

**DEPARTMENT OF THE INTERIOR****Bureau of Ocean Energy Management****30 CFR Part 585****Bureau of Safety and Environmental Enforcement****30 CFR Part 285**

[Docket No. BOEM-2023-0005]

RIN 1010-AE04

**Renewable Energy Modernization Rule****AGENCY:** Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement, Interior.**ACTION:** Final rule.

**SUMMARY:** The Department of the Interior (the Department or DOI), acting through the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) (“the agencies”), is finalizing regulatory amendments to its renewable energy regulations under the authority of the Outer Continental Shelf Lands Act (OCSLA). The notice of proposed rulemaking (NPRM) for this final rule was published in the **Federal Register** on January 30, 2023. While the NPRM contemplated amendments only to the Department’s existing renewable energy regulations that are administered by BOEM, this final rule also finalizes regulatory amendments previously proposed by BOEM that are now administered by BSEE and includes amendments to regulations resulting from the “Reorganization of Title 30—Renewable Energy and Alternative Uses of Existing Facilities on the Outer Continental Shelf” direct final rule, issued by the Department on January 31, 2023. This final rule eliminates unnecessary requirements for the deployment of meteorological (met) buoys; increases survey flexibility; improves the project design and installation verification process; establishes a public Renewable Energy Leasing Schedule; reforms BOEM’s renewable energy auction regulations; tailors financial assurance requirements and instruments; clarifies safety management system regulations; revises other provisions; and makes technical corrections. This final rule advances the Department’s energy policies in a safe and environmentally sound manner that will provide a fair return to the U.S. taxpayer.

**DATES:** This final rule is effective on July 15, 2024.

**ADDRESSES:** The Bureau of Ocean Energy Management (BOEM) has

established a docket for this action under Docket ID No. BOEM-2023-0005. All documents in the docket are listed on the <https://www.regulations.gov> website and can be found by entering the Docket ID No. in the “Enter Keyword or ID” search box and clicking “search”.

**FOR FURTHER INFORMATION CONTACT:** For questions about this final action regarding 30 CFR parts 585 and 586, contact Nabanita Modak Fischer, Office of Regulations, BOEM, 45600 Woodland Road, Sterling, Virginia 20166, at email address *Nabanita.ModakFischer@boem.gov* or at telephone number (703) 787-1415; and Karen Thundiyil, Chief, Office of Regulations, BOEM, 1849 C Street NW, Washington, DC 20240, at telephone number (202) 742-0970 or email address *Karen.Thundiyil@boem.gov*. For questions about this final action regarding 30 CFR part 285, contact Kirk Malstrom, Chief, Regulations and Standards Branch, BSEE, at telephone number (202) 258-1518 or email address *regs@bsee.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. These services are available 24 hours a day, 7 days a week, to leave a message or question with the point-of-contact. You will receive a reply during normal business hours. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

*Preamble acronyms and abbreviations.* Multiple acronyms and abbreviations are included in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the agencies define the following terms and acronyms here:

ANCSA	Alaska Native Claims Settlement Act of 1971
ANSI	American National Standards Institute
API	American Petroleum Institute
ASLM	Assistant Secretary for Land and Minerals Management
ASSP	American Society of Safety Professionals
BOEM	Bureau of Ocean Energy Management
BSEE	Bureau of Safety and Environmental Enforcement
CAA	Clean Air Act of 1970
CAB	Conformity Assessment Body
CBA	Community Benefit Agreement
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
COP	Construction and Operations Plan
CRA	Congressional Review Act

CSSCR Critical Safety Systems

Commissioning Records

CSSE Critical Safety Systems and Equipment

CVA Certified Verification Agent

CZM Coastal Zone Management

CZMA Coastal Zone Management Act of 1972

Department U.S. Department of the Interior

DNCI Determination of No Competitive Interest

DNV Det Norske Veritas

DM Departmental Manual

DOE U.S. Department of Energy

DOI U.S. Department of the Interior

EA Environmental Assessment

EBM Ecosystem-based Management

EIS Environmental Impact Statement

E.O. Executive Order

EPAct Energy Policy Act of 2005

ESA Endangered Species Act of 1973

ESP Environmental Studies Program

FCC Federal Consistency Certification

FDR Facility Design Report

FERC Federal Energy Regulatory Commission

FIR Fabrication and Installation Report

FOIA Freedom of Information Act

FOWT Floating Offshore Wind Turbines

FR Federal Register

FSN Final Sale Notice

G&G Geological and Geophysical

GAP General Activities Plan

GHG Greenhouse Gas

IBLA Interior Board of Land Appeals (U.S. Department of the Interior)

IC Information Collection

IEC Inclusive Engineering Consortium

IECRE IEC System for Certification to Standards Relating to Equipment for Use in Renewable Energy

IRA Inflation Reduction Act

ISO Independent System Operator

LPA Labor Peace Agreement

MACO Mid-Atlantic Council on the Ocean

MMS Minerals Management Service

MOU Memorandum of Understanding

NAGPRA Native American Graves Protection and Repatriation Act

NCCOS National Centers for Coastal Ocean Science

NEPA National Environmental Policy Act of 1969

NHPA National Historic Preservation Act of 1966

NMFS National Marine Fisheries Service

NMSA National Marine Sanctuaries Act of 1972

NOAA National Oceanic and Atmospheric Administration

NONC Notice of Noncompliance

NROC Northeast Regional Ocean Council

NPRM Notice of proposed rulemaking

NRSRO Nationally Recognized Statistical Rating Organization

NTL Notice to Lessee

NWP Nationwide Permit

OCS Outer Continental Shelf

OCSLA Outer Continental Shelf Lands Act

OEM Original Equipment Manufacturer

OIRA Office of Information and Regulatory Affairs

OMB Office of Management and Budget

ONRR Office of Natural Resources Revenue

OSRP Oil Spill Response Plan

OSW Offshore Wind

PATON	Private Aids to Navigation
PDE	Project Design Envelope
PEIS	Programmatic Environmental Impact Statement
PLA	Project Labor Agreement
PPA	Power Purchase Agreement
PRA	Paperwork Reduction Act of 1995
PSN	Proposed Sale Notice
Pub. L.	Public Law
PVR	Project Verification Report
RFA	Regulatory Flexibility Act of 1995
RFI	Request for Information
RHA	Rivers and Harbors Act of 1899
RIA	Regulatory Impact Analysis
RNA	Rotor-nacelle Assembly
ROP	Regional Ocean Partnerships
ROW	Right-of-Way
RTO	Regional Transmission Organization
RUE	Right-of-Use-and-Easement
S&P	Standard and Poor's
SAP	Site Assessment Plan
SBREFA	Small Business Regulatory Enforcement Fairness Act of 1996
SIEBA	Standardizing Integrated Ecosystem-Based Assessments
SME	Subject Matter Expert
SMS	Safety Management System
UMRA	Unfunded Mandates Reform Act of 1995
USACE	U.S. Army Corps of Engineers
U.S.C	United States Code
USCG	U.S. Coast Guard
USEPA	U.S. Environmental Protection Agency
WCOA	West Coast Ocean Alliance
WTG	Wind Turbine Generator

*Background information.* On January 30, 2023, the Department issued an NPRM to modernize its regulations to facilitate the development of offshore wind (OSW) energy resources (88 FR 5968). On January 31, 2023, the Department issued the “Reorganization of Title 30—Renewable Energy and Alternative Uses of Existing Facilities on the Outer Continental Shelf” direct final rule (88 FR 6376) following the delegation of authority to BSEE to administer some of the regulations addressed in the NPRM.<sup>1</sup> The agencies have summarized the significant comments received on the proposed rule and have provided responses to them in this preamble.

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## I. General Information

### A. Executive Summary

#### 1. Purpose of This Regulatory Action

Congress authorized the Secretary of the Interior to grant Outer Continental Shelf (OCS) leases for renewable energy activities when it enacted the Energy Policy Act of 2005. The Secretary delegated authority to BOEM and BSEE to carry out development and oversight of the Nation’s offshore energy resources.

This action finalizes certain provisions proposed in the Renewable Energy Modernization Rule (88 FR 5968, January 30, 2023). A summary of the key provisions is included below. This final rule facilitates the development of OCS renewable energy and supports the Department’s commitment to ensuring safe and responsible domestic energy production. The final rule modernizes the offshore renewable energy regulations, streamlines processes, clarifies regulatory provisions, enhances compliance provisions, and corrects technical errors and inconsistencies. Through these changes, the Department aims to reduce administrative burdens and reduce cost and uncertainty while creating greater regulatory flexibility in a rapidly evolving industry. This final rule updates OCS renewable energy regulations to reflect lessons learned since the regulations were originally promulgated in 2009. The Department projects this action will save the renewable energy industry \$1 billion over 20 years.

#### 2. Summary of the Key Provisions

The final rule contains eight key provisions:

(1) *Eliminating unnecessary requirements for the deployment of met buoys (30 CFR part 585, subpart G).*

This action finalizes the elimination of the existing regulations that required on-lease site assessment plans (SAPs) and BOEM permitting for met buoys. However, deployment of met buoys that qualify as obstructions deployed in U.S. navigable waters under section 10 of the Rivers and Harbors Act (RHA) would continue to require US Army Corps of Engineers (USACE) permits. Met buoys are also typically required to be marked and lighted in accordance with a U.S. Coast Guard private aids to navigation (PATON) approval. Met buoys will continue to require U.S. Coast Guard PATON approval under 33 CFR part 66 and 14 U.S.C. 545. This final rule clarifies that the elimination of the Department's regulations requiring SAPs and BOEM permitting for met buoys does not reduce or eliminate the need for BOEM's environmental review of site characterization (geotechnical and geophysical surveys, biological surveys) and site assessment activities (deployment of met towers and buoys). This final rule also notes that the USACE may incorporate its own decommissioning requirements in permits applicable to met buoys but BSEE's decommissioning requirements in part 285 will apply to met buoys if the USACE has not required a decommissioning obligation. BSEE expects to utilize its regulatory authority for decommissioning of buoys in limited circumstances.

*(2) Increasing survey flexibility (30 CFR part 585, subpart G).*

This action finalizes the provision allowing deferral of some geotechnical surveys until the submission of the Facility Design Report (FDR). This change is being finalized to allow more time to complete the required geotechnical surveys and provide greater flexibility in designing projects. At the same time, this action clarifies that the submission of geophysical data, including subsea archaeological surveys, cannot be deferred to the FDR and will continue to be required in a construction and operations plan (COP).

*(3) Improving the project design and installation verification process (30 CFR part 285, subpart G).*

This action finalizes the provisions that expanded the role of the certified verification agent (CVA) to include verification of the design and commissioning of the Critical Safety Systems and Equipment (CSSE) to ensure that any activities authorized by BSEE are carried out safely. The reliance on CVAs will provide an independent source of review for key stages of project development and help to establish public confidence in the renewable energy industry. Also, to reduce

confusion and ambiguity, the final rule clarifies BSEE's expectations for CVA "verification" and "certification" that are practical and consistent with the policy goal of promoting safety.

*(4) Establishing a Public Renewable Energy Leasing Schedule (30 CFR part 585, subpart B).*

This rule finalizes the renewable energy leasing schedule amendments as proposed. The schedule for leasing will provide increased certainty and enhanced transparency and is intended to facilitate planning by industry, the States, and other stakeholders. The schedule of anticipated leasing would be updated at least once every 2 years. This final rule provides clarification that the offshore wind leasing schedule should not be confused with BOEM's National Outer Continental Shelf Oil and Gas Leasing Program schedule and explains that BOEM is committed to following the Department's policy on consultation with Tribes where there are Department actions that may have a substantial direct effect on a Tribe(s).

*(5) Reforming BOEM's renewable energy auction regulations (30 CFR part 585, subpart C).*

This rule finalizes the pre- and post-auction procedure amendments as proposed, with added clarifications. These amendments address the use of bidding credits and more clearly outline auction processes and requirements. This final rule describes how BOEM operationalizes its commitment to coordinate with Tribes and conduct consultation with the Tribal leadership for Tribes that may be affected by any leases, easements, or right-of-way (ROWS); and notes that the regulations require Tribal consultation prior to the issuance of a lease and during area identification before competitive leasing.

Additionally, in this final rule, BOEM finalizes the auction process as proposed, including providing clarification for how BOEM will consider the use of bidding credits on a case-by-case basis specific to the lease sale conditions.

*(6) Financial assurance requirements and instruments (30 CFR part 585, subpart F).*

This action finalizes the use of credit ratings, requiring financial assurance at a more relevant time, allowing for staged funding of decommissioning accounts, and adding letters of credit as an acceptable financial assurance instrument. In addition, this final rule allows for a lessee to demonstrate its capacity to meet financial assurance requirements for lease or grant activities based on electricity sales contracts and net income projections.

*(7) Clarifying safety management system regulations (30 CFR part 285, subpart H).*

This final rule clarifies the information requirements for safety management systems (SMS) and expectations regarding SMS standards. It adds a provision to incentivize lessees and grantees to obtain a safety management certification from recognized accreditation organizations to reduce the frequency and intensity of regulatory oversight activities. The final rule also clarifies that lessees and grantees are required to have and use an SMS for all OCS activities undertaken pursuant to a lease, from site assessment through decommissioning. The final rule also establishes a performance-based approach to promote flexibility in determining the best way to ensure the safety of personnel on and near OCS renewable energy facilities during activities covered by the SMS.

*(8) Other provisions.*

This action finalizes all technical corrections as proposed. The most significant of these provisions will restructure commercial lease terms into four periods tied to activities required to develop the lease; explicitly allow regulatory departures before and after a lease or grant is issued or made; authorize civil penalties without either notice or a time period for corrective action when violations constitute a threat of serious, irreparable, or immediate harm or damage; add specific procedures regarding lease segregation and consolidation; and standardize the annual rental rate per acre across most grants.

### 3. Costs and Benefits

The Regulatory Impact Analysis (RIA) estimates the costs and benefits of the rule. The RIA can be found in the rulemaking docket (Docket No. BOEM-2023-0005). BOEM, on behalf of the Department, conducted a Regulatory Impact Analysis to consider the costs and benefits of the rule. Most of the revisions in the rule have negligible or no cost impact, while others may have second-order benefits that are difficult to quantify. BOEM identified four elements of the rule that have quantifiable effects. Three of those changes (met buoy requirements, financial assurance, and geotechnical survey revisions) provide compliance cost savings and one, SMS reporting, has minor compliance cost burdens. In net, BOEM estimates these changes could save the OCS renewable energy industry approximately \$127 million in annualized cost savings over the 20-year period of analysis (3 percent discounting). In addition to these

quantitative costs and benefits, the rule also provides qualitative benefits. This rule provides additional clarity and certainty, while streamlining the regulatory framework. The changes from this rule will facilitate more expedient and responsible development of offshore renewable energy projects.

#### B. Does this action apply to me?

Entities potentially affected by this action include, but are not limited to, all current and future OCS renewable energy lessees, grantees, and operators.

#### C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final rule will also be available on the internet. Following signature by the Principal Deputy Assistant Secretary of Land and Minerals Management (ASLM), BOEM will post a copy of this final rule at: <https://www.boem.gov/about-boem/regulations-guidance/published-rules>. Following publication in the **Federal Register** (FR), the published version of the final rule will be available on BOEM's and BSEE's respective websites.

## II. Background

### A. BOEM and BSEE Statutory and Regulatory Authority and Responsibilities

Congress authorized the Secretary to grant OCS leases for renewable energy activities when it enacted the Energy Policy Act of 2005, which amended OCSLA by adding a new subsection 8(p).<sup>2</sup> Subsection 8(p) of OCSLA authorizes the Secretary to award OCS leases, ROWs, and right-of-use and easement grants (RUEs) for activities not otherwise authorized by other applicable law, if those activities “produce or support production, transportation, storage, or transmission of energy sources other than oil or gas.” Subsection 8(p) requires the Secretary to award such leases, ROWs, and RUEs on a competitive basis unless the Secretary determines, following public notice, that competitive interest does not exist. Subsection 8(p) also authorizes the Secretary to issue regulations to carry out the subsection’s grant of authority. The Secretary delegated that authority to BOEM’s and BSEE’s predecessor, the Minerals Management Service (MMS). Subsection 8(p)(8) of OCSLA (43 U.S.C. 1337(p)(8)) authorizes the Secretary to “issue any necessary regulations to carry out this subsection.” Subsection 8(p)(10) (43 U.S.C. 1337(p)(10)) of

OCSLA states “this subsection does not apply to any area on the Outer Continental Shelf within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, or National Marine Sanctuary System, or any National Monument.” NOAA may consider authorizing renewable energy activities, and/or activities in support of the development of renewable energy, under the authority of the National Marine Sanctuaries Act, through one or more of the following mechanisms—General Permits, Authorizations, Certifications, and Special Use Permits.

### B. History of Renewable Energy Modernization Rule

On March 20, 2006, the Secretary delegated the responsibility for regulating OCS renewable energy activities to MMS,<sup>3</sup> the predecessor agency to BOEM and BSEE. MMS promulgated the first OCS renewable energy regulations on April 29, 2009 (74 FR 19638). Between May 19, 2010, and August 29, 2011, Secretary Salazar issued Secretary’s Order 3299 and two amendments that ultimately divided MMS into three separate agencies: BOEM, BSEE, and the Office of Natural Resources Revenue (ONRR). The Secretary emphasized the importance of separate and independent safety and environmental oversight when testifying before Congress on May 26, 2010:

The *Deepwater Horizon* tragedy and the massive spill have made the importance and urgency of a reorganization of this nature ever more clear, particularly the creation of a separate and independent safety and environmental enforcement entity. We will responsibly and thoughtfully move to establish independence and separation for this critical mission so that the American people know they have a strong and independent organization ensuring that energy companies comply with their safety and environmental protection obligations.<sup>4</sup>

Pursuant to section 3 of Secretary’s Order 3299, Amendment No. 2, BOEM “exercise[s] the conventional (e.g., oil and gas) and renewable energy-related management functions of the [MMS] not otherwise transferred pursuant to this Order including, but not limited to, activities involving resource evaluation,

planning, and leasing.”<sup>5</sup> Under section 4 of Secretary’s Order 3299, Amendment No. 2, BSEE exercises “safety and environmental enforcement functions,” including “the authority to inspect, investigate, summon witnesses and produce evidence, levy penalties, cancel or suspend activities, and oversee safety, response, and removal preparedness.”<sup>6</sup>

Section 4 of Secretary’s Order 3299, Amendment 2, assigned the renewable energy program to BOEM “until such time that the [ASLM] determines that an increase in activity justifies transferring the inspection and enforcement functions to [BSEE].” On October 18, 2011, the Department’s regulations that were administered by BOEM were codified at 30 CFR chapter V, and its renewable energy regulations were located in 30 CFR part 585.<sup>7</sup> Subsequently, in September 2013, the DOI Office of Inspector General (OIG) issued a report supporting the policy of independent regulatory oversight and enforcement in the renewable energy program and recommending implementation of that policy through a transfer of those responsibilities from BOEM to BSEE.<sup>8</sup> The OIG noted that “allowing the bureau responsible for planning and leasing renewable energy projects [*i.e.*, BOEM] to also formulate the policies for inspection and enforcement is contrary to the independent oversight and separation of duties envisioned in [Secretary’s Order 3299] as originally issued.”<sup>9</sup> In the years since the 2009 rulemaking and the DOI OIG report in 2013, the renewable energy industry and BOEM’s and BSEE’s renewable energy programs have grown substantially. Consequently, the Department promulgated a rule of agency organization and procedure entitled “Reorganization of Title 30—Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf” (“Reorganization Rule”) that transferred existing safety and environmental oversight and enforcement regulations governing OCS renewable energy activities from 30 CFR

<sup>2</sup> Sec’y of the Interior Order 3299, as amended and issued Aug. 29, 2011, available at [https://www.doi.gov/sites/doi.gov/files/elips/documents/3299a2-establishment\\_of\\_the\\_bureau\\_of\\_ocean\\_energy\\_management\\_the\\_bureau\\_of\\_safety\\_and\\_environmental\\_enforcement\\_and\\_the\\_office\\_of\\_natural\\_resources\\_revenue.pdf](https://www.doi.gov/sites/doi.gov/files/elips/documents/3299a2-establishment_of_the_bureau_of_ocean_energy_management_the_bureau_of_safety_and_environmental_enforcement_and_the_office_of_natural_resources_revenue.pdf).

<sup>3</sup> *Id.*

<sup>4</sup> Reorganization of Title 30: Bureaus of Safety and Environmental Enforcement and Ocean Energy Management, 76 FR 64432 (Oct. 18, 2011).

<sup>5</sup> Office of Inspector Gen., Dept of Interior, U.S. Department of the Interior’s Offshore Renewable Energy Program 9 (2013) (Report No. CR-EV-BOEM-0001-2013).

<sup>6</sup> *Id.*

<sup>2</sup> Codified at 43 U.S.C. 1337(p).

<sup>3</sup> 218 DM 1–6; 218 DM 8.

