) Other factors determined by the Director.

(c) Except as provided in paragraph (d) of this section, if MMS authorizes facilities to remain in place, the former lessee or grantee under this part remains jointly and severally liable for decommissioning the facility unless satisfactory evidence is provided to MMS showing that another party has assumed that responsibility and has secured adequate financial assurances.

(d) In your decommissioning application, you may request that certain facilities authorized in your lease or grant be converted to an artificial reef or otherwise placed in place. The MMS will evaluate all such requests, as provided in §250.1730 of this subchapter.

§ 285.910 What must I do when I remove my facility?



(a) You must remove all facilities to a depth of 15 feet below the mudline, unless otherwise authorized by MMS.

(b) Within 60 days after you remove a facility, you must verify to MMS that you have cleared the site.

§ 285.911 [Reserved]



Decommissioning Report



§ 285.912 After I remove a facility, cable, or pipeline, what information must I submit?



Within 60 days after you remove a facility, cable, or pipeline, you must submit a written report to MMS that includes the following:

(a) A summary of the removal activities, including the date they were completed;

(b) A description of any mitigation measures you took; and

(c) If you used explosives, a statement signed by your authorized representative that certifies that the types and amount of explosives you used in removing the facility were consistent with those in the approved decommissioning application.

Compliance With an Approved Decommissioning Application



§ 285.913 What happens if I fail to comply with my approved decommissioning application?



If you fail to comply with your approved decommissioning plan or application:

- (a) The MMS may call for the forfeiture of your bond or other financial assurance;
- (b) You remain liable for removal or disposal costs and responsible for accidents or damages that might result from such failure; and
- (c) The MMS may take enforcement action under §285.400.

Subpart J—Rights of Use and Easement for Energy- and Marine-Related Activities Using Existing OCS Facilities



Regulated Activities



§ 285.1000 What activities does this subpart regulate?



- (a) This subpart provides the general provisions for authorizing and regulating activities that use (or propose to use) an existing OCS facility for energy- or marine-related purposes, that are not otherwise authorized under any other part of this subchapter or any other applicable Federal statute. Activities authorized under any other part of this subchapter or under any other Federal law that use (or propose to use) an existing OCS facility are not subject to this subpart.
- (b) The MMS will issue an Alternate Use RUE for activities authorized under this subpart.
- (c) At the discretion of the Director, an Alternate Use RUE may:
 - (1) Permit alternate use activities to occur at an existing facility that is currently in use under an approved OCS lease; or
 - (2) Limit alternate use activities at the existing facility until after previously authorized activities at the facility have ceased and the OCS lease terminates.

§§ 285.1001--285.1003 [Reserved]



Requesting an Alternate Use RUE



§ 285.1004 What must I do before I request an Alternate Use RUE?



If you are not the owner of the existing facility on the OCS and the lessee of the area in which the facility is located, you must

contact the lessee and owner of the facility and reach a preliminary agreement as to the proposed activity for the use of the existing facility.

§ 285.1005 How do I request an Alternate Use RUE?



To request an Alternate Use RUE, you must submit to MMS all of the following:

- (a) The name, address, e-mail address, and phone number of an authorized representative.
- (b) A summary of the proposed activities for the use of an existing OCS facility, including:
 - (1) The type of activities that would involve the use of the existing OCS facility;
 - (2) A description of the existing OCS facility, including a map providing its location on the lease block;
 - (3) The names of the owner of the existing OCS facility, the operator, the lessee, and any owner of operating rights on the lease at which the facility is located;
 - (4) A description of additional structures or equipment that will be required to be located on or in the vicinity of the existing OCS facility in connection with the proposed activities;
 - (5) A statement indicating whether any of the proposed activities are intended to occur before existing activities on the OCS facility have ceased; and
 - (6) A statement describing how existing activities at the OCS facility will be affected if proposed activities are to occur at the same time as existing activities at the OCS facility.
- (c) A statement affirming that the proposed activities sought to be approved under this subpart are not otherwise authorized by other provisions in this subchapter or any other Federal law.
- (d) Evidence that you meet the requirements of §285.106, as required by §285.107.
- (e) The signatures of the applicant, the owner of the existing OCS facility, and the lessee of the area in which the existing facility is located.

§ 285.1006 How will MMS decide whether to issue an Alternate Use RUE?