<sup>4</sup> Minerals Management Service Reorganization: Special Hearing Before the Subcomm. on Dept. of the Interior, Environment & Related Agencies of the S. Comm. On Appropriations, S. Hrg. 111–1035, at 12 (2010) (statement of Ken Salazar, Sec’y of the Interior).

part 585, administered by BOEM, to 30 CFR part 285, administered by BSEE.

Over the past decade, BOEM has conducted twelve competitive renewable energy lease sales and administered thirty-four commercial leases. Through these activities and working actively with relevant stakeholders, the Department identified opportunities to modernize its regulations and better facilitate the development of offshore wind energy resources. BOEM held multiple public meetings and engaged in significant stakeholder engagement and received recommendations from industry, technical and scientific organizations, other government agencies and other stakeholders on the reform of the renewable energy program. Since then, the Department has refined its goals for meeting U.S. climate and renewable energy objectives.

The Department determined that aspects of its renewable energy regulations could be streamlined and improved since the last rulemaking.

On January 30, 2023, the Department proposed the Renewable Energy Modernization Rule to reduce regulatory burdens and streamline the regulations, incorporate the recommendations from the stakeholders, and achieve the U.S. climate and renewable energy goals. 88 FR 5968. The proposed Renewable Energy Modernization Rule was the result of over ten years of effort by the Department and industry to identify and resolve the obstacles to establishing an effective and commercially viable offshore renewable energy industry on the OCS.

#### C. Purpose of This Rulemaking

This final rule includes regulations administered by BOEM (30 CFR parts 585 and 586) and BSEE (30 CFR part 285), as identified in the Reorganization Rule. A summary of key provisions is provided below. The Department believes that this final rule will facilitate the development of OCS renewable energy and promote U.S. climate and renewable energy objectives in a safe and environmentally sound manner while providing a fair return to the U.S. taxpayer. The final rule reforms the renewable energy regulations, streamlines processes, clarifies ambiguous provisions, enhances compliance provisions, and corrects technical errors and inconsistencies. Through these changes, the Department aims to reduce administrative burdens, reduce costs and uncertainty, and introduce greater regulatory flexibility in a rapidly evolving industry to foster the growth of OCS renewable energy, while maintaining environmental

safeguards. The Department's regulatory changes in this final rule are not intended to contradict, preempt, supersede, alter, or otherwise be incompatible with the authority and jurisdiction of other Federal agencies or entities or their regulations. Rather, the Department's purpose for these changes is to ensure the development of renewable energy on the OCS is carried out in a manner that provides for safety and protection of the environment, in addition to the other factors as specified in OCSLA Section 8(p).

#### D. Summary of the Proposed Renewable Energy Modernization Rule

On January 30, 2023, the Department published the NPRM, which proposed amendments to 30 CFR part 585. The NPRM proposed key provisions that would accomplish the following:

- (1) Eliminate SAP requirements for met buoys;
- (2) Adopt a flexible and performance-based approach to geophysical and geotechnical surveying;
- (3) Conform the CVA review standard to industry practice and provide flexibility in the CVA nomination and engineering report submittal process;
- (4) Clarify auction procedures;
- (5) Align financial assurance requirements with the risk to U.S. taxpayers and permit incremental funding of decommissioning accounts;
- (6) Clarify and enhance safety management requirements; and
- (7) Make other revisions and technical corrections that would improve the Department's OCS renewable energy regulatory program.

### III. Summary of the Significant Provisions

The following section provides a summary of key comments and responses regarding significant provisions and the Department's rationale for the final decisions and amendments in those significant provisions.

#### A. Site Assessment Facilities

##### 1. What did the Department propose?

*(a) 30 CFR 585.104 Do I need a BOEM lease or other authorization to produce or support the production of electricity or other energy product from a renewable energy resource on the OCS?*

The proposed rule clarified that off-lease site assessment facilities would not require a limited lease and the Department would not conduct any case-by-case determinations regarding whether off-lease site assessment activities require a lease. This proposed

clarification of BOEM's authority over off-lease site assessment activities applied to both met buoys and met towers. Although met towers have greater environmental impacts than met buoys, BOEM did not believe this proposed regulatory change would increase environmental risk due to USACE permitting requirements, common use of met buoys, and BOEM's existing practice.

*(b) 30 CFR 585.113 Definitions.*

The Department proposed to define the following terms:

Bidding credit(s), commercial activities, commercial operations, critical safety system, engineered foundation, fabrication, lease area, multiple factor auction, project design envelope, provisional winner, receipt, and site assessment activities.

*(c) 30 CFR 585.600 What plans must I submit to BOEM before I conduct activities on my lease or grant?*

The existing regulations required lessees to submit an SAP for BOEM approval before conducting any site assessment activities on their commercial leases. The proposed rule proposed to exempt floating site assessment facilities, such as met buoys, from the SAP requirement. Under the proposed rule, a lessee planning to install an industry-standard met buoy using a gravity anchor for site assessment would not require an SAP.

The proposal intended to allow lessees to deploy met buoys more efficiently and at a reduced cost given that an SAP would no longer be required. Instead, a met buoy would generally be authorized by USACE permitting requirements under section 10 of the Rivers and Harbors Act (such as Nationwide Permit (NWP) 5 that applies to Scientific Measurement Devices, see 86 FR 73522, or a similar USACE general permit or individual permit). Under the proposed rule, BOEM would no longer authorize met buoys on the OCS. Consequently, the proposed rule would have also eliminated the need for a Clean Air Act (CAA) air quality permit from the U.S. Environmental Protection Agency (USEPA) for on-lease met buoys with backup diesel generators because these buoys would fall outside the CAA definition of an "OCS source." To accommodate the SAP changes, BOEM proposed several ancillary regulatory changes, including eliminating deadlines for SAP submittals, decoupling the requirement to operate under a Safety Management System (SMS) from SAP submission, and removing references to terminology that relates primarily to buoys (e.g., anchors,

chains, moorings) in the SAP regulations.

USACE NWP 5 or a similar USACE general permit complies with current Federal environmental laws and governs deployment of devices whose purpose is to measure and record scientific data and that result in no more than minimal individual and cumulative adverse environmental impacts. Under the proposed rule, site assessment activities would still require an SMS, and the Department would still maintain oversight of site assessment activities.

*(d) 30 CFR 585.900(c) Who must meet the decommissioning obligations in this subpart?*

The proposed rule also proposed to amend the decommissioning regulations to avoid duplicative or conflicting requirements for the removal of met buoys. Under the proposed rule, a lessee would decommission its met buoys according to the USACE requirements of an issued permit. In these circumstances, USACE would be responsible for determining on a case-by-case basis if financial assurance is required at the time of buoy installation. If for some reason the USACE did not require its buoy decommissioning, BSEE retains the authority to require decommissioning of the buoys. BSEE expects to utilize its regulatory authority for decommissioning of buoys in limited circumstances. In addition, BOEM may request additional financial assurance under § 585.517(b), or if necessary, apply financial assurance held under § 585.516(a)(1). Further, BOEM retains the authority to require decommissioning financial assurance for buoy(s) that remain in place when the agency authorizes subsequent construction and operations on the OCS under a COP or GAP. Under the proposed rule, the buoys would be authorized and installed pursuant to USACE regulations and USACE would assume responsibility for ensuring that any required removal takes place in accordance with the terms and conditions of the permit and at USACE's discretion. In these circumstances, the USACE would be responsible for determining on a case-by-case basis if financial assurance is required.

2. What are the key public comments?

*(a) On-lease met buoys.*

*Comment:* Several commenters expressed concern or opposition to the proposal. A commenter discussed the impact that BOEM's proposal to delay the SAP to be concurrent with the COP would have on the planning process. The commenter stated that the proposal delays public awareness of the plan and an opportunity to "affect it early in the

planning process." The commenter also stated that if BOEM were to merge the SAP and COP phases, then a project Environmental Impact Statement (EIS) would have to be prepared prior to lease award.

*Response:* The purpose of an SAP is to describe proposed data collection facilities, such as a meteorological (met) tower or buoy. Such facilities are often—but not always—needed to collect the data required for inclusion in a COP. Under the existing regulations, an SAP is superfluous for a proposed project that does not include installation of a met tower or buoy, yet the existing regulations still require the submittal and approval of such plans. The final rule eliminates this formal requirement but does not affect BOEM's responsibilities to conduct environmental reviews or consultations. Therefore, this change does not require preparation of an EIS prior to a lease award.

*Comment:* Several commenters expressed concern with the language under § 585.600(b)(4) stating that BOEM would have discretion to waive certain information or analysis requirements in a proposed SAP if the applicant can demonstrate that the information is not needed or required by a state's coastal management program. According to the commenters, the language implies that BOEM can make decisions on behalf of coastal states regarding what information is sufficient for Federal consistency review. In an effort to promote cooperation among BOEM, lessees, and coastal states, a commenter suggested BOEM revise the amended language to limit the exemption provision to the necessary data and information required to initiate Federal consistency review; make explicit reference to National Oceanic and Atmospheric Administration (NOAA) Federal consistency regulations; and involve States in the decision-making process for information waiving requirements. Another commenter suggested that BOEM revise the amended language to limit the exemption provision, noting that without the identified data and information described in 15 CFR 930.58 and in a state's approved enforceable policies, a State would not be able to conduct a Federal consistency review and be required to request this information, further delaying the Federal consistency review process.

*Response:* The commenters are correct that neither the applicant nor BOEM can dictate what data and information is deemed necessary to conduct an adequate consistency review based on the enforceable policies of a State's

coastal management program. The final rule, however, would not have that effect. As noted in the proposed rule preamble, the applicant would need to "demonstrate that . . . the information is not needed or required by a State's coastal management program" before BOEM would grant a waiver and this demonstration would entail confirmation with the affected State.

*Comment:* BOEM received other comments opposing the proposed revisions and stating that the proposal not to require an SAP for met buoys pursuant to § 585.600 may limit environmental review, data collection, siting considerations, and buoy removal planning requirements for developers. Commenters also offered suggestions regarding anchor abandonment and duplication in buoy siting. Commenters requested more information from BOEM on how these concerns would be addressed under this proposed change. The commenter also stated they, "look forward to contributing to defining 'unnecessary requirements' within the Makah area of sovereign interest."

*Response:* This rulemaking does not reduce or eliminate BOEM's environmental review of site characterization (geotechnical and geophysical surveys, biological surveys) and site assessment activities (deployment of met towers and buoys). This review takes place during BOEM's development of an Environmental Assessment (EA) pursuant to NEPA, which begins with a Notice of Intent to prepare a NEPA analysis (and related public comment period) and concludes during the period between publication of a Proposed Sale Notice (PSN) and a Final Sale Notice (FSN) (*i.e.*, prior to issuing a lease). These EAs analyze potential environmental impacts of activities expected to take place following lease issuance, including site characterization and site assessment activities. BOEM also notes that USACE may have decommissioning requirements applicable to met buoys, depending on the type of permit used and subject to district review and discretion. Finally, BSEE has authority to require lessees to decommission facilities installed within their leases under 30 CFR 285.900 and 285.90. BSEE expects to utilize its regulatory authority for decommissioning of buoys in limited circumstances. This decommissioning authority is not constrained or affected by BOEM's changes to the SAP regulations. Since this comment was submitted, BOEM conducted government-to-government consultations with this commenter on the proposed rule generally and this comment in particular. BOEM also has

initiated and held government-to-government consultations and staff-level meetings with the commenter and four additional Indian Tribes to discuss potential impacts and to solicit and fully consider their views on the proposed rulemaking.

**Comment:** Another commenter stated the proposal would give greater jurisdiction and flexibility to BOEM and allow for more self-regulation of OSW developers. Further, the commenter stated that permitting met buoys and eliminating SAPs by delegating the responsibility to USACE would reduce public review and transparency, remove met buoys from OCSLA jurisdiction, and strip the requirement of CAA permits being issued for met buoys, which use diesel fuel for energy backup systems.

**Response:** BOEM's proposed removal of the SAP requirement for met buoys simply resolves a significant regulatory overlap. The proposed rule would not delegate any authority to USACE that it does not already possess and exercise. The proposed removal of the SAP requirement would subject buoys installed for OSW purposes to all of the USACE requirements that currently apply to buoys installed on the OCS for any other purpose. It should also be noted that BOEM prepares an EA prior to lease issuance where impacts resulting from site characterization and site assessment activities are discussed and presented to the public for public comment and consideration before finalizing the EA. The final rule will not change this practice.

**Comment:** Several commenters expressed concern regarding delegation of review to USACE. A commenter inquired about how BOEM will work with USACE to ensure that OSW data buoys are properly permitted and noticed to mariners and how BOEM will ensure stakeholders are informed about OSW leases in a single location. Another commenter noted the SAP process was more transparent to the public regarding the components of a lease area survey and equipment that will be used.

**Response:** Stakeholder and public input is channeled through the NEPA review rather than through the review of an individual SAP. The proposed rule does not reduce or eliminate BOEM's environmental review of site characterization and site assessment activities (geotechnical and geophysical surveys, site assessment, and deployment of met buoys and/or met towers). This review occurs during BOEM's development of an EA which typically concludes with the release of a Final EA and a Finding of No

Significant Impact during the period between the issuance of a PSN and an FSN. These EAs analyze all anticipated environmental impacts of activities expected to take place following lease issuance, including site characterization and site assessment activities.

**Comment:** A commenter expressed opposition to the proposal to eliminate the SAP requirements for met buoys stating that further segmentation of the project review process will make stakeholder participation and awareness more burdensome than it already is.

**Response:** Stakeholder and public input is channeled through the leasing EA rather than through the review of an individual SAP. The rule does not reduce or eliminate BOEM's environmental review of site characterization and site assessment activities (geotechnical and geophysical surveys, site assessment, and deployment of met buoys and/or met towers). This review is completed during BOEM's development of an EA under NEPA which typically concludes with the release of a Final EA and a Finding of No Significant between the issuance of a PSN and an FSN. BOEM's leasing EAs analyze all anticipated impacts from site characterization and site assessment activities, including the deployment of met buoys and, in some cases, towers.

**Comment:** A commenter stated that permits for lease SAP approvals of met buoys by the USACE must include decommissioning requirements and BOEM must guarantee the continuity of OSW decommissioning processes so that commercial fishing industry is "not left with a cluttered benthic habitat without any Federal agency responsible for removal of structures within the Exclusive Economic Zone."

**Response:** USACE may incorporate its own decommissioning requirements in permit approvals of met buoys. For example, USACE NWP 5 requires that "upon completion of the use of the device to measure and record scientific data, the measuring device [*i.e.*, met buoy] and any other structures or fills associated with that device (*e.g.*, foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations." However, USACE decommissioning requirements are dependent on the type of permit used and subject to district review and discretion. Overall, USACE decommissioning requirements, coupled with the final rule's provision in 30 CFR 285.900(c) reserving to BSEE the authority to require decommissioning in the event that USACE does not require it and the

relatively low number of met buoys should ensure that the Exclusive Economic Zone will not result in the "cluttered benthic habitat" that the commenter is concerned about. Overall, BSEE expects to utilize its regulatory authority for decommissioning of buoys in limited circumstances.

**Comment:** A commenter stated that if a met tower or met buoy is part of the BOEM OSW leasing process, BOEM should conduct the permitting.

**Response:** BOEM's leases do not authorize deployment of met buoys and grant the lessee only the exclusive right to submit plans for BOEM's approval. BOEM analyzes the impacts of deploying buoys at the lease sale stage because this activity is expected to take place following lease issuance. In this regard, following publication of the final rule, the deployment of met buoys will be considered in the same fashion as other reasonably foreseeable activities, the impacts of which are analyzed in BOEM's NEPA documents and consultations but require no direct authorization from BOEM (*e.g.*, the use of port facilities and vessels). BOEM will concentrate on permitting more complex facilities and remove the unnecessary overlap in permitting requirements that was in place for met buoys.

**Comment:** One commenter noted that under § 585.600(a)(1), SAPs would be required only for site assessment activities involving an engineered foundation and that off-lease and on-lease site assessment activities for facilities without foundations would be authorized under USACE permitting requirements under section 10 of the Rivers and Harbors Act. The commenter stated that USACE NWPs are subject to regional conditions and are not used in all offshore areas and that this region-specific difference should be noted in the final rule.

**Response:** The commenter is correct that USACE permits may be subject to regional conditions, and the requirements for deploying a buoy may vary regionally. However, BOEM's regulations are not the appropriate vehicle for providing guidance applicable to permits issued by other agencies.

**Comment:** Regarding SAPs submitted before lease issuance being subject to Federal consistency reviews under 15 CFR part 930, subpart D (not subpart E), and noncompetitive lease sales reviewed under 15 CFR part 930, subpart D (not subpart C), two commenters suggested BOEM clarify language at § 585.612 to account for these scenarios.

**Response:** BOEM has considered the commenter's suggestions and notes that such clarifying language has already been proposed. Proposed revisions to § 585.612(a) clarify that an SAP submitted before lease issuance would be subject to 15 CFR part 930, subpart D. Likewise, proposed revisions to § 585.231(f) clarify that a noncompetitive lease is subject to 15 CFR part 930, subpart D. Although BOEM appreciates suggestions that may provide more clarity, the suggested revisions to include clarifying language on noncompetitive leases at § 585.612 would be duplicative of the language that is already provided at § 585.231(f), which is similar to BOEM's requirements for offshore oil and gas and marine minerals activities. BOEM cannot hold an OSW lease auction (Federal action, under 15 CFR part 930, subpart C), nor permit activities (federally permitted activities or plans, 15 CFR part 930, subparts D and E), without concurrence or presumed concurrence from the State coastal management programs with reasonably foreseeable coastal effects or for which the activities are within their geographic location description or have been awarded a consistency review through the unlisted activity review process from NOAA's Office of Coastal Management.

**Comment:** A commenter expressed opposition to BOEM's proposal to change the SAP process to rely on USACE NWP's stating that, because of regional differences in offshore areas, transferring permit authority to the USACE may not streamline the process and may trigger additional Federal Consistency Certification (FCC) review.

**Response:** BOEM is not transferring authority to USACE, as USACE generally has regulatory authority over deployment of met buoys in OCS areas. Any regional differences, as the commenter asserts, would exist regardless of whether BOEM exercises additional jurisdiction over the same buoys. The USACE permits scientific measurement devices used for a variety of purposes deployed in U.S. navigable waters and on the OCS, including met towers and met buoys. The USACE permitting process is subject to the same Federal environmental laws applicable to BOEM's SAP process. The USACE statutory authorities under section 404 of the CWA and/or section 10 of the Rivers and Harbors Act of 1899 require compliance with Federal environmental laws similar to BOEM's SAP process.

As for BOEM, expected site characterization and site assessment activities on the lease will continue to

be analyzed as part of the environmental review performed prior to a lease sale.

USACE currently issues approval of installation of buoys for multiple purposes for which BOEM is not consulted and which are unrelated to OSW. Current lessees need to perform met buoy deployment and installation activities in compliance with USACE's NWP 5 or another applicable general permit or individual permit. In addition, BOEM has coordinated with USACE to ensure that the final rule addresses the concerns raised by the commenter.

**Comment:** A commenter recommended that BOEM retain involvement in the permitting process by the USACE and United States Coast Guard (USCG) and retain involvement in geophysical and geotechnical site characterization survey activities.

**Response:** BOEM would retain involvement in the permitting process through its environmental review process. This review is completed during BOEM's development of an EA under NEPA which typically concludes with the release of a Final EA and a Finding of No Significant Impact between the issuance of a PSN and an FSN (i.e., prior to lease issuance). BOEM's EAs analyze environmental impacts of activities expected to take place following lease issuance, including site characterization and site assessment activities. Further, BOEM is not proposing to alter its involvement in geophysical and geotechnical site characterization survey activities. BOEM's OSW leases include stipulations that require the submission of geological and geophysical (G&G) survey plans for review by BOEM prior to the commencement of survey activities. Moreover, BOEM's leasing EAs analyze potentially significant impacts from G&G survey activities.

**Comment:** A commenter recommended that BOEM establish a clear framework and mechanisms for interagency consultation prior to the deployment of site assessment facilities with novel anchoring technologies that do not have a BOEM-approved SAP.

**Response:** If a novel anchoring technology was proposed that was not analyzed in the BOEM leasing EA, or if USACE determined that effects of the novel anchoring technology had more than minimal adverse environmental effects, additional environmental review would be needed, and USACE may require an individual permit application. The types of technology permitted without further environmental review would be limited to those that are within the scope of the EA and any associated consultations.

**Comment:** A commenter recommended the addition of language regarding the mechanism for financial assurance regarding decommissioning if USACE does not require site clearance ahead of site assessment activities.

**Response:** BOEM would not hold decommissioning financial assurance for facilities, like a met buoy, for which the agency did not issue an approval. The lessee may have decommissioning obligations under its USACE authorization, but BOEM would not hold financial assurance guaranteeing that obligation. Although BOEM would not hold decommissioning financial assurance directly related to the buoy, BSEE's regulations still require that the buoy be decommissioned (30 CFR 285.902). BSEE expects to utilize its regulatory authority for decommissioning of buoys in limited circumstances.

**Comment:** A commenter recommended deleting the definition of "engineered foundation" from § 585.600(a)(1) to "avoid confusion, given that it only applies to met towers and no other structures."

**Response:** BOEM agrees with this approach given that the term "engineered foundation" was intended to be used only in the SAP provisions of the rule. Therefore, this definition has been deleted in the final rule (§ 585.113) and § 585.600(a)(1) is revised accordingly.

**Comment:** A commenter suggested the following revisions to BOEM's proposed language in § 585.600(a)(1), which provides that SAPs would be required only for site assessment activities involving an engineered foundation:

*Before you:*  
Conduct any site assessment activities on your commercial lease, involving [delete: an engineered foundation, such as] meteorological towers or other facilities that are installed [add: on the seabed] using a fixed-bottom foundation requiring professional engineering design and assessment of sediment, meteorological, and oceanographic condition [add: as part of the design].

*You must submit, and obtain approval [strikethrough: for] of, your SAP [strikethrough: according to]*  
under §§ 585.605 through 585.613.

**Response:** BOEM agrees in part with the commenter and is revising § 585.600(a)(1) to provide that:

*Before you:*  
Conduct any site assessment activities on your commercial lease, involving meteorological towers or other facilities that are installed *on the seabed* using a fixed-bottom foundation requiring professional engineering design and assessment of sediment, meteorological,

and oceanographic condition *as part of the design*.

*You must submit, and obtain approval for your:*

SAP under §§ 585.605 through 585.613.

*Comment:* A commenter asked BOEM to consider if the definition of “engineered foundation” (“means any structure installed on the seabed using a fixed-bottom foundation constructed according to a professional engineering design (based on an assessment of relevant sedimentary, meteorological, and oceanographic conditions)”) should be modified to apply to all substructures whether fixed or floating. A commenter raised concerns that changes to deployment requirements for meteorological buoys should be reconsidered, reasoning that such changes would limit environmental review, data collection, siting, and buoy removal efforts.

*Response:* Met buoys have minimal environmental impact and SAPs are not submitted for public review. All structures, including met buoys and their mooring and anchors, are still required to be decommissioned with the seabed cleared. SAPs may be used for other purposes such as testing new technologies, so the standard in § 585.600(a) applies to more than met towers. Met buoys with more complex foundations such as piles or suction buckets will still require an SAP if they are “installed on the seabed using a fixed-bottom foundation requiring professional engineering design and assessment of sediment, meteorological, and oceanographic conditions as part of the design.”

*(b) Off-lease met buoys.*

*Comment:* A couple of commenters opposed BOEM’s proposal related to off-lease site assessments due to potential impacts to the environment and fisheries. A commenter wrote that disassociating met towers and buoys from leases would lead to more deployment of the devices, creating additional hazards for mariners as navigable waters are already decreased by wind farms. The commenter asked how fishermen would be impacted from a posited increased in the number of buoys and towers.

*Response:* BOEM does not believe that the marginal change in regulatory approach BOEM has proposed will lead to an appreciable increase in the number of buoys and other devices deployed—either on-lease or off-lease. Lessees are not likely to deploy any more meteorological buoys than are reasonably necessary to collect the data needed to support a project due to logistical and economic constraints.

BOEM will continue to evaluate the effects of such deployments under NEPA analyses of reasonably foreseeable outcomes of the issuance of OSW leases. Moreover, the deployment of these devices would be subject to existing regulations with which other sectors of the economy engaged in oceanographic research must comply.

*Comment:* A commenter called BOEM’s proposal arbitrary and capricious, stating that BOEM’s rationale for eliminating review for off-lease met buoys/towers contradicts its reasoning for continuing to require SAPs for on-lease met towers.

*Response:* BOEM will no longer require SAPs for the deployment of standard buoys and off-lease met towers. However, BOEM will retain the requirement for on-lease activities involving “facilities that are installed using a fixed-bottom foundation requiring professional engineering design and assessment of sediment, meteorological, and oceanographic conditions as part of the design.” Likewise, BOEM retains the SAP requirement for on-lease met towers, because their potential impacts are expected to be more significant than a standard met buoy. In both cases, BOEM is choosing to retain the SAP requirement for on-lease activities that are more likely to cause impacts. This division reflects the relatively tenuous nexus between an off-lease met tower and offshore wind development and the sheer unlikelihood of lessees installing and using such towers. BOEM has not processed a limited lease request since the regulations were first promulgated in 2009.

*Comment:* Additionally, the same commenter stated that, “BOEM’s primary rationale for such a change to regulations regarding off-lease met buoys/towers is also irrational. On the one hand, BOEM states that it intends to accomplish this change by stating that site assessment activities do not produce or support energy generation. Yet its rationale for making the change is to accelerate OSW development.”

Similarly, a commenter “disagree[ed] with BOEM’s finding that site assessment activities do not produce, transport, or support the generation of any energy project.” Alternatively, a commenter agreed with BOEM that no lease or other authorization is required, because off-lease site assessment activities do not “produce or support production, transportation, storage, or transmission of energy from sources other than oil or gas” within the meaning of 43 U.S.C. 1337(p)(1)(C).

*Response:* These comments seem to suggest that BOEM must require

authorizations for any activities within its statutory jurisdiction. However, it is neither irrational nor arbitrary for the agency to choose to require an authorization for activities within its jurisdiction that it finds more likely to be impactful, and to choose not to require an authorization for activities within its jurisdiction that it finds less likely to be impactful and that are permitted by other Federal agencies in compliance with Federal statutes and regulations. BOEM need not require leases for such buoys any more than it needs to require a specific authorization for buoys deployed by a BOEM lessee.

*Comment:* A commenter stated that under the proposal, BOEM would no longer have the authority to deny a limited lease for off-lease met towers. The commenter said that under the existing requirements, developers must remain accountable to tribes and non-sovereign stakeholders who have interests in environmental protection.

*Response:* BOEM agrees that, under the proposed and final rules, it would no longer have the authority to deny a limited lease for off-lease met towers, because BOEM would not require a limited lease for such structures. However, the construction of a met tower on the OCS will continue to be governed by a host of Federal regulations and authorizations. In addition, environmental review under NEPA, consultations under section 106 of the National Historic Preservation Act (NHPA) and other authorities, as well as the need for tribal government-to-government consultations remain in place. Such projects would be subject to the same regulatory requirements as needed to construct a met tower for any other purpose. In particular, installation of a met tower on the Pacific OCS would be a very significant undertaking, including opportunities for input, participation and government-to-government consultations attendant thereto.

*Comment:* A commenter urged BOEM to “reconsider its proposed rule determining that off-lease site assessment facilities do not require a limited lease.” Here, the commenter expressed disagreement with the agency’s finding that “site assessment activities do not produce, transport, or support the generation of any energy products.” Referencing 88 FR 5968, 5976, the commenter asserted that site assessment activities, including the operation of met buoys, support generation of energy products. The commenter further asserted that BOEM makes a similar finding with respect to met towers, stating that the agency’s “decision not to seek to eliminate the

limited lease requirement for off-lease met-buoys is incongruous with its proposal to eliminate the limited lease requirement for off-lease met towers.”

**Response:** BOEM acknowledges that the existing approach treats on-lease and off-lease activities differently in some cases. Historically, BOEM required an authorization for on-lease buoys, but not off-lease buoys. The final rule standardizes the approach by not requiring an authorization for buoys in either case, subject to limited exceptions. Because buoys are preferred over towers, BOEM expects this will result in a consistent approach in the majority of situations—particularly on the Pacific OCS where deeper water will favor the preference for met buoys over towers even more strongly.

BOEM agrees with the commenter that site assessment activities like buoys and towers may support the generation of electricity or other energy product, and § 585.104 is revised accordingly. Historically, BOEM would require an authorization for on-lease met towers, and off-lease towers if their purpose was to support OSW. In practice, BOEM has received very few proposals for an on-lease met tower, and no proposals for off-lease met towers. Under the revised regulations, BOEM will require an approved SAP for on-lease met towers, but not off-lease met towers. BOEM believes that requiring an SAP for on-lease met towers is justified because potential environmental impacts of met towers and facilities with engineered foundations are both more variable and more significant for certain marine resources. However, BOEM is not requiring an SAP for off-lease met towers because the nexus between an off-lease met tower and offshore wind is likely to be more attenuated than an on-lease met tower. Also, BOEM estimates that such towers are likely to be so uncommon as not to merit specific treatment under our regulations.

**Comment:** A commenter requested clarification on the review process and timeline for off-lease site assessment activities. The commenter said that these activities, particularly met buoys, may have significant impacts to features including natural hard bottoms and artificial reefs. The commenter stated that State agencies must be given sufficient opportunity to review activities due to potential impacts on bat and bird migrations.

**Response:** USACE evaluates applications to install met buoys on a case-by-case basis. An application for a USACE authorization would require compliance with the same Federal environmental laws (e.g., the Endangered Species Act) applicable to

BOEM’s SAPs; that compliance may result in measures to avoid or minimize impacts to environmental resources.

**Comment:** Multiple commenters discussed the limited opportunities for State engagement and public participation if the proposal is finalized. A commenter stated that BOEM should clarify how off-lease site assessment facilities will be managed where USACE’s NWPs are suspended due to regional conditions. The commenter also recommended that BOEM provide a grace period prior to implementation to align with State and USACE permit renewals and provide time for states to coordinate procedural matters with USACE districts.

**Response:** Under the current regulatory regime for the OCS, off-lease site assessment activities may occur without BOEM approval and with USACE authorization (under either a nationwide, regional or general permit) unless the purpose of the activities is to collect data for renewable energy, in which case BOEM makes a case-by-case determination as to whether a lease and GAP would be required. Given that this distinction is only about the purpose of the data collection, rather than the type of activities or their potential impacts, BOEM cannot justify the higher burdens placed solely on those interested in site assessment data to inform renewable energy. This suggests BOEM should either require an SAP for all buoys, regardless of the purpose for which they are proposed, or none. However, because OCSLA would not permit BOEM to regulate buoys installed regardless of purpose (and because there is another agency with precisely that mandate), we have opted not to regulate buoys. Further, BOEM disagrees that the proposal will result in limited opportunities for State and public participation in BOEM’s process, as a large number of public engagement opportunities remain<sup>10</sup> and will continue under the final rule. BOEM coordinates extensively with states and consults with State authorities through BOEM’s Intergovernmental Task Forces and through regular *ad hoc* meetings. Opportunities for public engagement are likewise plentiful; BOEM typically holds dozens of meetings with different stakeholder groups, both virtual and in-person, as well as public comment opportunities associated with the RFI, the Call, the draft Area Identification, scoping for the lease sale Environmental Assessment, PSN, and scoping for the

project EIS. The Department coordinated the finalization of this provision with USACE. Given that USACE has a well-established permitting program and because the Department is providing regulatory relief with this final rule, BOEM does not find a grace period to be necessary. Applicants who wish to deploy off-lease site assessment facilities to collect data for renewable energy can follow the existing well-established USACE processes to obtain general or individual permits, as appropriate. Where a general permit is not available, the USACE district may evaluate activities under an individual permit.

**Comment:** A commenter recommended the following revisions to the rulemaking text:

- § 585.611: Clarify that information about sites that have religious or cultural significance to Tribes, including viewsheds and traditional cultural landscapes and properties, must be included with the information an applicant must submit with an SAP to assist BOEM in complying with NEPA and other applicable laws.

- § 585.617: Paragraph (e)(1) should be revised to add “culturally significant sites, including viewsheds and traditional cultural landscapes and properties; or subsistence rights of a federally-recognized Tribe.”

- § 585.606: Paragraph (e) should be revised to add “culturally significant sites, including viewsheds and traditional cultural landscapes and properties; or subsistence rights of a federally recognized Tribe.”

**Response:** BOEM reviewed these requests for additions to BOEM’s SAP, COP, and GAP requirements, and determined that BOEM’s regulations, as amended in this final rule, will require this information to be included in such plans. The regulations in 30 CFR 585.627 require lessees to submit detailed information and analysis “to assist BOEM in complying with NEPA and other applicable laws.” This includes information about “archaeological resources use, or historic property use, Indigenous traditional cultural use, or use pertaining to treaty and reserved rights with Native Americans or other Indigenous peoples, including required information to conduct review of the [plan] under the NHPA or other applicable laws or policies, including treaty and reserved rights with Native Americans or other Indigenous peoples.”

We have not adopted the precise wording proposed in the comment, but we believe the language, as revised, will achieve the same result.

<sup>10</sup> See A Citizen’s Guide to the Bureau of Ocean Energy Management’s Renewable Energy Authorization Process, Dec. 2016, available at <https://www.boem.gov/sites/default/files/renewable-energy-program/KW-CG-Broch.pdf>.

**3. What is the Department finalizing?**

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

This rule finalizes that off-lease site assessment facilities would not require a limited lease and the Department would not conduct any case-by-case determinations regarding whether off-lease site assessment activities require a lease. This applies to both met buoys and met towers. This final rule does not adopt the language from the proposed rule stating that, “for purposes of this section, site assessment activities are not considered to produce, transport, or support the generation of any energy products; and, therefore, such activities do not, by themselves, require a lease, easement or ROW.” (88 FR 5992) That language implied that such activities would not be covered under BOEM’s authority under OCSLA. While it is true that in this rule, BOEM has excluded buoys from the description of activities for which an approved SAP would be required, it would be an overstatement to say that such activities do not support the generation of energy. Please refer to Section V of this preamble for a detailed discussion on this section.

*(b) § 585.113 Definitions.*

BOEM is not including its proposed definition of “engineered foundation” in the final rule because the definition was intended to be used only in the SAP provisions of the rule. However, the final rule retains the same standard (meteorological or other facilities that are installed on the seabed using a fixed-bottom foundation requiring professional engineering design and assessment of sediment, meteorological, and oceanographic conditions as part of the design) in 30 CFR 585.600 for determining whether an SAP is needed for proposed site assessment activities on a commercial lease.

*(c) § 585.600 What plans must I submit to BOEM before I conduct activities on my lease or grant?*

BOEM is finalizing this portion of the rule about site assessment facilities as proposed in § 585.600. BOEM concludes that its previous SAP requirement was unreasonably burdensome and redundant with some of USACE’s permit process and, therefore, unnecessary. Under the final rule, lessees would deploy a met buoy following the existing well-established USACE processes to obtain a general or individual permit, as appropriate. USACE permits may be subject to regional and special conditions, and the requirements for deploying a buoy may

vary regionally. The USACE permitting authority stems from section 10 of the RHA and section 404 of the Clean Water Act (CWA). Under these authorities, the USACE renders decisions for certain offshore activities affecting navigable waters.<sup>11</sup> BOEM does not anticipate gaps in Federal oversight of met buoys deployed for measuring renewable energy resources will result from this rulemaking. Equivalent met buoys and other scientific research buoys deployed for reasons unrelated to BOEM’s OCSLA authority are already deployed routinely under other Federal authorities and programs, including NOAA’s National Data Buoy Center program. BOEM is retaining the SAP process for facilities installed on a commercial lease using a fixed-bottom foundation constructed according to a professional engineering design (based on an assessment of relevant sedimentary, meteorological, and oceanographic conditions), including met towers.

*(d) § 285.900 Who must meet the decommissioning obligations in this subpart?*

BOEM coordinated extensively with the USACE to ensure adequate regulatory coverage for met buoys on the OCS. For example, on decommissioning, BOEM anticipates that met buoys permitted under USACE authority will be subject to USACE decommissioning requirements, as applicable. However, to provide a backstop, BSEE revised its decommissioning regulations to ensure that if, in the event, USACE does not impose decommissioning requirements on a met buoy, BSEE retains the authority to require it to be safely decommissioned. BSEE expects to utilize its regulatory authority for decommissioning of buoys in limited circumstances.

*B. Project Design Envelope*

**1. What did the Department propose?**

*(a) § 585.112 Definitions.*

BOEM proposed to add a definition for “Project Design Envelope (PDE)” as part of its proposal to codify the use of a PDE throughout the NPRM subpart F (Plans and Information Requirements). The NPRM proposed to add language to include the use of a PDE, which includes a range of design parameters and construction and operation activities. The NPRM also proposed the addition of language to clarify the ability of lessees and grantees to submit plans using a PDE. The use of a PDE is a proven approach to provide lessees

and grantees with flexibility throughout the permitting process while still complying with NEPA and other statutory and regulatory obligations.

*(b) § 585.610 What must I include in my SAP?*

The NPRM proposed that SAP information may be provided using a PDE with BOEM reserving the right “to determine what range of values for any given parameters are acceptable.”

*(c) § 585.626 What must I include in my COP?*

The NPRM proposed that COP information may be provided using a PDE with BOEM reserving the right “to determine what range of values for any given parameters are acceptable.”

*(d) § 585.645 What must I include in my GAP?*

The NPRM proposed that GAP information may be provided using a PDE with BOEM reserving the right “to determine what range of values for any given parameter are acceptable.”

**2. What are the key public comments?**

*Comment:* Some commenters asserted that the proposed PDE approach does not provide enough detailed information for various stakeholders, such as fishing communities, the public, or permitting and consulting agencies, to provide meaningful evaluation of potential impacts and conduct Federal consistency reviews.

A couple of commenters suggested that mitigation measures should be defined and made clear in the PDE. A commenter said that stakeholders cannot effectively comment on unclear mitigation measures, nor can the effectiveness of such mitigation measures be evaluated.

A commenter stated that BOEM should be allowed to provide direction and articulate preferences for products, mitigation approaches, and installation methods included in the PDE. The commenter discussed the need to examine the range of impacts that could occur within the PDE, not just the maximum, to identify technologies and approaches that provide benefits or lessen the impact of a project. The commenter warned that a PDE approach may undermine meaningful public evaluation of likely design parameters if there are other contractual obligations in place to use a specific technology from States or other sources.

*Response:* BOEM’s existing EIS analyses use several methods to ensure sufficiently detailed information is provided to stakeholders about the range of impacts that may occur from a project that uses a PDE. For example, BOEM may develop comparisons between different options within a PDE

<sup>11</sup> Including the extension of the RHA to the limits of the outer continental shelf by the Outer Continental Shelf Lands Act at 43 U.S.C. 1333(a)(1).

as part of the reasonable range of alternatives analyzed in detail in a COP EIS. This analysis of alternatives allows for comparison of impacts across design options within the PDE (e.g., foundation type) that inform the public about the trade-offs between different technologies. Moreover, the maximum impact scenario is not necessarily the same for every resource, thus, BOEM's EISs typically assess impacts from a variety of designs, techniques, layouts, and cable routes within the PDE.

**Comment:** One commenter voiced support for the proposal but requested that BOEM remove the language in § 585.626(a) that "BOEM reserves the right to determine what range of values for any given parameter are acceptable." Another commenter stated that BOEM should provide guidance on the range of parameters it is prepared to review through the process rather than requiring multiple rounds of PDE submissions to narrow the scope. The commenter suggested a new interagency memorandum of understanding under which consulting agencies align and prepare to complete their review processes and avoid utilizing PDEs as a tool for crafting EIS analyses from a range of component options.

**Response:** BOEM needs the authority to review and request revisions to a PDE that is unreasonably broad or vague. For example, BOEM may request a revision when the PDE is too broad to be effectively analyzed by NEPA or consulted upon with another agency, or there is not enough detail in the COP to ensure sufficient safety and technical feasibility to support a COP approval. The PDE approach is considered necessary to allow for rapidly changing technologies in OSW. BOEM can use updated COP and PDE Guidelines to set recommended limits on the PDE.

### 3. What is the Department finalizing?

#### (a) § 585.113 Definitions.

BOEM is finalizing the definition of PDE as proposed. The final rule will clarify the process for lessees and other stakeholders by explicitly integrating PDE principles into the regulatory text, primarily by referencing "ranges" of design parameters or locations. In this final rule, BOEM recognizes that a PDE should not be overly broad to avoid not defining the project well enough for meaningful analysis.

#### (b) § 585.610 What must I include in my SAP?

BOEM is finalizing that SAP information may be provided using a PDE with BOEM reserving the right "to determine what range of values for any given parameter are acceptable."

#### (c) § 585.626 What must I include in my COP?

BOEM is finalizing that COP information may be provided using a PDE with BOEM reserving the right "to determine what range of values for any given parameter are acceptable."

#### (d) § 585.645 What must I include in my GAP?

BOEM is also finalizing that GAP information may be provided using a PDE with BOEM reserving the right "to determine what range of values for any given parameter are acceptable."

#### C. Geophysical and Geotechnical Surveys

##### 1. What did the Department propose?

#### (a) § 585.626 What must I include in my COP?

The NPRM proposed to provide more flexibility and clarify existing flexibility in COP requirements. BOEM proposed to shift the geotechnical survey and data collection requirements from the largely prescriptive standards to performance-based standards. These performance-based standards would give lessees the leeway to demonstrate that their selected combination of geotechnical and geophysical surveys would provide BOEM the data at the COP review stage to determine whether the project as designed could be constructed safely in the proposed range of locations. Lessees could then determine their own balance between geotechnical and geophysical surveys at the COP stage. Through a COP sufficiency determination, BOEM would still ensure that the COP contains information sufficient to complete its environmental review and required consultations.