(a) We will consider requests for an Alternate Use RUE on a case-by-case basis. In considering such requests, we will consult with relevant Federal agencies and evaluate whether the proposed activities involving the use of an existing OCS facility can be conducted in a manner that:

- (1) Ensures safety and minimizes adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components, to the extent practicable;
- (2) Does not inhibit or restrain orderly development of OCS mineral or energy resources; and
- (3) Avoids serious harm or damage to, or waste of, any natural resource (including OCS mineral deposits and oil, gas, and sulphur resources in areas leased or not leased), any life (including fish and other aquatic life), or property (including sites, structures, or objects of historical or archaeological significance);

(4) Is otherwise consistent with subsection 8(p) of the OCS Lands Act; and

(5) MMS can effectively regulate.

(b) Based on the evaluation that we perform under paragraph (a) of this section, the MMS may authorize or reject, or authorize with modifications or stipulations, the proposed activity.

§ 285.1007 What process will MMS use for competitively offering an Alternate Use RUE?



(a) An Alternate Use RUE must be issued on a competitive basis unless MMS determines, after public notice of the proposed Alternate Use RUE, that there is no competitive interest.

(b) We will issue a public notice in the Federal Register to determine if there is competitive interest in using the proposed facility for alternate use activities. The MMS will specify a time period for members of the public to express competitive interest.

(c) If we receive indications of competitive interest within the published timeframe, we will proceed with a competitive offering. As part of such competitive offering, each competing applicant must submit a description of the types of activities proposed for the existing facility, as well as satisfactory evidence that the competing applicant qualifies to hold a lease or grant on the OCS, as required in §§285.106 and 285.107, by a date we specify. We may request additional information from competing applicants, as necessary, to adequately evaluate the competing proposals.

(d) We will evaluate all competing proposals to determine whether:

(1) The proposed activities are compatible with existing activities at the facility; and

(2) We have the expertise and resources available to regulate the activities effectively.

(e) We will evaluate all proposals under the requirements of NEPA, CZMA, and other applicable laws.

(f) Following our evaluation, we will select one or more acceptable proposals for activities involving the alternate use of an existing OCS facility, notify the competing applicants, and submit each acceptable proposal to the lessee and owner of the existing OCS facility. If the lessee and owner of the facility agree to accept a proposal, we will proceed to issue an Alternate Use RUE. If the lessee and owner of the facility are unwilling to accept any of the proposals that we deem acceptable, we will not issue an Alternate Use RUE.

§§ 285.1008--285.1009 [Reserved]



Alternate Use RUE Administration



§ 285.1010 How long may I conduct activities under an Alternate Use RUE?



(a) We will establish on a case-by-case basis, and set forth in the Alternate Use RUE, the length of time for which you are

authorized to conduct activities approved in your Alternate Use RUE instrument.

(b) In establishing this term, MMS will consider the size and scale of the proposed alternate use activities, the type of alternate use activities, and any other relevant considerations.

(c) The MMS may authorize renewal of Alternate Use RUEs at its discretion.

§ 285.1011 What payments are required for an Alternate Use RUE?



We will establish rental or other payments for an Alternate Use RUE on a case-by-case basis, as set forth in the Alternate Use RUE grant, depending on our assessment of the following factors:

(a) The effect on the original OCS Lands Act approved activity;

(b) The size and scale of the proposed alternate use activities;

(c) The income, if any, expected to be generated from the proposed alternate use activities; and

(d) The type of alternate use activities.

§ 285.1012 What financial assurance is required for an Alternate Use RUE?



(a) The holder of an Alternate Use RUE will be required to secure financial assurances in an amount determined by MMS that is sufficient to cover all obligations under the Alternate Use RUE, including decommissioning obligations, and must retain such financial assurance amounts until all obligations have been fulfilled, as determined by MMS.

(b) We may revise financial assurance amounts, as necessary, to ensure that there is sufficient financial assurance to secure all obligations under the Alternate Use RUE.

(c) We may reduce the amount of the financial assurance that you must retain if it is not necessary to cover existing obligations under the Alternate Use RUE.

§ 285.1013 Is an Alternate Use RUE assignable?



(a) The MMS may authorize assignment of an Alternate Use RUE.