BOEM proposed to allow the submission of geotechnical data for an engineering assessment of the proposed turbine foundations with a lessee's FDR in lieu of the results of *in situ* boring and sampling at each foundation location in the COP.

The NPRM also proposed to grant the Department the flexibility to allow a lessee to submit subsea archaeological surveys at the FDR stage on a case-by-case basis, subject to terms and conditions of COP approval.

The proposal put forward clarifications that the COP must still have the information sufficient to define the baseline geological conditions of the seabed and provide sufficient data to develop a geologic model, assess geologic hazards, and determine the feasibility of the proposed site. The proposal also stated that the vast majority of the data that would be deferred to the FDR and Fabrication and Installation Report (FIR) stage is used

solely for engineering purposes. If the COP needs to be modified as a result of information gathered from the deferred surveys, the Department would require the lessee to revise the COP under the regulations at § 585.634. The Department believed that the proposed changes introduced flexibilities and would enhance the Department's (and lessees') ability to respond to environmental and ocean-user concerns raised during its environmental reviews by modifying the project design.

#### (b) § 585.645(b) What must I include in my GAP?

The NPRM proposed similar changes to the General Activities Plan (GAP) requirements for limited leases and grants to be consistent with the proposed changes to COP data requirements. Specifically, the NPRM proposed revisions of the geotechnical, shallow hazards and geological survey information requirements in the GAP at § 585.645(a).

#### (c) Solicitation of comments concerning a potential new permit requirement for conducting geological and geophysical surveys for renewable energy activities.

BOEM considered whether there was a need for a future rulemaking intended to regulate surveys associated with OCS renewable energy activities. To that effect, the proposed rule solicited comments on the following questions:

What additional protections might be gained through rulemaking that cannot be achieved by way of the lease stipulations?

Should BOEM establish a permit-based mechanism to regulate surveys? And to what extent, if any, should that permit program differ from the permit requirements of the oil and gas program and marine minerals program?

Is there another mechanism that could aid in the confirmation of any damage to fishing gear as well as the identification of responsible parties for any such damage from survey activities?

To what extent should BOEM require additional public reporting and notice of any anticipated OCS survey activities? Is there a greater need for specific advance notice requirements to include the location, dates, and times in which other OCS surveys will be conducted?

To what extent should BOEM identify and track OCS survey activities related to renewable energy program activities?

How can BOEM improve the current procedures for reporting by and reimbursement of any party that might be negatively impacted by the activities in renewable energy survey activities? Can these improvements replace the need to promulgate regulations

governing OCS surveys for renewable energy projects?

Should BOEM require advance coordination of survey activities with other lessees operating on the OCS?

Are there other policies or requirements that BOEM should consider to minimize the adverse interaction between those conducting surveys and other users of the OCS?

## 2. What are the key public comments?

### (a) COP data requirements.

**Comment:** Several commenters supported the proposed changes allowing certain archeological data to be submitted with the FDR and indicated this would save time and money by eliminating the need to collect more data than is necessary due to uncertainties in design. One commenter suggested that BOEM offer two submittals for developers to: (1) submit archeological survey information at the COP stage and (2) provide other survey information at a later date on a component-by-component basis. However, another commenter opposed the flexibility for the completion of archeological surveys. Several commenters argued that if archeological resource surveys are allowed to be deferred, BOEM should work to facilitate agreements or memoranda of understanding among National Historic Preservation Act (NHPA) section 106 consulting parties to establish strong communication and design mitigation approaches.

**Response:** Based on comments received, BOEM will continue to require archeological surveys and analyses to be conducted prior to the FDR/FIR stage because sufficient geophysical data is necessary to assess potential impacts from offshore wind activities on cultural resources and the introduction of a case-by-case deferral of certain marine archaeological surveys would have created uncertainty for all parties participating in consultations conducted according to section 106 of the NHPA.

**Comment:** Several commenters suggested that BOEM should set specific regulatory timelines for the COP review process, including a 20-day preliminary review, a matrix of the subject matter expert comments within 45 days, and an updated FAST-41 dashboard for communication with project developers. A commenter also recommended that developers should be required to begin consultation with State programs as early as possible, not just upon the issuance of the Draft EIS, and should be required to include the results of this consultation to State coastal programs, fisheries users, and other coastal and marine users, as part of the COP.

**Response:** In August 2023, BOEM released final guidance, entitled *Information Needed for Issuance of a Notice of Intent (NOI) Under the National Environmental Policy Act (NEPA) for a Construction and Operations Plan (COP)*, which establishes a non-binding framework similar to the regime proposed by the commenter. BOEM prefers to focus on implementing the current guidance, with its inherent flexibilities, adaptability, and exceptions, as opposed to issuing a formal, rigid rulemaking to address these issues.

**Comment:** One commenter stated, “BOEM proposes to clarify the language of § 585.627 concerning the information to be submitted alongside the COP, not to satisfy OCSLA but to assist BOEM in complying with other statutory responsibilities, including NEPA.” The commenter also found it notable that BOEM stated, “[t]he non-geotechnical survey data included in the COP submittal are more than adequate to assess impacts to the human, marine, and coastal environment, to conduct necessary statutory consultations, and to show technical feasibility of all proposed foundation types.”

The commenter supported the proposed clarifications and further recommended revising the regulation to focus the requirement on information regarding the potential for significant impacts. They stated that doing so would be consistent with NEPA and the NHPA, as well as various species-protection statutes that require interagency consultation. The commenter stated that tailoring the information to the statutory need would assist both BOEM and the COP applicant to manage their shared responsibilities for developing data and analyses.

**Response:** BOEM incorporated responsive edits into § 585.627(a) in the final rule because they more accurately mirror the text in the NEPA statute and regulations, which focus on significant effects of a Federal action. BOEM added the phrase “(or the potential significance of the effect is unknown)” to fully reflect Sec. 106 of NEPA, as amended by the Fiscal Responsibility Act of 2023. BOEM also added the phrase “or such information is otherwise required by another statute or regulation” to emphasize that some of the requirements in § 585.627(a) are subject to additional authorities beyond NEPA, which may require the submission of additional information. BOEM also made parallel edits to the relevant SAP regulations at § 585.611(b) and the relevant GAP regulations at § 585.646(a)–(b) because BOEM’s plan

requirements have parallel structures regarding NEPA. To illustrate the edits made, the regulatory text in the final rule for § 585.627(a) provides, in part, that your COP must contain detailed information and analysis necessary to assist BOEM in complying with NEPA and other applicable laws. Your COP must contain information about those resources, conditions, and activities listed in the table in paragraph (a) that your proposed activities may significantly affect, or that may have a significant effect on your proposed activities (including where the potential significance of the effect is unknown) and must contain any other information required by law.

**Comment:** A commenter expressed support for the proposal to submit some archaeological surveys with the FDR, stating that this would reduce vessel time in the water and associated environmental impacts. The commenter stated that the requirement to submit geotechnical surveys at each foundation location at COP submittal is “at best unrealistic and premature and at worst wasteful and inefficient,” because “only some geotechnical survey[s] together with geophysical and archaeological surveys are necessary to inform the public environmental review process.” Another commenter requested that BOEM provide more detail about which surveys would be acceptable at the pre-COP stage to avoid duplicative survey work.

**Response:** The final rule clarifies which surveys are acceptable at the pre-COP stage and which surveys are acceptable at the FDR/FIR stage. Specifically, in the final rule geophysical survey data is required at each foundation and cable location in the COP to develop the geologic model as well as for environmental reviews. In addition, while the NPRM would have allowed deferral of some geophysical surveys, BOEM declined to carry forward that proposal in the final rule.

Consistent with the proposed rule, under the final rule geotechnical data at each foundation location can be deferred to FDR for final foundation design provided the data submitted in the COP is otherwise sufficient for evaluation of geologic hazards and foundation feasibility. Final assessment of geohazards and feasibility may be deferred to the FDR stage by the lessee, at which time this information will also be subject to review and certification by the CVA. Consequently, the current requirement to submit site-specific geotechnical data at the COP stage under 30 CFR 585.626(a) is modified by both agencies in this final rule. Consistent with the proposed rule, BSEE

and BOEM are relocating review of this site-specific data from 30 CFR 585.626(a) to 30 CFR 285.700(b) and (c).

*Comment:* A commenter expressed disagreement with the note in the proposed rule suggesting that delayed archaeological surveys could lengthen the NHPA section 106 review process. The commenter asserted that the proposed rule is in line with industry standards and suggested that BOEM clarify in the final rule whether any supporting documentation would be required to get a survey strategy approved under the performance-based standard. The commenter also suggested that BOEM clarify in the final rule that phased geotechnical identification represents a reasonable and good faith effort under the NHPA and future project-specific Memoranda of Agreement and Programmatic Agreements should include stipulations related to post-review discoveries. The commenter also recommended that BOEM match the cultural resources survey requirement language for GAPs to the corresponding requirement language for COPs.

*Response:* BOEM's NPRM § 585.626(b)(3) stated that “[o]n a case-by-case basis and subject to terms and conditions of COP approval per § 585.628(f), BOEM may permit you to submit certain surveys of the subsea portions of the area of potential effects with your FDR per § 585.701(a)(11).” Upon further consideration of comments received, particularly from federally recognized Tribes, BOEM is eliminating this language. BOEM agrees that sufficient geophysical data is necessary to assess potential impacts from offshore wind activities on cultural resources and the introduction of a case-by-case deferral of certain marine archaeological surveys could create uncertainty for some parties participating in consultations conducted according to section 106 of the NHPA. BSEE has removed the referenced regulatory text in § 585.701(a).

*Comment:* A commenter suggested developers be allowed to submit geophysical data pertaining to inter-array cables (IACs) after the COP, at the FDR/FIR Stage because the IAC layout is uncertain until the turbine generators have been selected, and delaying submission would allow for targeted collection of data.

*Response:* Developers may request a departure for submitting geophysical survey data for IACs and BOEM will evaluate the request based on the site-specific conditions and project details.

*Comment:* A commenter suggested BOEM establish a *de minimis* threshold or more specific details for when project

revisions after a COP approval are needed as the current proposed text is broad. The commenter further stated that COP revisions should not be required unless the changes occur outside of the PDE. A commenter proposed detailed regulatory text changes to several sections including additional review actions BOEM may take in relation to a COP that proposes to develop a lease in phases or segregate a lease, changes to the activities that trigger a revision to the COP and the timeline for approval, and the timing to commence operations on a commercial lease.

*Response:* While a *de minimis* threshold has not been specifically added to § 585.617, § 585.634, or § 585.655, as the provision in the final rule reads, minor deviations from an approved SAP, COP, or GAP should not require a plan revision. BOEM added a reference to the PDE as relevant to a determination of whether a revision is required. BOEM selectively adopted part of the recommendation regarding phased development in § 585.238 (which appeared as § 585.629 in the NPRM) by accepting the recommendation regarding conditioned approvals that account for subsequent phased development. BOEM protected its discretion by adding that it may take other actions within its authority, but determined that the proposed revision specifying that BOEM may “bifurcate its pending review of a Plan where a lease is segregated” was potentially confusing.

*(b) Other comments on policies or requirements BOEM should consider related to geophysical or geotechnical surveys.*

*Comment:* Several commenters expressed concern that proposed changes to survey requirements may result in less information being available at the earliest stages of leasing and permitting and would affect consulting parties' review of proposed projects. One such commenter recommended revising § 585.103(a)(4) by adding, “culturally significant sites, including viewsheds and traditional cultural landscapes and properties, and subsistence rights of a federally-recognized Tribe” at the end of the paragraph.

*Response:* The concerns expressed in this comment are noted and well-received. BOEM will not, as proposed in the NPRM, modify existing requirements for geophysical survey results to be submitted with the COP. Consistent with the proposed rule, the final rule permits deferred submittal of site-specific deep borings from geotechnical surveys. However, the

geotechnical surveys that may be deferred are not necessary to assess impacts to cultural or other environmental resources.

*Comment:* A couple of commenters stated that industry should be required to share geological and geophysical data from exploratory surveys. A commenter discussed OCS sand resources for beach nourishment projects and requested that BOEM balance lease issuance with non-energy uses. The commenter expressed concern that BOEM's mandate to protect sand resources is not given equal importance as its role in energy. The commenter stated that internal and external agency coordination for sand resources is needed to conduct a baseline assessment on sediment resources. The commenter also requested that BOEM define “competing uses” to include a phrase like “such as offshore sand resources.”

*Response:* BOEM understands that the survey data generated by offshore developers is of great interest to other communities, including academic communities and those investigating other resources, such as sand and mineral resources. Such issues must be weighed against developers' justifiable business interest in keeping information confidential that has been developed at great cost. BOEM agrees with the importance of understanding the implications to all offshore resources. The provisions of 30 CFR 585.626 and 585.627, and 585.645 and 585.646 (equivalent in COP and GAP frameworks) ensure that lessees and ROW holders will evaluate and describe the implication to offshore resources as part of plan preparation.

*Comment:* A commenter said that BOEM should consider requiring compensation to the commercial fishing industry as mitigation for the impacts of site investigations on vessels and gear. A commenter said that BOEM should acknowledge that noise produced from survey equipment may result in temporary decreased catch rates.

*Response:* BOEM is actively pursuing mechanisms to promote the compensation of impacted fishers. BOEM is aware of potential impacts to the fishing industry as a result of noise produced from survey equipment. The agency has devoted significant resources to avoiding and minimizing potential impacts and will continue to do so outside of the current rulemaking process.

### 3. What is the Department finalizing?

*(a) § 585.626 What must I include in my COP?*

BOEM is finalizing its proposal to allow submission of the results of *in situ*

boring and sampling at each foundation location with a lessee's FDR, in lieu of requiring that information to be included in the COP. To effectively implement this rule, BOEM revised the recommended level of geotechnical data required in the COP to match the scope described in BOEM report 2018–054 by DNV.<sup>12</sup> BOEM requires this level of data in each COP to ensure there is sufficient data and analysis for evaluation of geologic hazards and a foundation feasibility assessment.

However, BOEM decided against allowing geophysical surveys to be deferred on a case-by-case basis. With this final rule, BOEM will not allow a lessee to submit the results of certain detailed subsea archaeological surveys with the FDR. BOEM reasoned that sufficient geophysical data is necessary to assess potential impacts from offshore wind activities on cultural resources and the introduction of a case-by-case deferral of certain marine archaeological surveys would create uncertainty for all parties participating in consultations conducted according to section 106 of the NHPA. Under the final rule, geophysical survey data continues to be required in the COP to develop the geologic model as well as for environmental reviews. BOEM also determined that sufficient geophysical data is necessary to assess potential impacts from offshore wind activities on cultural resources and the introduction of a case-by-case deferral of certain marine archaeological surveys creates uncertainty for all parties participating in consultations conducted pursuant to section 106 of the NHPA. Finally, BOEM considered concerns raised by federally recognized Tribes who opposed deferring submittal of geophysical data to the FDR stage.

*(b) § 585.645(b) What must I include in my GAP?*

BOEM is finalizing its proposed revisions of the geotechnical, shallow hazards and geological survey information requirements in the GAP regulations at § 585.645(a). To effectively implement this rule, BOEM revised the recommended level of geotechnical data required in the GAP to match the scope described in BOEM report 2018–054 by DNV.<sup>13</sup> BOEM requires this level of data in each GAP to ensure there is sufficient data and analysis for evaluation of geologic

hazards and a foundation feasibility assessment.

*(c) § 285.701 What must I include in my Facility Design Report?*

BOEM is finalizing its proposed revisions that would defer the submission of some geotechnical information, previously submitted as part of the COP—or GAP for facilities deemed complex and significant—to be submitted as part of the FDR under § 285.701(a)(10).

*D. 30 CFR part 285, subpart G, Certified Verification Agent and Engineering Report*

**1. What did the Department propose?**

*(a) §§ 285.700 through 285.710, 285.712, and 285.714 Improving the project design and fabrication/installation verification process.*

BOEM and BSEE concurrently review reports for design and construction of the facilities on the OCS. Rather than relying solely on agency engineering expertise, the agencies also require lessees to use a CVA to provide independent third-party review of a project's FDR and FIR. The NPRM addressed the CVA's integral role in determining that a proposed OCS renewable energy facility is designed and constructed safely using best engineering practices in accordance with §§ 285.707 and 285.712. The CVA would also be expected to monitor fabrication and installation activities and to submit a final report to BOEM and BSEE, as applicable, before the start of commercial operations or other approved activities in accordance with §§ 285.637(a)(2) and (3) and 285.708–285.712.

Under the proposed rule § 285.708(a)(2) and (b), the CVA would be required to evaluate the commissioning of any Critical Safety Systems and Equipment, such as equipment designed to prevent or reduce major accidents that could result in harm to health, safety, or the environment associated with facilities. The NPRM proposed to add flexibility to the CVA nomination process. Currently, a lessee or a grantee must submit its CVA nominations with its SAP, COP, or GAP. In the NPRM, the Department would approve or disapprove CVA nominations as part of its plan review. Multiple lessees have expressed a desire to have an approved CVA in place before COP submittal so the CVA may provide third-party review of design concepts in the COPs. This reasoning also supports CVA review of SAPs and GAPs before submittal.

The Department has concluded that integrating CVA review into the earliest

stages of the design and permitting process is consistent with its policy goals of encouraging safety and best engineering practices. We also recognize that a lessee or a grantee may need to nominate new CVAs as the project progresses (for instance, if a design parameter changes at a later stage) or to request replacement of an approved CVA if that CVA is ineffective or can no longer perform their duties. As a result, the proposed rule would have provided flexibility for the Department, lessees, and grantees by decoupling the CVA nomination and approval process from plan submittal and approval. The proposed rule also clarified that a lessee or a grantee could nominate separate CVAs to review different components of a project.

A CVA provides independent third-party review of a project's design, fabrication, and installation. The proposed rule would expand the CVA's role to include verification of the design, fabrication, and installation of the Critical Safety Systems and Equipment to assist the Department in meeting requirements of OCSLA and its implementing regulations to ensure that any authorized activities are carried out safely. The Department's existing regulations require CVAs to "certify" projects, and the Department supports this approach as applied to the FDR and FIR stages of wind power development.

**2. What are the key public comments?**

*(a) Purpose, Role, and Scope of CVA.*

*Comment:* Several commenters expressed disagreement with the proposed changes to the CVA requirements, stating that the changes may lead to a reduction in safety and recommending that the Department carefully consider concerns about impacts to mariners. A commenter stated opposition to the proposed waiver process for a CVA and use of a lessee's engineer as they viewed the project engineer designation as a lessening of responsibility and could produce conflicts of interest in reviewing components. Another commenter opposed the use of multiple CVAs for various components insofar as it could lead to inconsistencies in the verification of a project. Finally, a commenter opposed the changes in the "verification" and "certification" language, suggesting that these changes would not be in line with industry standards.

*Response:* CVA roles and responsibilities are now regulated by BSEE. BSEE defines the role of the CVA in §§ 285.707 and 285.708. Changes to the rule on CVA roles and responsibilities will not reduce the level

<sup>12</sup> See <https://www.boem.gov/sites/default/files/environmental-stewardship/Environmental-Studies/Renewable-Energy/Data-Gathering-Process.pdf>.

<sup>13</sup> See <https://www.boem.gov/sites/default/files/environmental-stewardship/Environmental-Studies/Renewable-Energy/Data-Gathering-Process.pdf>.

of safety on a project and will not reduce the safety of mariners or other OCS users. The CVA must meet BSEE requirements for qualifications and experience, and their scope of work will address safety concerns through commissioning of the facility. Waiver requirements were already included in the regulations. Any waiver of the CVA requirement will be rigorously reviewed to ensure there is no reduction in safety prior to accepting the use of a project engineer. The final rule adds stricter requirements for project engineers when a waiver is requested. If multiple CVAs are used on a project, BSEE will require one CVA to oversee the entire facility design, fabrication, and installation and to ensure continuity across all project components.

BSEE understands that the terms “verification” and “certification” are not consistently defined across published standards. Accordingly, BSEE is defining each term based on the Oxford Dictionary and contextual usage in relevant standards. The terms “certify” or “certification” describes how the CVA “recognizes that (someone or something) possesses certain qualifications or meets certain standards.” BSEE may thus require a CVA to “certify” that a design or safety component conforms to a defined certification protocol based on criteria from specific quality assurance standards or recognized accepted engineering practices. The terms “verify” or “verification” describes how the CVA demonstrates that something is true, accurate, or justified. BSEE has evaluated each of the CVAs actions, as required by the regulations, and updated the regulations to use the appropriate term.

*Comment:* Multiple commenters favored the proposed changes to CVA requirements. Several commenters expressed support for the proposed revisions to the role of a CVA, stating that the revisions align with best engineering practices and BOEM and BSEE policy goals of encouraging safety. One commenter stated support for the inclusion of flexibility, pragmatism, durability, and performance-based standards and suggested that the Department include a supporting discussion in the preamble detailing the approach to these concepts. A commenter expressed support for the CVA role revisions and the approval of CVA nomination prior to COP submittal to create flexibility for both lessees and the Department.

*Response:* BSEE has determined that reliance on CVAs will provide an independent source of review for key stages of project development and help

to establish public confidence in the renewables industry. BSEE defines the role of the CVA in §§ 285.707 through 285.712. CVAs play a role throughout the development of a project, including design, fabrication, installation, and commissioning of Critical Safety Systems and Equipment through verifications and certifications. The CVA nomination now occurs within BSEE’s oversight, therefore, the CVA nomination has been decoupled from the COP. BSEE has taken a performance-based approach and declined to incorporate new industry standards in the regulations at this point in time as standards are changing and still being developed, especially U.S.-specific standards. The process implemented here provides flexibility regarding standard selection but also provides BSEE the opportunity to review the standards chosen by the lessee and CVA during the FDR review process.

*Comment:* Several commenters suggested changes that would enable the Department to approve separate FDRs and FIRs for major project components. The commenters stated that these changes would encourage developers to seek CVA review throughout their project design process and would permit the use of specialized CVAs to verify specific project components.

*Response:* BSEE already allows and encourages separated FDR/FIR submittals of integrated asset packages to allow for flexibility pursuant to § 285.700(b). BSEE has made rule changes related to the role and responsibilities of the CVA for the purpose of advancing overall levels of safety in §§ 285.707 and 285.708. If multiple CVAs are used on a facility, BSEE will still require one CVA to oversee the entire facility design, fabrication, and installation and ensure the compatibility of each facility component. All CVAs must meet BSEE requirements for qualifications and experience during the nomination process and BSEE will ensure the CVA scope of work addresses safety concerns throughout the commissioning of the facility.

*(b) Clarification of Rule Terminology.*  
*Comment:* A commenter requested that the Department clarify the phrase “all incidents” that affect the design, fabrication, and installation of the project and its components that the CVA is required to report in § 285.705. The commenter further requested that the proposed rule change the burden of reporting incidents from the CVA to the lessee, who has site control, and allow a CVA to verify any modifications needed to address the incident. Another commenter suggested that the

Department change the definition for professional engineers that are allowed to replace CVAs to “licensed professional engineer” rather than “registered,” as it is the more common form in the United States. A commenter suggested that the Department explicitly define “installation” and “commissioning” in a similar manner to the definition of “fabrication” and explain in more detail what is included in the Critical Safety Systems and Equipment to better define what is required to be verified by a CVA.

*Response:* The regulations at § 285.705(a)(3) require the lessee to use CVA(s) to immediately notify BSEE of incidents that affect the design, fabrication, and installation of the project and its components. The lessee is also responsible for reporting certain incidents as required in §§ 285.815 and 285.831, and the lessee is responsible for accepting any fabrication or installation modifications and notifying BSEE as provided in § 285.703.

BSEE ensures that the lessee upholds its reporting requirements (including the requirement to use a CVA to report certain incidents) and can take enforcement action if the lessee fails to meet these requirements. The use of the CVA for reporting incidents as a part of their oversight responsibilities enables their participation in evaluating such incidents and providing an independent analysis to BSEE and is thus preferable to having the lessee solely report incidents.

“Incidents that affect the design, fabrication, and installation of the project and its components” is an intentionally broad phrase that includes but is not limited to design changes or events that occur prior to the final project verification report (PVR) that affect the design, fabrication, or installation of the project or its components such that the original design envelope, standards, or functionality has been changed from what was originally reviewed. BSEE notes the rest of the comments and may take them into consideration in the event that BSEE initiates a relevant rulemaking process in the future.

*(c) Scope and Role of CVAs and Project Engineers.*

*Comment:* Several commenters provided feedback on the proposed revisions to the role of a CVA in § 285.705. Some commenters asked that the Department specify the qualifications required of a “project engineer” that is allowed to stand in for a CVA as it would assist developers in determining if a waiver could be pursued.

Other commenters suggested adding language to indicate that the CVA scope of work must be in accordance with project certification schemes generally accepted and used in industry, such as International Electrical Code Renewable Energy (IECRE) OD-502. A commenter also requested that the Department clarify the responsibility of a General Project CVA to avoid conflicts and misunderstandings that may result in the incorrect completion or non-performance of verification tasks.

Another commenter suggested that the Department adopt an independent process to review and approve a company's credentials for CVA nomination rather than project-specific approach proposed by the Department, to decouple CVA nomination from the project approval processes and encourage new participants in the CVA market.

**Response:** A CVA must be both competent and independent. A proposed waiver and substitution of project engineers for CVAs will be evaluated by BSEE on a case-by-case basis. The lessee must submit the project engineer's qualifications to BSEE as a part of their waiver request to demonstrate that the project engineer is a professional engineer with relevant experience and expertise in the facilities they will be verifying/certifying. The waiver must demonstrate that the project engineer is qualified to perform the requirements of §§ 285.708 through 285.713. BSEE may evaluate this waiver requirement in future rulemakings. BSEE disagrees with the commenters' suggestion to incorporate any specific project certification standard, such as IECRE OD-502. BSEE has taken a performance-based approach and declined to incorporate new industry standards in the regulations at this point in time as standards are changing and still being developed, especially U.S.-specific standards. The process implemented here provides flexibility while still allowing BSEE to evaluate the CVA scope of work to ensure that it fully describes the CVA's verification and certification approach.

When multiple CVA's are nominated for a project, a general project CVA must be nominated to manage the overall project verification and certification approach to ensure consistency and oversight among the other CVAs, especially in transition areas between different CVAs.

BSEE disagrees with the commenters' suggestion to adopt an independent process to review and approve a company's credentials for CVA nomination because BSEE reviews each CVA nomination to make sure that the

nominated CVA has the technical expertise, experience, and capacity for the specific project. A specific company may be an acceptable CVA for one project and not another depending on the technologies involved in the project, technical expertise of the company, number of projects the company is overseeing, and several other factors. BSEE will continue to review the CVA nomination for each specific project.

*(d) Monitoring and Witnessing of Project Stages by CVA.*

**Comment:** A commenter provided specific regulatory text revisions for §§ 285.708 and 285.710 regarding when a CVA is needed on a project and how to nominate a CVA for the Department's approval, including a suggestion that CVAs may periodically monitor fabrication and installation of a facility and utilize type-approved procedures rather than "proper" procedures to verify a design.

A commenter requested additional guidance on how a CVA may verify safety and suggested that a "design-basis" approach as described in BOEM's 2020 COP Guidelines Attachment C could be applied.

A commenter stated that the "Background" section of the proposed rule should be revised to reflect the current expectations for third-party witnessing of certain commissioning activities, as recently issued in a COP Approval Letter Terms and Conditions.

Another commenter stated that attending and witnessing of commissioning activities of safety and protection functions by the CVA is not necessary as these functions are already type-certified as part of the IECRE-OD501 process. The commenter instead provided several regulatory text revisions to § 285.710 to recommend that verification by a CVA be limited to a review of completeness of commissioning records and systems and remove the requirement of a review for type-certified components.

**Response:** As to the first comment described above, BSEE agrees that the procedures used and validated during the type-approval process should be used for type-approved components. For other components, OEM procedures should be used when applicable as per § 285.710. The specific regulatory text recommendations were not all incorporated; however, those recommendations were used to update the final regulatory text.

In response to the second comment described above, BSEE is not employing a "design basis" for the FDR and FIR. The CVA must certify and/or verify the contents of the FDR and the FIR. The FDR contains specific engineering and

design information, including Critical Safety Systems and Equipment. The FIR contains specific fabrication and installation information. Project "design bases" tend to be broad and less specific, and therefore not meet the criteria for an FDR or FIR. CVA verification must address specific hazards identified via a risk assessment and what mitigations (or design changes) were implemented to minimize or alleviate the hazards.

As to the third comment described above, BSEE did not make changes based on the comment, but BSEE did meet the intent of the comment in the proposed and final rule by including requirements for commissioning activities that are similar to those in the COP terms and conditions in §§ 285.705, 285.708, and 285.710. BSEE will also work with the CVA to make sure expectations for commissioning are clear.

Finally, as to the fourth comment described above, BSEE disagrees that there is no need for witnessing of the commissioning of Critical Safety Systems and Equipment and has not implemented the proposed revisions to § 285.710. One of the roles of the CVA, as described in § 285.710, is to certify that engineering procedures are executed as designed. BSEE has determined that periodic witnessing of commissioning operations (inclusive of Critical Safety Systems and Equipment commissioning) in addition to reviewing completeness records is necessary to ensure conformance with submitted plans and that all Critical Safety Systems and Equipment are functioning as intended and installation is completed as designed.

**Comment:** Multiple commenters requested that the Department further clarify the role of the CVA in verifying a facility's safety by incorporating appropriate consideration for human and occupational safety through verification of adherence to industry codes and standards to reduce confusion regarding CVA review of a facility.

**Response:** BSEE has declined to incorporate new standards into these regulations because BSEE has determined that the proposed processes adequately account for human health and occupational safety. Human and occupational safety must be considered during the risk assessments that identify the Critical Safety Systems and Equipment as is required by § 285.701. The CVA will review the risk assessments and the standards proposed as a part of the FDR and FIR for adequacy, will certify adherence to the standards, and will certify that the risk

assessment outcomes have been integrated into the project design. BSEE will review the risk assessment, FDR, FIR, and CVA submissions to ensure that appropriate standards are being utilized.

*Comment:* A commenter stated that the removal of mooring and anchoring systems from CVA verification presents an increase to risk and safety of a project and requests that the Department reinstate the requirement. The commenter also discussed the need for a CVA to verify any self-inspection plans submitted for facilities in development.

*Response:* Mooring and anchoring systems have not been removed from the CVA verification process. For floating facilities, the CVA or project engineer must verify their structural integrity, stability, ballast, and that proper procedures were used during, *inter alia*, installation of the mooring and tethering systems described at § 285.710(d)(3). For fixed bottom foundations for non-FOWTs, a CVA or project engineer is required to inspect and verify mooring, tendon, and tethering systems under § 285.710(b)(6).

BSEE will be evaluating self-inspection plans throughout the life of the project. The self-inspection plan includes an evaluation of the Critical Safety Systems and Equipment identified and the associated inspection criteria as well as the self-inspection criteria related to structural, mooring, and monitoring of corrosion protection. Due to the performance monitoring that BSEE will be conducting throughout the life of the project, BSEE is best suited to perform this work as opposed to a CVA.

(e) *Other Comments.*

*Comment:* A commenter suggested that the Department formalize the Project Verification Report using a consistent term, “PVR.” The commenter requested that the Department clarify whether some or all Critical Safety Systems and Equipment are referenced in existing 30 CFR 585.710 and clarify that the periodic inspection referenced in proposed 30 CFR 585.710(a) is applicable to the entire scope described by paragraph (b).

*Response:* The term “PVR” is defined as an abbreviation for Project Verification Report in this preamble. BSEE has formalized the minimum requirements of a Project Verification Report in § 285.708. BSEE understands that technologies will undergo frequent changes in a new industry; accordingly, BSEE declines to provide a list of Critical Safety Systems and Equipment which could limit future innovation. The regulation requires that the lessee do a risk assessment of their specific

facilities and identify the Critical Safety Systems and Equipment, with oversight from the CVA. The CVA’s periodic inspections, as referenced in 30 CFR 285.710(a), are applicable to the entire scope of the CVA’s oversight in 30 CFR 285.710(b), which includes Critical Safety Systems and Equipment.

*Comment:* A commenter suggested that the proposed text does not clearly state who will prepare the PVR at § 585.704.

*Response:* BSEE agrees with the comment and has amended the equivalent provisions in § 285.708(a)(5) to designate a CVA to prepare the PVR. BSEE realizes there may be multiple PVRs for a project and has formalized the minimum requirements of a PVR in § 285.708(a)(5).

*Comment:* A commenter stated that the “Background” section in the NPRM (Section IV.B.6, 88 FR 5974) states that “[t]he CVA must also use good engineering judgment and practice in conducting independent assessments of the commissioning of critical safety systems.” However, the commenter stated that this language is not included in existing 30 CFR part 585 (2011), although it can be found in recently issued COP Approval Letter Terms and Conditions. The commenter urged the Department to clarify “witnessing” requirements to be performed by the CVA, as proposed in 30 CFR 585.705(b)(2). They suggested that the Department revise the “Background” section of the rule preamble to reflect the current expectations for 3rd-party witnessing of certain commissioning activities.

*Response:* BSEE has revised § 285.708 to clarify that the CVA’s primary duties for fabrication and installation are to: (1) use good engineering judgment and practice in conducting an independent assessment of the fabrication and installation activities and of the commissioning of Critical Safety Systems and Equipment; (2) monitor the fabrication and installation of the facility and the commissioning of Critical Safety Systems and Equipment; (3) assess the facility design to withstand the environmental and functional load conditions appropriate for the intended service life at the proposed location; and (4) certify in Project Verification Reports that project components are fabricated and installed in accordance with accepted engineering practices and to a nationally or internationally recognized quality assurance standard or to an equivalent alternate means of quality assurance considered on a case-by-case basis.

The regulatory text at § 285.710(a) provides that “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.” BSEE added another witnessing expectation for the CVA or project engineer to make periodic onsite inspections to witness the commissioning of Critical Safety Systems and Equipment at § 285.710(f). Specific witnessing expectations may be included and approved by BSEE as part of the CVA scope of work.

*Comment:* A commenter asked that the Department clarify the CVA’s duties for facility design review at § 585.708 to include within the usage of “good engineering judgment and practices” specific language that the facility “will withstand the environmental and functional load conditions appropriate for the intended service life at the proposed location and has been designed to provide for safety.”

*Response:* BSEE agrees with this comment in theory, but § 285.708 contains requirements for fabrication and installation review. BSEE has included language in § 285.707(a) to require the CVA to verify a facility is designed to withstand the environmental and functional load conditions appropriate for the intended service life at the proposed location and has been designed to minimize risk to personnel as required by § 285.105(a).

*Comment:* A commenter proposed to add a new section entitled “What must I include in my as-built submissions?” with content as follows: “(a) Your as-fabricated drawings and documents of any facilities that are outlined in your FDR and FIR, must be made available to DOI prior to PVR non-objection and must include the following items:

Required documents: (1) Complete set of cable drawing(s), Required documents: (2) Electrical one-line drawing(s). ”

*Response:* BSEE is considering publishing guidance regarding as-built drawings and professional engineer stamping expectations but has not made changes in this final rule as a result of these comments.

BSEE notes the rest of the comments and may take them into consideration in the event that BSEE initiates a relevant rulemaking process in the future.

3. What is the Department finalizing?

(a) § 285.700 *What reports must I submit to BSEE before installing facilities described in my approved SAP, COP, or GAP?*

The Department is finalizing the language in § 285.700, as was proposed § 585.700, with clarifying revisions. In

final § 285.700(a), BSEE requires that lessees submit an FDR and an FIR before installing facilities described in the approved COP (§ 585.632(a)) and, when required by your SAP (§ 585.614(b)), or GAP (§ 585.651). You may submit your FDRs and FIRs to BSEE pursuant to revisions made to §§ 285.700, 285.701, and 285.702 before or after SAP, COP, or GAP approval.

As provided in final § 285.700(b), if you submit separate FDRs and FIRs by asset package (e.g., wind turbine generator (WTG), offshore substation/electrical service platform, etc.), you must ensure major integrated asset package(s) are complete (e.g., the WTG package includes the rotor-nacelle assembly (RNA), blades, tower, foundation, and transition piece, if applicable), and explain to BSEE how all asset packages will function together effectively in an integrated manner in accordance with your project design. You must also demonstrate that such integration has been verified by your CVA.

Subject to these requirements, you may proceed with fabrication and installation, under § 285.700(d), when (1) BSEE deems your report submitted before SAP, COP, or GAP approval and notifies you of its non-objection to the FDR and FIR, or does not respond within 60 business days of SAP, COP, or GAP approval; or (2) BSEE deems your report submitted after SAP, COP, or GAP approval and notifies you of its non-objection to the FDR and FIR or does not respond with objections within 60 business days of the report being deemed submitted.

The existing requirement to submit site-specific geotechnical data at the COP stage under 30 CFR 585.626(a) is being modified by both agencies. BSEE and BOEM are relocating review of this site-specific data from 30 CFR 585.626(a) to 30 CFR 285.701(a). Within this provision, BSEE is clarifying that the 60-day FDR and FIR review period in the existing regulation is 60 business days. BSEE determined that a 60-business day review period, rather than the proposed 60-calendar day review period, is necessary to ensure that BSEE has sufficient time to review these complicated and lengthy technical documents.

Section 285.700(e) has also been revised to state that you may commence procurement of discrete parts of the project that are commercially available in standardized form and type-certified components, or fabrication activities that do not take place on the OCS (e.g., manufacturing), prior to the submittal of the FDR or FIR under § 285.700(a) or any plans required under 30 CFR parts

585 and 586. The procurement and fabrication of facility components are subject to verification and certification by your CVA, and BSEE may object to their installation if the components or their fabrication are inconsistent with accepted industry or engineering standards, the approved SAP, COP, or GAP, the FDR or FIR, or BSEE's regulations.

Under final § 285.700(f), if BSEE requires additional information or has objections, we will notify you in writing within 60 business days of the FDR or FIR being deemed submitted for FDRs and FIRs submitted after plan approval, or within 60 business days of plan approval for FDRs and FIRs submitted before plan approval. Following initial notification of any objections, BSEE may follow up with a letter or email detailing its objections to the report and requesting that certain actions be undertaken. Final paragraph (f) in this section also states that you cannot commence fabrication or installation activities on the OCS until you resolve all objections in such reports to BSEE's satisfaction.

*(b) § 285.701 What must I include in my Facility Design Report?*

The Department is finalizing the language in proposed § 285.701, including revisions to § 285.701(a)(1) through (10), the addition of paragraphs (a)(11) through (13) and removal of paragraph (e). In this section, BSEE addresses how the design report demonstrates that the design conforms to key responsibilities listed in § 285.105(a). In paragraph (a) of this section, the required documents in the report include a cover letter; location plat; front, side, and plan view drawings; structural drawings; summary of environmental data used for design; summary of engineering design data; design calculations; project-specific studies used in the facility design or installation; description of the loads imposed on the facility; geotechnical reports; design standards; Critical Safety Systems and Equipment; and other information required by BSEE. BSEE is not finalizing proposed changes to paragraph (b) and is keeping the provision in the existing regulation with the exception of adding "tendon" to paragraph (b)(2). BSEE is revising paragraph (c) to include what was proposed in paragraph (b) that requires submission of the FDR to BSEE according to § 285.110. Under paragraph (d) of this section, if you are required to use a CVA, the design report must include a certification statement with accompanying justification attesting that the design of the structure has been certified by a BSEE-approved CVA to be

in accordance with accepted engineering practices and the approved SAP, GAP, or COP, as applicable, and has been designed to provide for safety. The certification statement should also identify a location where the certified design and as-built plans and specifications will be on file. The Department proposed in the January 30, 2023, NPRM to change the regulatory language defining the CVA's role from "certify" and "certification" to "verify" and "verification" in § 285.701(d). The Department ultimately decided to maintain the use of "certify" and "certification" in this regulation. BSEE evaluated each use of the words "certify," "certification," "verify," and "verification" and updated the regulations as appropriate. In this case, "certify" and "certification" are appropriate because the terms describe how the CVA "recognizes that (someone or something) possesses certain qualifications or meets certain standards." The CVA must, for example, "certify" that a design or safety component conforms to a defined certification protocol based on criteria from specific quality assurance standards or recognized accepted engineering practices.

*(c) § 285.702 What must I include in my Fabrication and Installation Report?*

The Department is finalizing this regulation, consistent with proposed § 285.702. BSEE is revising § 285.702(a)(1) through (7); removing the existing paragraph (d); redesignating existing paragraphs (b) and (c) as paragraphs (c) and (d), respectively; adding paragraphs (a)(8) through (10) and (b); and revising the newly redesigned paragraph (d). BSEE added new documents that must be included in the fabrication and installation report, including quality assurance information, which includes certificates ensuring adherence to nationally or internationally recognized assurance standards; commissioning procedures for Critical Safety Systems and Equipment, including OEM procedures or other BSEE accepted engineering practices for commissioning of Critical Safety Systems and Equipment as identified in § 285.701(a)(12); project easement; and other information. A similar attestation to § 285.701 must accompany the filing of fabrication and installation reports. For purposes of quality assurance, BSEE requires that certificates ensuring adherence to nationally or internationally recognized standards be included in the FIR, pursuant to § 285.702(a)(6). Additionally, the NPRM proposed to change the regulatory language defining the CVA's role from "certify" and

“certification” to “verify” and “verification” in § 285.702(d). The Department ultimately decided to maintain the use of “certify” and “certification” in this regulation. In this case, the terms “certify” or “certification” are appropriate because they describe how the CVA “recognizes that (someone or something) possesses certain qualifications or meets certain standards.” BSEE may require a CVA to “certify” that a design or safety component conforms to a defined certification protocol based on criteria from specific quality assurance standards or recognized accepted engineering practices. The terms “verify” or “verification” describes how the CVA demonstrates that something is true, accurate, or justified. BSEE has evaluated each of the CVAs actions, as required by the regulations, and updated the regulations to use the appropriate term.