(b) To request assignment of an Alternate Use RUE, you must submit a written request for assignment that includes the following information:

(1) The MMS-assigned Alternate Use RUE number;

(2) The names of both the assignor and the assignee, if applicable;

(3) The names and telephone numbers of the contacts for both the assignor and the assignee;

(4) The names, titles, and signatures of the authorizing officials for both the assignor and the assignee;

(5) A statement affirming that the owner of the existing OCS facility and lessee of the lease in which the facility is located approve of the proposed assignment and assignee;

(6) A statement that the assignee agrees to comply with and to be bound by the terms and conditions of the Alternate Use RUE;

(7) Evidence required by §285.107 that the assignee satisfies the requirements of §285.106; and

(8) A statement on how the assignee will comply with the financial assurance requirements set forth in the Alternate Use RUE.

(c) The assignment takes effect on the date we approve your request.

(d) The assignor is liable for all obligations that accrue under an Alternate Use RUE before the date we approve your assignment request. An assignment approval by MMS does not relieve the assignor of liability for accrued obligations that the assignee, or a subsequent assignee, fail to perform.

(e) The assignee and each subsequent assignee are liable for all obligations that accrue under an Alternate Use RUE after the date we approve the assignment request.

§ 285.1014 When will MMS suspend an Alternate Use RUE?



(a) The MMS may suspend an Alternate Use RUE if:

(1) Necessary to comply with judicial decrees;

(2) Continued activities pursuant to the Alternate Use RUE pose an imminent threat of serious or irreparable 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;

(3) The suspension is necessary for reasons of national security or defense; or

(4) We have suspended or temporarily prohibited operation of the existing OCS facility that is subject to the Alternate Use RUE, and have determined that continued activities under the Alternate Use RUE are unsafe or cause undue interference with the operation of the original OCS Lands Act approved activity.

(b) A suspension will extend the term of your Alternate Use RUE grant for the period of the suspension.

§ 285.1015 How do I relinquish an Alternate Use RUE?



(a) You may voluntarily surrender an Alternate Use RUE by submitting a written request to us that includes the following:

(1) The name, address, e-mail address, and phone number of an authorized representative;

(2) The reason you are requesting relinquishment of the Alternate Use RUE;

(3) The MMS-assigned Alternate Use RUE number;

(4) The name of the associated OCS facility, its owner, and the lessee for the lease in which the OCS facility is located;

(5) The name, title, and signature of your authorizing official (which must match exactly the name, title, and signature in the MMS qualification records); and

(6) A statement that you will adhere to the decommissioning requirements in the Alternate Use RUE.

(b) We will not approve your relinquishment request until you have paid all outstanding rentals (or other payments) and fines.

(c) The relinquishment takes effect on the date we approve your request.

§ 285.1016 When will an Alternate Use RUE be cancelled?



The Secretary may cancel an Alternate Use RUE if it is determined, after notice and opportunity to be heard:

(a) You no longer qualify to hold an Alternate Use RUE;

(b) You failed to provide any additional financial assurance required by MMS, replace or provide additional coverage for a de-valued bond, or replace a lapsed or forfeited bond within the prescribed time period;

(c) Continued activity under the Alternate Use RUE is likely to cause serious 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;

(d) Continued activity under the Alternate Use RUE is determined to be adversely impacting the original OCS Lands Act approved activities on the existing OCS facility;

(e) You failed to comply with any of the terms and conditions of your approved Alternate Use RUE or your approved plan; or

(f) You otherwise failed to comply with applicable laws or regulations.

§ 285.1017 [Reserved]



Decommissioning an Alternate Use RUE



§ 285.1018 Who is responsible for decommissioning an OCS facility subject to an Alternate Use RUE?



(a) The holder of an Alternate Use RUE is responsible for all decommissioning obligations that accrue following the issuance of the Alternate Use RUE and which pertain to the Alternate Use RUE.

(b) The lessee under the lease originally issued under part 250 of this chapter will remain responsible for decommissioning obligations that accrued before issuance of the Alternate Use RUE, as well as for decommissioning obligations that accrue following issuance of the Alternate Use RUE to the extent associated with continued activities authorized under other parts of this subchapter.

§ 285.1019 What are the decommissioning requirements for an Alternate Use RUE?



(a) Decommissioning requirements will be determined by MMS on a case-by-case basis, and will be included in the terms of each Alternate Use RUE.

(b) Decommissioning activities must be completed within 1 year of termination of the Alternate Use RUE.

(c) If you fail to satisfy all decommissioning requirements within the prescribed time period, we will call for the forfeiture of your bond or other financial guarantee, and you will remain liable for all accidents or damages that might result from such failure.