*(d) § 285.703 What reports must I submit for project modifications and repairs?*

The Department is finalizing paragraphs (a) and (c) of § 285.703, consistent with proposed § 585.703. With respect to repairs and modifications, BSEE revised the term “major repair” to provide for substantial repair of a Critical Safety Systems or Equipment, including those identified in your FDR. The term “major modification” is revised to contain similar language of “substantial alteration” of Critical Safety Systems and Equipment, including those identified in your FDR. A similar attestation to § 285.701 must accompany the filing of repair and modification reports. CVAs will also be required to “certify” that major repairs or modifications of renewable energy structures and crucial components to a completed project conform to accepted engineering practices, in the FDR and the BOEM-approved plan, as applicable.

*(e) § 285.704 After receiving the FDR, FIR, or project verification reports, what will BSEE do?*

The Department is finalizing this regulation, consistent with proposed § 585.704, with revisions to § 285.704(a), (b), and (c). In this final rule, BSEE-administered rules for determining if reports are “deemed submitted” or in need of correction for “problems and deficiencies” track similar BOEM-administered rules. BSEE will have 20 business days to deem a report submitted or to notify a lessee of problems or deficiencies that prevent BSEE from determining that the reports are “deemed submitted” such as the submission being incomplete or files being unopenable or corrupted.

*(f) § 285.705 When must I use a Certified Verification Agent (CVA)?*

The Department is finalizing paragraphs (a) through (d) of § 285.705, consistent with proposed § 585.705, with minor revisions. This regulation has been updated to allow for multiple CVAs, if approved by BSEE. The roles of the CVAs have been updated to add that the CVAs must (1) ensure that the design of the facilities is suitable for the location where they will be installed, (2) ensure Critical Safety Systems and Equipment are commissioned in accordance with the procedures identified in § 285.702(a)(8), and (3) provide BSEE and the lessee with reports of all incidents that affect the facility design, fabrication, and installation, including the commissioning of Critical Safety Systems and Equipment, for the project and its components.

Waivers from CVA requirements must include a demonstration that the facility design conforms to a standard design that has been used successfully in a similar environment, the relevant fabricator has successfully fabricated similar facilities, the installation company has successfully installed similar facilities in a similar offshore environment, and the facility will be fabricated or that major modification or major repairs were completed in conformance with accepted engineering practices and to a nationally or internationally recognized quality assurance standard.

Finally, if BSEE waives the requirement for a CVA, lessees must demonstrate that their project engineer can perform the same duties and responsibilities as the CVA. The lessee must submit the project engineer’s qualifications to BSEE as part of their waiver request to demonstrate that the project engineer is a professional engineer with relevant experience and expertise in the facilities they will be verifying/certifying.

*(g) § 285.706 How do I nominate a CVA for BSEE approval?*

The Department is finalizing § 285.706(b)(2) and (7), (c), and (d), consistent with proposed § 585.706. BSEE is removing § 285.706(e) because the Reorganization Rule transferred authority for approving a CVA from BOEM to BSEE. The final rule modifies proposed paragraph (a) of this section to require that a CVA must be nominated by the lessee and approved by BSEE before conducting any verification activities for which they have been nominated. Under this revised provision, if you intend to use multiple CVAs, you must nominate a general project CVA who will manage the

overall project verification and certification approach and who will ensure consistency and oversight among multiple CVAs. The general project CVA must be nominated no later than the COP submission date. Paragraph (c) of this section also includes conflict of interest provisions to ensure chosen CVA(s) were not directly involved in the design, fabrication, installation, modification, or repair for which they are asked to provide an independent oversight.

Section 285.706 also requires that all verifications and certifications must be conducted under the direct supervision of a registered professional engineer.

*(h) § 285.707 What are the CVA’s primary duties for facility design review?*

The Department is finalizing § 285.707(a) and (b) consistent with proposed § 585.707 (a) and (b), with a few minor revisions. BSEE has made minor changes to the description of CVA duties in final § 285.707(a) to require CVAs to verify to BSEE that the facility is designed not only to withstand the environmental and functional load conditions appropriate for the intended service life at the proposed location, but also to minimize safety risk to personnel as required in § 285.105(a). Also, the regulation at paragraph (b)(9) is added to provide that the CVA must conduct an assessment supporting the design for human safety and how the results were used in the design. The Department is not finalizing the proposed § 285.707(c).

*(i) § 285.708 What are the CVA’s or project engineer’s primary duties for fabrication and installation review?*

The Department is finalizing § 285.708, consistent with proposed § 585.708, with minor revisions. BSEE has updated expectations for the CVA’s oversight of fabrication and installation to add in paragraph (a) that the CVA must 1) use good engineering judgement and practice in conducting an independent assessment of the fabrication and installation activities and of the commissioning of Critical Safety Systems and Equipment, and 2) monitor the fabrication and installation of the facility and the commissioning of Critical Safety Systems and Equipment. Under paragraph (a)(5) in this section, the CVA must certify in a project verification report that project components are fabricated and installed in accordance with accepted engineering practices and to a nationally or internationally recognized quality assurance standard (or to an equivalent alternate means of quality assurance considered on a case-by-case basis), the lessee’s BOEM-approved SAP, COP, or

GAP (as applicable), and the lessee's FIR. As provided in paragraph (a)(5), the project verification report must also identify the location of all records pertaining to facility fabrication and installation. In paragraph (a)(6), the CVA must provide records documenting that Critical Safety Systems and Equipment are commissioned in accordance with the procedures identified in § 285.702(a)(8); and, under paragraph (a)(7), identify the location of all records pertaining to commissioning of Critical Safety Systems and Equipment, as required in § 285.714(c).

Under paragraph (b), the CVA or project engineer must now also monitor the fabrication and installation of the facility and the commissioning of Critical Safety Systems and Equipment to certify that they have been built and installed in accordance with the lessee's FDR(s) and FIR(s). According to final paragraph (b)(1), the CVA or project engineer must inform the lessee and BSEE if the fabrication and installation procedures or Critical Safety Systems and Equipment commissioning procedures have changed or design specifications have been modified and, under paragraph (b)(2), if the lessee accepts the modifications, the lessee must also inform BSEE.

(j) *§ 285.709 When conducting onsite fabrication inspections, what must the CVA or project engineer verify?*

The Department is finalizing § 285.709(a), consistent with proposed § 585.709 with minor edits. BSEE is not finalizing paragraph (b) as proposed and is keeping the provision in the existing regulation.

(k) *§ 285.710 When conducting onsite installation inspections, what must the CVA or project engineer do?*

The Department is finalizing § 285.710, consistent with proposed § 585.710. For inspections of installation activity on floating facilities, BSEE is adding commissioning of Critical Safety Systems and Equipment to the scope of work performed by a CVA or project engineer in § 285.710(b)(9). Content of their work will include onsite inspections to verify, witness, survey, or check the installation and commissioning of Critical Safety Systems and Equipment to verify the equipment functions as designed and that all records associated with commissioning of Critical Safety Systems and Equipment are complete. The final rule expands the scope of CVA or project engineer activity to verify that proper procedures are used for commissioning of Critical Safety Systems and Equipment for both fixed and floating facilities at § 285.710(c). For floating facilities, the CVA or project

engineer must verify their structural integrity, stability, ballast, and that proper procedures were used during (1) loadout of the facility, (2) installation of foundation pilings, templates, and anchoring systems, and (3) installation of the mooring, tendon, and tethering systems as required by final § 285.710(d). The CVA or project engineer must also conduct an onsite inspection of the installed facility as approved, as provided in final § 285.710(e) and witness the commissioning of Critical Safety Systems and Equipment, as provided in final § 285.710(f).

(l) *§ 285.712 What are the CVA's or project engineer's reporting requirements?*

The Department is finalizing § 285.712, consistent with proposed § 585.712, with one edit. With this final rule, reports prepared by a CVA or project engineer will summarize issues involving the designs, and any incidents during facility fabrication and installation or Critical Safety Systems and Equipment commissioning, and how those issues were resolved, pursuant to § 285.712(b)(5).

(m) *[RESERVED]*

BSEE is removing and reserving this section, consistent with the NPRM.

(n) *§ 285.714(a)(4) What records relating to FDRs, FIRs, and Project Modification and Repair Reports must I keep?*

The Department is finalizing § 285.714, consistent with proposed § 585.714. Additional recordkeeping measures are required for the commissioning of Critical Safety Systems and Equipment and the location of records identified in the certification statement, as set out in §§ 285.701(c), 285.703(b), and 285.708(a)(5) and (a)(7). These additional recordkeeping measures include providing BSEE with the location of these records in the certification statements associated with these regulations.

*E. Renewable Energy Leasing Schedule*

1. What did the Department propose?

(a) *§ 585.150 What is the renewable energy leasing schedule?*

BOEM proposed to include a new § 585.150 describing the renewable energy leasing schedule. This proposed schedule would include a list of locations under consideration for leasing and a leasing schedule that BOEM intends to follow in announcing its future renewable energy lease sales. According to the proposal, at least once every two years, the Secretary would publish a schedule of proposed lease

sales. As a proposed schedule, it would not obligate BOEM to offer all sales on the schedule; BOEM would adjust the schedule as necessary through the scheduled updates. The first published schedule would be issued for the five-year period following the effective date of this rulemaking, and subsequent schedules will cover the five-year period after each update. This schedule would include a general description of the area of each proposed lease sale, the calendar year in which each lease sale is projected to occur, and the reasons for any changes made to the previous schedule. Every time the schedule is updated, BOEM would identify those lease sales that are being considered for the following 5-year period. For more details on the proposed renewable energy leasing schedule, see 88 FR 5984.

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

2. What are the key public comments?

*Comment:* Some commenters expressed opposition to BOEM’s proposed renewable energy leasing schedule. A commenter said that based on their experience with the oil and gas 5-year program, the 5-year leasing schedule would not be transparent, in the public interest, or protective of the marine ecosystem and public health. The commenter said the schedule would undermine due process and meaningful public involvement. A commenter stated that a schedule by rulemaking would give BOEM the authority to further curtail public engagement and stakeholder input and avoid waiting for studies that could impact decisions. The commenter recommended that BOEM establish the schedules outside of the rulemaking process.

*Response:* The OSW leasing schedule in this rule should not be confused with BOEM’s National Outer Continental Shelf Oil and Gas Leasing Program, which is different in many ways. BOEM does not agree that including in our discretionary decision-making process a requirement for greater public transparency about the agency’s leasing intentions could undermine due process or meaningful public involvement, as the commenter asserts. The regular dissemination of a schedule indicating

areas where the agency intends to focus future area identification efforts will not affect the actual process that BOEM employs to evaluate potentially suitable areas for leasing.

While we commit in this rulemaking to periodically publishing an OSW leasing schedule, that aspirational schedule is independent from BOEM's area identification and leasing process. The schedule will simply summarize the agency's future plans for the consideration of areas for leasing. For leasing scheduled in the first year or two of the five-year period, BOEM may have completed some of the milestones toward leasing development (area identification, sale notices, etc.). For leasing scheduled later in the five-year period, BOEM may not have completed or even begun such steps.

**Comment:** A commenter expressed support for additional requirements associated with stakeholder engagement and government coordination. A couple of commenters said BOEM should consider allowing public input when changes are made to the schedule. A commenter expressed concern that the proposed rule would not include a requirement for public engagement or comment periods on the leasing schedule, stating that public engagement should be required. Similarly, a few commenters recommended that in creating a schedule, BOEM should lay out a comprehensive process for engagement that would also vet alternatives and promote the most appropriate areas for development of OSW.

**Response:** BOEM has not included a requirement for a comment period prior to publishing the leasing schedule every two years. The leasing schedule is meant to shed light on the state of BOEM's current thinking rather than being the culmination of a detailed decision-making process. Note that areas identified in a leasing schedule will likely not see actual development for at least another 10–15 years, during which many comment periods, public meetings, consultations, government-to-government consultations, meetings, publications, studies, plans and other activities must take place. The leasing plan sits at the beginning of this process and is intended merely to let the public know where BOEM plans to focus its attention on the consideration of new areas.

**Comment:** One commenter requested additional information regarding how BOEM will integrate Tribal consultation with the development of the schedule before it is released to the public. Another commenter requested that Tribal consultation be triggered

whenever there is a change to the lease schedule.

**Response:** BOEM is committed to following the Department's policy on Consultation with Indian Tribes and Alaska Native Claims Settlement Act (ANCSA) Corporations and will consult with Tribes where there are departmental actions that may have a substantial direct effect on a Tribe(s) (512 DM4; 512 DM 6). BOEM declines to commit to public comment periods to inform the leasing schedules introduced in this rule.

**Comment:** A commenter proposed revisions to the regulatory text at § 585.150 to “ensure that the leasing schedule is focused on relevant objectives, is realistically achievable, and fosters transparency for all stakeholders.” A few commenters said the text should identify specific considerations to be reflected in the leasing schedule, including State and Federal renewable energy goals and mandates, renewable energy supply chain needs, comparative needs of regional and national energy markets, and the intersection of energy generation potential and commercial development interest.

**Response:** The items mentioned in the comment will almost certainly be considered in creating the leasing schedule, however, BOEM is not committing in this rulemaking to publishing a discussion of how considerations were balanced to obtain the announced leasing schedule.

### 3. What is the Department finalizing?

#### (a) § 585.150 What is the renewable energy leasing schedule?

The final rule creates a new subpart B comprised of § 585.150 that establishes a leasing schedule, essentially as proposed in the NPRM. The schedule is published at least every two years, which covers the five-year period following the schedule's publication. The schedule will describe a general description of the area covered by each proposed lease sale, the calendar year in which it is projected to occur, and reasons for any changes to the previously published schedule. BOEM did not add any mandatory comment periods or specific outreach to the leasing schedule requirement.

### F. Lease Issuance Procedures

BOEM proposed to revise several aspects of renewable energy auction regulations in the NPRM. These revisions would provide simplification, clarification, and conformance with existing agency practice.

### 1. What did the Department propose?

#### (a) § 585.106 What happens if I fail to comply with this part?

BOEM proposed clarification to the process surrounding the imposition of civil penalties.

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

BOEM proposed to reorganize, simplify, and clarify the regulatory section § 585.210 that detail the steps leading to an OCS renewable energy auction.

#### (c) § 585.213 What information is included in the PSN?

BOEM proposed to simplify and clarify the auction regulations by replacing the currently enumerated auction formats, bid systems, and bid variables with a more flexible process to better accommodate an emerging industry while allowing for auctions to be customized based on circumstances surrounding each individual auction.

Consistent with BOEM's existing practice, the proposed sale notice (PSN) would propose the specific format and procedures for an upcoming auction, and the public would have an opportunity to submit comments that would inform BOEM's final decisions regarding format and procedures.

#### (d) § 585.214 What information is included in the FSN?

BOEM proposed to publish the final auction format and procedures in the final sale notice (FSN). This would allow BOEM greater flexibility to tailor each auction to fit the particular circumstances.

#### (e) § 585.216 How are bidding credits awarded and used?

As discussed in the NPRM preamble at 88 FR 5985, BOEM proposed to continue to implement multiple factor auctions, through the use of bidding credits, to allow the competitive lease award process to take into consideration various priorities, such as advancing a domestic supply chain or requiring workforce development agreements, relating to orderly development of OCS renewable energy resources. The proposal clarified that a bidder may be eligible for bidding credits based on actions the bidder has already undertaken or for commitments to future actions. In addition, at 30 CFR 585.225(g), BOEM proposed that, in the event that a lessee does not meet the commitments it made to obtain any bidding credits, the lessee would be required to repay the value of the bidding credits that it received plus interest. BOEM would also reserve the right to impose civil penalties pursuant to the provisions of subpart N of 30 CFR

part 550 for failure to comply with the terms or provisions of a lease, easement, or right-of-way. According to the provisions of the proposed rule, a multiple factor auction could take one or more non-monetary factors into consideration, including: (1) power purchase agreements (PPAs); (2) eligibility for, or applicability of, renewable energy credits or subsidies; (3) development agreements by a potential lessee that would facilitate shared transmission solutions and grid interconnection; (4) technical merit, timeliness, financing and economics, environmental considerations, public benefits, or compatibility with State and local needs; (5) agreements or commitments by the developer that would facilitate OCS renewable energy development or other OCSLA goals; or (6) any other factor or criteria to further development of offshore renewable energy in a sustainable and environmentally sound manner, as identified by BOEM in the PSN and FSN. In the NPRM, BOEM solicited comments on the use of bidding credits and multiple factor auctions as a method of advancing important priorities, such as promoting workforce development or supply chain enhancement. BOEM was specifically “interested in obtaining comments on how bidding credits or factors might be tailored to mitigate possible adverse, project-related impacts. For example, BOEM was interested in receiving comments on what impacts a project could have on underserved communities and how bidding credits or multiple factor auctions can be used to promote mechanisms such as community benefit agreements (CBA) that could address those impacts and provide benefits to the underserved communities. Comments on alternative means to achieve public policy goals, such as through lease stipulations, are also sought.”

*(f) § 585.222 Improper or Inappropriate Bidder Communications.*

BOEM proposed to explicitly prohibit a bidder from disclosing its auction strategies and economic valuations of a lease area to other bidders in a particular auction in any manner that could prevent the United States from obtaining a fair return on a prospective lease. The proposal also outlined the rules applicable to all auctions and the processes BOEM would use to disqualify a bidder that no longer meets qualification requirements or who engages in specified improper conduct. Additionally, it specified how a disqualified bidder might seek to be re-qualified as a bidder.

*(g) § 585.224 What will BOEM do after the auction?*

The proposal added a new term “provisional winner” to describe the bidder that BOEM determines has submitted the winning bid at the close of the auction, pending completion of the government’s post-auction reviews and the lease award reconsideration process. As proposed, the provisional winner would become the winning bidder upon favorable completion of these reviews and appeals. Additionally, as discussed in the NPRM preamble (88 FR 5985), BOEM proposed to consolidate the reconsideration and appeal provisions in § 585.118 into a single section while retaining separate processes for seeking the review of a decision, selecting a provisional winner, and for appealing all other final decisions.

BOEM proposed to simplify and clarify post-auction procedures in § 585.224 by outlining what BOEM and a provisional winner must do between the auction and lease execution. Additionally, the proposal eliminated the term “request for interest” and proposed to replace it with a broader term “request for information” (RFI). Finally, in § 585.225, BOEM proposed to change the due date for payment of the first 12 months’ rent to 45 calendar days after the winning bidder receives a copy of the executed lease from BOEM.

*(h) § 585.225 What happens if BOEM accepts a bid?*

Because the proposed rule would allow a provisional winner to become a lessee before it has completed all obligations for which it obtained bidding credits, an additional provision was proposed at § 585.225(g), specifying that a lessee that has obtained bidding credits for prospective performance obligations that were not fulfilled at the time of the lease award, are subject to repayment in the event that those performance obligations are not ultimately met prior to a specified deadline or event.

*(i) § 585.226 What happens if the provisional winner fails to meet its obligations?*

As discussed in the preamble of the proposed rule (88 FR 5987), BOEM proposed to define the term “provisional winner” and to outline consequences if a provisional winner fails to sign the lease agreement, provide the requisite amount of financial assurance, or tender the outstanding bid balance. It included a list of actions that BOEM would be authorized to take if a provisional winner fails to fulfill its obligations.

*(j) § 585.438 What happens to leases or grants (or portions thereof) that have*

*been relinquished, contracted, or cancelled?*

BOEM proposed language in the NPRM (88 FR 5996) that would provide clear authority for BOEM to offer a lease to the next highest bidder if a provisional winner of a lease auction fails to fulfill its obligations before lease execution or is otherwise unable to execute a lease. Similarly, BOEM proposed that if a lessee relinquishes its lease or BOEM contracts or cancels a lease in whole or in part, BOEM could re-offer the area previously covered by the lease.

**2. What are the key public comments?**

*(a) Pre- and Post-Auction Procedures.*

*Comment:* A commenter said that, in the area identification process, BOEM does not explicitly consider the energy potential of the areas or the current and future renewable energy goals of the proximate states. Therefore, the commenter suggested that BOEM add a factor to the list in § 585.211(a) “to indicate that the Call might include an indicative power (MW) capacity of the given area(s) . . . informed by Federal, State, and local clean energy goals, supply chain considerations, and commercial interest.” Additionally, the commenter said the regulatory text should require the consideration of commercial viability and prevention of waste during the area identification process. The commenter provided revised regulatory text for §§ 585.211 and 585.212 to reflect these suggestions. The commenter further expressed support for:

- “Simplification and clarity added to the lease process regulations that make them both more readable and easier to follow;

Changes to Call and Area Identification procedures at 30 CFR 515.211 and 585.212 that clarify factors BOEM considers in determining whether specific OCS areas are suitable for further consideration for renewable energy development, including the area’s feasibility for development;

Consideration as to whether an area is technically and economically viable for industry is critical to determining if an auction should move forward;

Clarity provided related to the auction format that provides BOEM with the flexibility to adjust its format as industry evolves; and

Clarity regarding post auction procedures at 30 CFR 515.224.”

To further transparency, a commenter recommended providing more information at the *Call for Information and Nominations* stage, including the target capacity or acreage that may be

offered, and preliminary information on the auction format.

**Response:** BOEM does consider the goals and mandates of coastal states adjacent to areas under consideration for OSW leasing in the area identification process. For example, BOEM typically does not move forward with leasing offshore of states that actively oppose OSW development, and BOEM has offered multiple rounds of leasing in areas with strong regional interest in OSW, such as southern New England and the New York Bight. However, BOEM does not offer a specific leasing “target” in the area identification process because doing so would require BOEM to pre-determine results and BOEM does not do that. BOEM feels it is important to consistently convey to the public that the decision-making process occurs *through* public outreach. Public outreach is more than simply a process that BOEM must go through to get to already-desired outcomes. It may be possible to establish a target— informed by State objectives—in a way that makes clear that the decision has not already been made to find a given amount of acreage, whatever the consequences. However, the existence of such a target could lead to an impression that, once formed, could be difficult to rectify.

**Comment:** A commenter recommended revising paragraph (b)(2) of § 585.211 to include “archaeological and/or culturally significant sites on the seabed or nearshore, including viewsheds and traditional cultural landscapes and properties.” The commenter said this paragraph should also “provide that BOEM request additional socio-economic information such as potential impacts associated with housing, Tribal revenues, worker’s camps traditional gathering, first foods, other disproportionate impacts felt by Tribal citizen members.”

**Response:** Section 585.211(b)(2) pertains to resources on which BOEM requests comment in a *Call for Information and Nominations*, and states that BOEM may request comments on “archaeological sites on the seabed or nearshore.” The comment requests that BOEM specify that it may also request information on “culturally significant sites, including viewsheds and traditional cultural landscapes and properties.”

Certainly, with or without the addition of this language, commenters *may* submit such information. Indeed, BOEM’s *Calls for Information and Nominations* are open-ended and request whatever information commenters care to share. Listing other regulatory categories of information that

BOEM may specifically request is unlikely to result in the generation of more data.

As a practical matter, BOEM *does* request such information (and much more) when it issues such *Calls*. For example, in the Call for the Central Atlantic, published April 29, 2022, BOEM requested information on “known archaeological and cultural resource sites on the seabed,” “the identification of historic properties or potential effects to historic properties,” “visual resources and aesthetics, the potential impacts of wind turbines and associated infrastructure to those resources, and potential strategies to help mitigate or minimize any visual effects,” and “other relevant socioeconomic, cultural, biological, and environmental data and information.”

**Comment:** The commenter also recommended increasing the time between the FSN and the auction to 60 days to strike a balance between an efficient auction schedule and orderly development.

**Response:** As a practical matter, BOEM ordinarily schedules more than the currently required 30 days between the FSN and the sale. However, increasing the minimum time between the FSN and the sale would eliminate BOEM’s discretion to use a shorter waiting period and is not likely to enhance orderly development. Typically, the PSN is published several months before the FSN, and potential bidders are provided a 60-day period to review and comment on the proposed terms and conditions of the sale. By the time BOEM issues the FSN, the terms and conditions of the sale are well known. There are circumstances where BOEM may need to limit the time between the FSN and the sale, for example, to permit scheduling flexibility related to holidays, the scheduling of other lease sales, or other potential conflicts.

**Comment:** A commenter recommended amending § 585.235(a)(4) so the operations period does not begin until the commissioning of the final power producing facility or power distribution system is complete. The commenter said that commercial operations must be allowed to begin as wind turbines are installed and commissioned, as is the standard practice in the industry. The commenter recommended approving commercial operations prior to installation of power producing facilities based on the approved FDR/FIR, with the ability for BOEM/BSEE to revoke permission for commercial operation if conditions are not being met. Additionally, the commenter suggested providing lessees

the opportunity to remedy errors before permission for commercial operations is revoked. The commenter reasoned that early commercial operations provide economic benefits, including a cashflow balance “for the lessee during the installation stage where substantial outlay of capital is being made,” early revenue that incentivizes early installation, and safety benefits, including aerodynamic dampening that counteracts hydrodynamic loading on the tower and foundation, maintaining the structural fatigue lifetime of the structure.

**Response:** BOEM and BSEE considered many alternative ways to structure the commercial operations issues identified in the NPRM, including the one suggested in this comment. BOEM and BSEE agree that assuming BSEE and the CVA are satisfied that the installation and commissioning process is proceeding smoothly, turbines should be permitted to run and generate electricity as part of the testing and commissioning process. BOEM and BSEE, therefore, tied the commencement of commercial operations with the submission of required information under 30 CFR 285.637, including the ability to submit interim documentation, to facilitate testing and continuous operations as facilities reach first power. Under the revised § 285.637, the CVA may submit interim PVRs for subdivisions of a project’s facilities installed prior to commencing commercial operations. Assuming no objections from BSEE, the lessee may begin commercial operations on that portion of the lease and continue commercial operations on that portion as other subdivisions of the project are brought online in the same way. This is meant to accommodate industry norms for commissioning projects safely and economically, while retaining BSEE oversight over the entire process. With the revisions made to § 285.637 in place, BOEM and BSEE decided to keep “commercial operations” tied to the “generation of electricity or other energy product for commercial use, sale, transmission or distribution from a commercial lease.”

**Comment:** To provide clarity and predictability, a commenter proposed revised text at § 585.628(c), eliminating the stipulation that it applies only to post-lease submissions, and adding explicit references to subparts D and E of the CZMA.

**Response:** BOEM has referenced both 15 CFR part 930, subparts D and E, in the proposed rule under § 585.627(b)(9). The provisions set forth in 15 CFR part 930, subpart D are applicable to a COP that is submitted prior to lease issuance

and the provisions of 15 CFR part 930, subpart E, are applicable to a COP that is submitted after lease issuance. As noted in the CZMA regulations, 15 CFR part 930, subpart D, requires the applicant/lessee to submit all of the necessary data and information as well as the consistency certification to both BOEM and the State's coastal management program at the same time. In addition, as stated in proposed § 585.628(c), under 15 CFR part 930, subpart E, the applicant/lessee would submit the necessary data and information as well as the consistency certification directly to BOEM and BOEM will forward the COP, consistency certification, and associated data and information to the applicable State CZMA agencies.

*Comment:* A commenter expressed general support for the proposed rule for re-offering leases at auction or when a lease area is relinquished, contracted or canceled.

*Response:* BOEM is finalizing the referenced proposal re-offering leases at auction or when a lease area is relinquished, contracted or canceled.

(b) *Auction Processes and Rules.*

*Comment:* A commenter requested additional information on the proposed changes to auctions. The commenter requested that more project information be made available to the commenter, a Tribal Nation, as early as possible, and recommended that BOEM build in clear triggers for tribal consultation at every stage.

*Response:* BOEM currently works to make project information publicly available as quickly as practicable. The comment did not specify what project information BOEM should release sooner. The commenter's location on the Pacific Coast suggests that it may believe that BOEM is withholding project information related to California leases, but no projects have been proposed on those leases and BOEM has no project information in its possession. Regarding consultations, BOEM is committed to honoring its Tribal consultation obligations. The regulations require Tribal coordination and consultation with the Tribal leadership for Tribes that may be affected by any leases, easements, or ROWs BOEM may issue (§ 585.102(e)). This occurs before the Call Area is identified, the earliest stage of the OSW lease process. BOEM invites representatives of affected Tribes to intergovernmental task forces, or other joint planning agreements. The regulations also require Tribal consultation prior to the issuance of a lease (§ 585.203), and during area identification prior to the competitive

issuance of leases (§ 585.211(b)). BOEM also consults on a government-to-government basis at the request of any Tribe, and on actions that have Tribal implications. We did not revise the regulations to add triggers for consultations because this issue is beyond the scope of the current rulemaking.

*Comment:* A commenter said BOEM needs to adopt a permanent supply chain mechanism to reduce uncertainty and give companies the confidence to invest in the domestic production supply chain, arguing that inconsistent lease stipulations confuse market signals necessary to spur investment.

*Response:* BOEM believes the Bureau can best support a domestic OSW supply chain through predictable lease sale schedule and permitting timeframes. The supply chain and workforce bidding credits and related lease stipulations are not targeted or restricted to localized entities but intended to incentivize domestic investments in the supply chain and training. However, the comments did not suggest, and BOEM did not adopt, regulatory changes in response to this comment.

*Comment:* A commenter encouraged BOEM to explicitly state a preference for minimizing changes to bidding credits between the PSN and the FSN.

*Response:* BOEM acknowledges the challenge that modifying bidding credit provisions between the PSN and the FSN may be more time consuming for companies preparing bids. However, BOEM also seeks to be responsive to regional stakeholder interests and comments received during regional Task Force meetings and the PSN comment period. This is primarily a program implementation issue, and so it has not been addressed in the current rulemaking.

(c) *Multiple Factor Auctions and Bidding Credits.*

*Comment:* A commenter requested that the final rule clarify that the use of bidding credits in auctions must remain optional for participating bidders. The commenter stated that mandating that bidders accept the terms of bidding credits could reduce competitive interest.

*Response:* Bidding credits or other factors in a renewable energy multi-factor auction have always been optional. The final rule remains silent on the mandatory versus optional nature of bidding credit or factors to provide future Department decisionmakers flexibility.

*Comment:* A commenter opposed the non-monetary factors listed in the proposed Rule (30 CFR 585.216(b)(3))

due to the short auction period and potential difficulty of being able to commit to shared transmission. The commenter asserted that there is a need for criteria for transmission-related credits and suggested that BOEM consider alternative methods to promote shared transmission, such as conditions of State procurement and non-binding lease stipulations that require reasonable efforts to utilize shared transmission.

*Response:* BOEM appreciates the comments on bidding credits. The list of bidding credits in § 585.216(b) is intended to be representative and not exhaustive. The decision of whether to use bidding credits in a particular auction, and if so, which ones, is not governed by the regulations. Accordingly, BOEM has not revised the list, even though examples, such as the commenter has proposed, may be possible to investigate further and include in a future lease sale.

*Comment:* A commenter asked for clarity in the final rule regarding the number of proposed penalties in the event that a lessee fails to comply with easement and right-of-way terms. A few commenters suggested modifying the definition of "bidding credit" to include a financial commitment attached to the bidding credits, for example, if a bidder receives a bidding credit for a CBA, the bidder should be required to expend a "significant portion" of the credit in funding those agreements. Without recommending revisions to the definition of a "bidding credit," a couple of commenters similarly recommended that all future bidding credits contain a financial commitment requirement.

*Response:* BOEM has required an explicit financial commitment for some bidding credits in renewable energy lease sales. Attachment of a financial commitment to the definition of bidding credit would prohibit some kinds of bidding credit that the agency may want to consider in future auctions, like a bidding credit rewarding development experience or innovative project design. BOEM has no current plans to use such bidding credits, but the agency does not wish to constrain its discretion to do so in the future. The design of any bidding credits offered in a multi-factor auction is determined based on a balancing of regional and national needs consistent with BOEM's authority under the OCS Lands Act.

*Comment:* A commenter said the added flexibility for BOEM to consider factors besides price in auctions has the potential for abuse. A couple of commenters asked BOEM to clarify how factors and their respective weights

would be determined, and how BOEM would assess whether the factors are in accord with the goals of the OCS Lands Act.

**Response:** BOEM sets bidding credits in advance of each lease sale. Bidding credits are designed to be consistent with the OCS Lands Act. BOEM describes proposed bidding credits in the PSN, allowing for public comment, and provides all the information about applicable bid credits in the FSN prior to the lease sale. We do not agree that this final rule adds additional flexibility to the non-price factors that BOEM may use. BOEM had discretion under the previous regulations to hold auctions that recognize non-monetary factors, and BOEM retains that discretion in the final rule. In addition, the final rule more accurately describes how BOEM intends to use non-price factors in holding auctions. Accordingly, BOEM sees no potential for abuse in the final rule.

**Comment:** Some commenters stated that bidding credits should not be based on or require that actions be taken in advance, rather, they should allow for identification of actions to be taken that are in alignment with BOEM's goals. A commenter said that bidding credits for actions a bidder has already taken would create unfair advantages and reduce competitive interest. Additionally, the commenter said it would reward past conduct, rather than incentivizing desired actions.

**Response:** The requirements for BOEM's bidding credits are outlined in the specific FSN, lease, and Bidder's Financial Form Addendum. BOEM designs multiple-factor bidding credits to maintain a level playing field for all auction participants, but declines to address this issue in the regulations.

**Comment:** A commenter expressed concern that two of the proposed categories for bidding credits (power purchase agreements, and pre-established renewable energy credit eligibility) could limit competition and favor larger organizations with existing facilities. The commenter expressed support for the BOEM's goal to facilitate efficient development of OSW energy resources and encouraged BOEM to continue seeking opportunities to improve the regulatory permitting process, stating that the biggest gains in facilitating efficient development of OSW energy resources may be made there as opposed to the use of bidding credits.

**Response:** We appreciate the input regarding bidding credits for power purchase agreements and pre-established renewable energy credit eligibility. BOEM sets bidding credits

for each sale in the FSN. BOEM limits the bidding credit percentage, in part, to ensure the auction is still efficient. Through this rulemaking and other initiatives, BOEM seeks to improve its regulatory permitting process even as it evaluates potential bidding credits.

**Comment:** A commenter expressed concern that it would be difficult for BOEM to implement the proposed bidding credits in § 585.216(b)(6) in a way that substantially benefits the public or furthers development of OCS renewables because many of the proposed credits are subject to uncertainty at the lease sale stage, which could lead to vague promises from bidders and distort the market with uncertain benefits to the public.

**Response:** BOEM designed the bidding credits it has used in recent sales to include upfront commitments for investments, with follow-through later in the lease term. This ability to refine planned investments over time to what is most needed in the future should help ensure that investments from the bidding credits are spent efficiently.

**Comment:** A commenter suggested expanding the workforce development bidding credit program to allow for a bonus bidding credit if a developer commits to both utilizing a PLA and employing a workforce in which a significant majority of workers constructing and maintaining wind farms are United States citizens or permanent residents. The commenter also recommended extending the credit program to pre-existing lessees by allowing developers to take a credit against future operating fees, which would fulfill the Administration's goals of "increasing the likelihood or pace of development." According to the commenter, BOEM has authority to amend the regulation under 30 CFR 585.506 to establish such an operating fee credit under applicable statutes and regulations, and it would be consistent with the IRA's apprenticeship requirement for renewable energy facilities. Another commenter also recommended revising § 585.506 to clarify that BOEM may award operating fee credits in future lease sales and existing leases. The commenter provided revised regulatory text reflecting these proposed changes.

Discussing the potential rewards for each credit in the recent California and Gulf of Mexico lease sales, a commenter recommended that future lease sales decrease disparities between bidding credits for the fishing community and others.

**Response:** With regard to the workforce development and PLA

bidding credit, BOEM already has the ability to implement such a bidding credit should it want to and no modification of the regulations is needed to permit BOEM to use such a credit. Commenters requested that BOEM add many examples to the representative list of bidding credits in § 585.216(b). Adding additional representative examples neither expands nor diminishes BOEM's bidding credit authority. BOEM has not added any of the requested examples because to do so could beg the question why other examples were excluded.

Regarding operating fee credits, although BOEM used such credits in the New York Eight lease sale, it has not used them since then. BOEM has not ruled out using them in the future and has tools necessary to do so if desired. The revision requested in § 585.506 would be needed were BOEM to amend existing leases to conditionally reduce the operating fee payments of existing lessees. This was not the purpose of the rulemaking, and BOEM has no current plans to offer such amendments to existing lessees. Accordingly, there is no need to revise the regulations as recommended by the commenter.

**Comment:** Some commenters expressed opposition to a cap on bidding credits because it would curtail public policy priorities (e.g., advancing a domestic supply chain), BOEM's stated goals of flexibility, and it would narrow the OCSLA definition of "fair return." A commenter said the final rule should allow a bidder to pursue multiple bidding credits at once, thus bidding credits should be capable of stacking. Likewise, the commenter opposed an "artificial cap" on the number of bidding credits a bidder can take, to ensure a fair return to the United States. A commenter wrote that BOEM "should allow for stackable credits reflecting a bidder's commitment to provide workforce training, supply chain development, fisheries compensatory mitigation, and financial support for habitat and wildlife monitoring as eligible bidding credits at § 585.216(b)."

**Response:** BOEM sets bidding credits in advance of each lease sale and designs credits to ensure they are consistent with the OCSLA. BOEM has limited the non-monetary portion of its auctions to 25 percent of the asking price in past lease sales. Limiting the bidding credits to a percentage of the asking price promotes efficiency of the auction, ensures a fair return to the Government for OSW leases, and is consistent with Congress's intent to direct wind energy leasing revenues to the General Fund while also allowing

BOEM to use monetary bidding incentives to further OCSLA goals. However, nothing in the regulations imposes a specific limit on the percentage credit, and no regulatory revision would be needed to use a higher amount. Accordingly, no revision has been made.

*(c)(i) How bidding credits or factors might be tailored to mitigate possible adverse, project-related impacts.*

*Comment:* A commenter said developers should adhere to standard mitigation hierarchy by minimizing potential impacts prior to mitigation considerations. The commenter encouraged BOEM to establish lease stipulations and bidding credits to support activities including workforce development, local job creation, energy access and reliability, enhancing engagement and capacity building in communities, sustainable development, circular economy methods, and fisheries resiliency and/or compensatory mitigation.

*Response:* BOEM appreciates this comment and will strive to avoid or minimize potential project impacts prior to considering mitigations. In addition, BOEM will continue to seek additional avenues for incentivizing accomplishment of worthy policy goals like those enumerated. Lease stipulations and bidding credits are determined on a case-by-case basis for specific lease sales, and not programmatically through regulations. Since this comment does not request any revision to BOEM's regulations, it is beyond the scope of the current rulemaking.

*Comment:* A commenter recommended that BOEM add a credit to its non-exclusive list in § 585.216(b) for funding commitments for affected ocean users. A commenter recommended BOEM allow bidders to earn up to 75% of cumulative credits for nonmonetary factors to ensure successful development "when a bidder can deliver, prior to the auction, a minimum of three legally binding and enforceable agreements, each earning up to 25% credit, with (1) local stakeholders, (2) fishing industry group(s), (3) offtake agreement(s) with power purchasers and placement in the interconnection queue with power regulators, and (4) government agencies." The commenter outlined specific criteria and listed a series of yes or no questions to determine if a developer is eligible for each of the recommended agreements. A commenter recommended increasing the proposed non-cash bidding credit cap to at least 35%, stating that it would allow BOEM to manage the program in

a manner that considers the environmental value of renewable resources on the OCS, potential impacts and benefits of renewable energy deployment, and equitable sharing of risks and benefits among various regions.

*Response:* As the commenter noted, the list of non-monetary credits in the final rule is included as representative of the credits that BOEM may offer. BOEM will continue to consider bidding credits on a case-by-case basis based on the particular conditions of each lease sale.

As for the amount of bidding credits, BOEM has limited the non-monetary portion of its auctions to 25 percent of the asking price in past lease sales. Limiting the bidding credits to a percentage of the asking price promotes efficiency of the auction, ensures a fair return for OSW leases, and is consistent with Congress's intent to direct wind energy leasing revenues to the General Fund while also allowing BOEM to use monetary bidding incentives to further OCSLA goals.

*Comment:* A commenter suggested that BOEM codify mitigation requirements in the final rule by incentivizing them through bidding credits or some other mechanism to ensure developers properly engage with ocean users, especially small businesses. Similarly, a commenter said BOEM should consider making certain factors mandatory, for example, developers should not be able to move forward until it has developed a CBA or mitigation fund. Alternatively, the commenter said BOEM could value the benefits to incentivize developers to negotiate them prior to NEPA review and the NHPA section 106 process.

*Response:* The list of non-monetary credits in the final rule is included as representative of the credits that BOEM may offer. BOEM will continue to consider bidding credits on a case-by-case basis based on the particular conditions of each lease sale. At this time, BOEM does not find it appropriate to establish mandatory non-monetary credits to be used in every sale.

*Comment:* A commenter said BOEM should consider awarding credits measured by the degree to which a developer mitigates harm to historic properties or cultural resources. A commenter said that BOEM should promote creditable stakeholder agreements, particularly those that mitigate conflict, improve project approval coordination, focus on engagement, and those that prioritize data sharing, local needs, regional scale conservation, or technological solutions to wildlife impacts.

*Response:* The list of non-monetary credits in the final rule is included as representative of the credits that BOEM may offer. BOEM will continue to consider bidding credits on a case-by-case basis based on the particular conditions of each lease sale.

*Comment:* Some commenters encouraged the use of bidding credits to mitigate impacts to fisheries. For example, a couple of commenters said bidding credits could fund research, encourage coordination between developers, and ensure minimum spacing between structures to minimize impacts to fisheries. A commenter said bidding credits could support regional fisheries funds to mitigate fisheries impacts.

*Response:* The list of non-monetary credits in the final rule is included as representative of the credits that BOEM may offer. BOEM will continue to consider bidding credits on a case-by-case basis based on the particular conditions of each lease sale.

*Comment:* A commenter supported bidding credits for fisheries mitigation as described in Gulf of Mexico Public Sale Notice Docket No. BOEM-2023-0021. Some commenters recommended that BOEM explicitly include benefits for the fishing industry to its list of non-monetary factors which may be included in multiple-factor auctions. For example, a commenter recommended additional text at § 585.216(b): "agreements or commitments by the developer that mitigate for the impacts of development of the lease site on users of the lease space and contribute to the continued resilience of those users." Another commenter similarly recommended additional text that would include fisheries compensatory mitigation as an eligible bidding credit.

*Response:* The list of non-monetary credits in the final rule is included as representative of the credits that BOEM may offer. BOEM will continue to consider bidding credits on a case-by-case basis based on the particular conditions of each lease sale. Therefore, BOEM did not make the requested changes to the regulations.

*(c)(ii) Comments on what impacts a project could have on underserved communities.*

*Comment:* A commenter said the main concerns of small fishing businesses and other ocean users, whom the commenter heard from in a small business roundtable, were related to mitigation of impacts to their businesses, and the need for BOEM to find ways to incentivize developers. According to the commenter, small fisheries expressed concern about

uncertain impacts wind energy developments could have on them; many stakeholders discussed an inability to adequately comment on the proposed rule and its potential impacts due to the number of unknowns, including BOEM's stance on mitigation. Additionally, the commenter said stakeholders felt the proposed rule was premature since BOEM has not finalized its guidance for mitigating impacts on fisheries.

*Response:* BOEM will continue to work to ensure that information regarding OSW development is communicated from BOEM and lessees to impacted communities frequently and as early as possible in the process. BOEM does not believe additional regulation is necessary. It is not clear what effect finalizing fisheries mitigation guidance would have on this rulemaking, or why waiting for the guidance to be finalized would inform the provisions of this rule. Further, BOEM is intentionally developing guidance in lieu of a prescriptive rule to ensure BOEM retains broad flexibility to address potential impacts to fisheries.

*(c)(iii) Comments on how bidding credits or multiple factor auctions can be used to promote mechanisms that could address impacts and provide benefits to the underserved communities.*

*Comment:* A commenter said that bidding credits and stipulations could encourage developers to engage with community stakeholders and establish funds for underserved communities. The commenter said these auction mechanisms could deliver long-term benefits to communities by encouraging CBAs, regional funds, and workforce development. The commenter stated that stipulations and bidding credits that support apprenticeships, local and targeted hire, Project Labor Agreements (PLAs), and strong labor standards could provide equity benefits. A commenter said that bidding credits should reward actions that benefit local communities. According to the commenter, these actions should be identified prior to each auction through public input, with criteria, goals, and implementation strategies outlined in the PSN. Additionally, the commenter suggested that bidding credits requiring additional commitments by developers "should be awarded in a manner that reasonably reflects the cost of the commitments and should be designed by BOEM in a manner such that the cost of compliance with bid credit requirements is quantifiable and predictable and has measurable outcomes based upon information available at the time of bidding." Lastly,

the commenter said that bidding credits for achievement of development milestones appear unnecessary and unfair to states where certain milestones occur after the auction process concludes.

A commenter recommended incentivizing agreements to address impacts identified through the NEPA and NHPA process.

A commenter encouraged BOEM to use bidding credits for CBAs with disadvantaged communities to advance the Administration's Justice40 goal. The commenter said BOEM could treat the credits as Federal investments within the rule and work with the Office of Management and Budget (OMB) to classify OSW activities as qualifying Justice40 activities. Additionally, the commenter said benefits must be developed with the communities themselves. Additionally, the commenter recommended that BOEM consider enforcement mechanisms for ensuring that benefits promised by lessees are provided. Some commenters recommended BOEM establish specific criteria for obtaining bidding credits, including an agreement to consult with relevant labor unions, community groups, and industry representatives to ensure bidding credits are used equitably, result in accessible high-quality job creation, minimize impacts to marine economic activities, and advance civil rights, racial justice, and equal opportunity goals of the Federal government. Another commenter suggested that BOEM standardize the types of bidding credits for impacted communities and use a regional third party-managed fund for these contributions.

*Response:* The list of non-monetary credits in § 585.216(b) of the final rule is included as representative of the credits that BOEM may offer. BOEM will continue to consider bidding credits on a case-by-case basis based on the particular conditions of each lease sale.

*Comment:* A commenter said that BOEM should provide a competitive advantage to developers that demonstrate a commitment to collaboration with communities early in the process. For example, BOEM could give greater bidding credits to developers with existing binding agreements over developers with mere promises to develop agreements if awarded a lease.

*Response:* The list of non-monetary credits in the final rule is included as a representation of the credits that BOEM may offer. BOEM will continue to consider bidding credits on a case-by-case basis based on the particular

conditions of each lease sale. Further, incentivizing binding agreements prior to a lease sale could result in many bidders—many of whom will be unable to win a lease—spending time and resources negotiating agreements. Because these will not result in projects that can move forward, such investments of time and energy on the part of both bidders and potentially affected communities will be wasted.

*Comment:* Some commenters said, "the Final Rule should require any conceptual strategy submitted to qualify for bidding credits be made publicly available and include details for development of a community benefits plan that commits to consultation with community stakeholder and labor unions to ensure credits result in quality jobs and equity." The commenters referred to DOE's Funding Opportunity Announcement for Regional Hydrogen Hubs Community Benefits Plans as a model for the information BOEM requires in conceptual strategies. According to the commenters, projects funded under this model are expected to include Community Benefits Plans that support meaningful engagement; invest in America's workforce; advance diversity, equity, inclusion, and accessibility; and contribute to the Justice40 Initiative. Additionally, the commenters said that bidding credits invested in supply chain facilities must require suppliers to use a supplier code of conduct that includes equitable access to jobs, among other things.

*Response:* Conceptual strategy requirements are determined on an auction-by-auction basis and are outside the scope of the current rulemaking. BOEM does not make conceptual strategies publicly available to protect bidders' claims of business confidential information. BOEM could require bidders to submit conceptual strategies that do not contain such information, but BOEM would expect to receive less useful information as a direct result. Bidding credits offered for workforce training and supply chain development are designed to further the development of OSW and cannot be directed to specific communities.

*Comment:* A commenter recommended that BOEM stipulate that lessees enter into PLAs covering the construction of renewable energy projects. The commenter stated that PLAs ensure access to unions, support training, promote safety, and increase economic benefits for local communities. Similarly, commenters said that PLAs and LPAs should not be credits, bidders should be required to certify that they will operate with PLAs and LPAs. Additionally, the

commenters said that workforce development should be considered in BOEMs multi-factor evaluation of bids, however, workforce development should exclude programs with no record of achievement. The commenters stated that bidders should be required to describe their workforce program's substance, history, and effort to recruit disadvantaged communities.

*Response:* BOEM is very interested in promoting the use of union labor and PLAs, and BOEM has introduced language supporting the use of PLAs into our leases and the lease sale process for this purpose. However, BOEM declines, at this time, to require PLAs in all cases by regulation.

*Comment:* A commenter said the final rule should include mandatory elements to address economic and environmental impacts to Tribes and adjacent communities, including a Tribal benefit agreement to offset all tribal impacts. The commenter said bidding credits should be awarded to bidders who have developed agreements with Tribes before the bidding process. A commenter said that funds accepted from developers need to provide direct funding to Tribes that they can use to hire independent technical experts to represent them/their interests, because the current process asks too much of Tribes without compensating them for their time.

*Response:* BOEM seeks to mitigate economic and environmental impacts of projects on Tribes and adjacent communities throughout the leasing and development process. While BOEM recognizes the commenter's interest in bidders that are responsive to Tribal and other community needs, BOEM has declined to require bidders to engage with Tribes and communities before the lease sale takes place, understanding that outreach from bidders who will not win a lease may represent an undue burden for both Tribes and bidders. Providing a credit for pre-sale mitigation agreements would likewise represent unreasonable effort for both Tribes and bidders (particularly those that ultimately do not win a lease in the auction).

*Comment:* Some commenters stated the policy-based factors described in § 585.216(b)(5) should qualify for bidding credits. Some commenters recommended that BOEM implement bidding credits for funding affected Tribal Nations, underserved communities, fisheries, affected coastal communities, domestic supply chain development, and equitable workforce training. A commenter recommended that BOEM add to its non-exclusive list in proposed § 585.216(b) a credit for

funding commitments for affected coastal communities and Tribal Nations. The commenter proposed regulatory language to reflect this revision. According to the commenter, including a credit for Tribal Nations could support socioeconomic benefits, and Tribal participation in the permitting process.

*Response:* BOEM does not agree with the commenter's proposal to add additional language to § 585.216. The bidding credits listed in § 585.216(b) are meant to be representative, and BOEM retains the flexibility to add or remove bidding credits at a future time. Bidding credits are designed to further the development of OSW or mitigate impacts and cannot be directed to specific communities. The final rule's § 585.216(b)(7) provides flexibility for BOEM to expand upon entities to whom the bidding credits may be offered.

*Comment:* A commenter recommended that eligible credits should include bidder commitments to ensure that local underserved affected communities are prepared for offshore development via shoreside infrastructure, workforce development, supply chain, community benefits, and resilience measures for fishing industries; consult with and address concerns of Tribal nations; and ensure sustainable access for other ocean users including fisheries.

*Response:* The list of non-monetary credits in the final rule is included as representative of the credits that BOEM may offer. BOEM will continue to consider bidding credits on a case-by-case basis based on the particular conditions or circumstances of each lease sale.

*(c)(iv) Comments on alternatives to achieving public policy goals.*

*Comment:* A commenter recommended including lease stipulations consistently across auctions (with some flexibility in deference to local context) for PLAs, domestic content utilization, environmental justice provisions, meaningful community engagement, domestic supply chain development, and environmental protections. The commenter also recommended BOEM explore other lease stipulations that could advance public policy priorities (e.g., workforce training, natural resource protection).

*Response:* BOEM acknowledges the challenges that changes between lease sales cause for bidders. As a policy matter, BOEM tries to take this into account in developing the lease terms and auction format. However, BOEM also seeks to be responsive to regional stakeholder interests and comments received during regional Task Force

meetings and the PSN comment period. BOEM must strike a balance between responsiveness to comments and not making unnecessary, or unnecessarily large, changes.

*Comment:* Some commenters said that LPAs would advance goals under OCSLA, including ensuring a fair return to the United States.

*Response:* BOEM is supportive of PLAs and has included lease language encouraging lessees to enter into PLAs for the construction stage of OSW projects. It is up to local bargaining units and OSW developers to negotiate PLAs terms that could include elements of LPAs. BOEM declines, at this time, to address either PLAs or LPAs by regulation.

*Comment:* A commenter asked for the rule to establish annual compensation fees for marine-based ecosystem service losses due to wind plants. A commenter said revisions to § 585.506 to allow for operating fee credits is a logical outgrowth of BOEM's proposal to formalize multiple factor auctions and bidding credits. A commenter said that a required annual payment on a lease, in the form of a lease stipulation, could be used for mitigation or compensation. The commenter described these operating fee credits as comparable to bidding credits but occurring outside of the auction stage and incorporated into lease stipulations. The commenter also said that BOEM could allow lessees to claim a bidding credit for an agreement to annually contribute the amount of the credit to a resiliency fund. The commenter suggested this option be made available for existing lessees as well.

To further policy goals being pursued through bidding credits, a couple of commenters recommended the use of operating fees to provide a base level of funding to address ongoing project impacts, including investments in fisheries compensatory mitigation funds, disadvantaged communities, tribal needs, shoreside infrastructure, transmission, and supply chain and workforce development.

*Response:* Proposals about annual compensation requirements, operating fee credits, and lease stipulations, whether for future lessees or existing ones, are outside the scope of the current rulemaking. However, these are initiatives that BOEM can still consider under the specific terms of a lease sale without the need of adding additional regulatory provisions.

*Comment:* Some commenters said that BOEM has broad discretion and authority under OCSLA to require the use of domestically sourced materials. A commenter recommended that the

Secretary use such discretion to satisfy various subsection 8(p)(4) requirements through lease and COP terms, conditions, and stipulations. According to the commenter, doing so would be consistent with the Administration's climate goal.

*Response:* BOEM is very interested in ensuring, as much as it can, that the U.S. supply chain is adequately developed and capable of cost-effectively serving the needs of the U.S. OSW industry. The most important factor needed to enable the supply chain to become sufficiently developed is a reliable pipeline of OSW projects. BOEM strives to make suitable offshore acreage available for this purpose, but it is also important that the cost of OSW be low enough for states and utilities to support it. This means balancing the desire to accelerate domestic sourcing with controlling OSW development costs. For this reason, BOEM has investigated other methods of promoting the domestic supply chain, such as bidding credits, over potentially more costly options such as a requirement to source materials domestically.

*(d) Improper or Inappropriate Bidder Communications.*

*Comment:* A few commenters agreed with the overarching intent of BOEM's proposal to prohibit improper or inappropriate bidder communications; however, they suggested revisions to BOEM's proposed language in § 585.222(f). A couple of commenters stated that the proposed language at § 585.222(f) is too broad, expressing concern that the proposed language could prevent legitimate and necessary conversation between potential joint-venture participants and limit participation in auctions. A commenter recommended revising the provision "to state that the prohibited communications are limited to those between bidders who actually participate in an auction (not precluding conversations between two bidders listed in a FSN where one bidder ultimately does not participate) and involve strategies and valuations related to a specific auction (not precluding discussions about high-level strategies and valuation approaches)."

*Response:* BOEM decided not to finalize the proposed regulations regarding bidder communications. BOEM sees advantages to the proposal that BOEM made in the NPRM. BOEM also sees that commenters raised valid concerns with the proposed language. However, BOEM has questions about some of the specifics of the commenter's proposals. Accordingly, BOEM declines to add regulatory provisions governing bidder communications at this time.

Bidder communications can continue to be regulated on a case-by-case basis in the sale notices of BOEM lease sales. Further, BOEM notes that notwithstanding BOEM's regulations regarding communications prior to an auction, bidders remain subject to antitrust laws, which may prohibit behavior not specified in BOEM's regulations.

*Comment:* Another commenter recommended specific revisions to § 585.222 as follows: "[add: (c) Bidders qualified by BOEM under §§ 585.106 [585.107] and 585.107 [585.108] must notify BOEM no later than the due date of the Bidder's Financial Form of (1) any change to the corporate form or identity of the qualified bidder (or its members if the qualified entity is a partnership or limited liability company); or (2) a material reduction in the technical or financial capabilities of the qualified bidder.]

[add: d] [delete: c] Only an authorized agent may act on a bidder's behalf during an auction. Bidders must submit the names of their authorized agents to BOEM before the auction, as prescribed in the FSN.

[add: e] [delete: d] Each bidder must follow the auction process specified in the FSN and may not take any action to disrupt or alter the process beyond its intended function.

[add: f] [delete: e] A bidder is responsible for immediately contacting BOEM if it is unable to submit its bid for any reason during an auction. If a bidder fails to timely notify BOEM of its inability to bid, it may not dispute the auction or lease award on that basis. If a bidder timely notifies BOEM of its inability to submit a bid, BOEM, in its discretion, may suspend the auction, continue the auction using an alternative method, or continue the auction without the participation of the affected bidder.

[Delete: (f) Bidders may not disclose their auction strategies or economic valuations of a lease area to other bidders listed in the FSN.]

[Add: (g) Notwithstanding your eligibility pursuant to section 585.106 and section 585.107, you may not participate in a lease sale under this Part if another person with whom you are affiliated participates separately in the same lease sale.

(h) An affiliate is a bidding entity who controls, is controlled by, or is under common control with another bidding entity, as may be specified in more detail in the final sale notice for a lease sale.

(i) An agreement between two persons for future shared investment in a lease to be sold by us pursuant to section

585.220 or section 585.231 does not itself create affiliation but must be disclosed to BOEM in writing by the date specified in the final sale.

(j) Where the final sale notice for a lease sale states that a bidder may not win more than a specified number of leases offered for sale, BOEM may exclude from participation in the lease sale any person who has entered into a joint bidding agreement(s) or a future shared investment agreement(s) that would cause the person to be affiliated with the initial owner(s) of more than the specified number of leases offered for sale.

(k) If you are eligible pursuant to section 585.106 and section 585.107, you may participate in a lease sale on behalf of yourself and one or more other person(s) eligible to participate in the lease sale provided that (i) you notify us in writing of your intention to do so by the date specified in the final sale notice and (ii) these other bidder(s) do not otherwise participate in the lease sale.]

*Response:* BOEM has not adopted the language proposed by the commenter in the final rule. Much of the content of this proposal can be implemented outside the rulemaking process, and BOEM declines to finalize language in this rule absent further consideration and opportunity for public comment.

*Comment:* A commenter opposed BOEM's proposed language in § 585.222(f), asserting that it is overly broad and could impede appropriate commercial speech. The commenter also asserted that it would reduce competition and BOEM's ability to obtain a fair return for the U.S. taxpayers and is unnecessary due to antitrust review conducted by the U.S. Department of Justice.

*Response:* BOEM eliminated the proposed § 585.222(f) that BOEM had proposed to add in the NPRM. Although BOEM believes it is appropriate to restrict communications between bidders for policy reasons related to antitrust and anticompetitive concerns, commenters raised valid concerns about the specific language proposed. BOEM, however, declines to address this in the manner proposed by the commenter, by creating a new section governing BOEM's implementation of one-per-customer restrictions in lease sales.

BOEM will continue to restrict bidder communications, and one-per-customer restriction implementation, on a case-by-case basis in lease sale documents rather than in the final rule as it continues to refine its requirements.

*Comment:* A couple of commenters requested that BOEM define "affiliated entities" or "affiliate," including what constitutes "control" of one entity over

another. A commenter said it should be clear that “control” extends only to the immediate parent(s) of the bidding entity.

**Response:** BOEM has decided to retain the flexibility to continue to develop its definition of affiliates in individual lease sales, and so has not included a definition in the final regulations.

(e) *Other comments on lease issuance procedures.*

**Comment:** Some commenters recommended maintaining the current requirements for area identification that state, “BOEM will develop measures . . .” rather than the proposed revision which states, “BOEM may develop measures . . .” Some commenters expressed concern that the proposed revision would create uncertainty and weaken mitigation standards.

**Response:** BOEM’s existing regulations on area identification state that “BOEM will evaluate the potential effect of leasing on the human, marine and coastal environments and develop measures to mitigate adverse impacts including lease stipulations” (§ 585.211(b)(2)), and “BOEM will consult to develop measures, including lease stipulations and conditions, to mitigate adverse impacts on the environment” (§ 585.211(b)(3)). The proposed language in the NPRM states that “BOEM may develop measures, including lease stipulations, to mitigate potential adverse impacts.”

It was never BOEM’s intention to signal that BOEM may not develop measures, including lease stipulations, to mitigate potential adverse impacts. Stipulations and mitigations can be identified at any time before the FSN is published, and the process of flagging such measures begins early in the process. Accordingly, BOEM has changed “may” back to “will” in the final rule. Moreover, BOEM added § 585.212(c)(3) to clarify that measures will continue to be developed through later environmental reviews and consultations and will be published in the PSN.

**Comment:** A commenter recommended revisions to BOEM’s lease planning regulations at 30 CFR part 585, subpart B, to support advanced planning for shared transmission systems.

**Response:** BOEM continues to advance a more planned approach to transmission solutions for offshore wind, including the use of shared infrastructure. BOEM has the authority to permit shared transmission infrastructure through both the COP and ROW processes. It should be acknowledged that State processes play

a large role in the potential use of shared transmission systems, and accordingly, BOEM has sought to improve clarity for the process where a State or RTO/ISO is involved by revising 585.307(c).

**Comment:** A commenter said that BOEM should clarify the meaning of “in a timely manner” in proposed §§ 585.231(f) and 585.306(b)(2).

**Response:** The CZMA regulations under 15 CFR part 930, subpart D do not have a set time requirement for the applicant to submit the consistency certification and the necessary data and information to the State CZMA agency. It is implied that the applicant will submit the information necessary to conduct an adequate consistency review in a timely manner so as not to delay the progress of the application for approval of a noncompetitive lease. The time requirements outlined in 15 CFR 930.60 go into effect upon submittal of all necessary data and information required by the State’s CZMA agency. Therefore, BOEM added the phrase “in a timely manner” to proposed § 585.231(f) to stress to the applicant that delay in submitting the consistency certification and necessary data and information to the State’s CZMA agency and BOEM may delay its application. As provided in proposed in § 585.231(e)(2), BOEM reserves the right to withdraw a determination of no competitive interest before the two-year expiration date if BOEM determines that the applicant has failed to exercise due diligence in obtaining a lease. To be consistent, and for the same reasons as above, BOEM has revised the second sentence of § 585.306(b)(2) in the final rule to read, “After BOEM publishes this notice, you are responsible for submitting any required consistency certification and necessary data and information in a timely manner to the applicable State CZMA agency and BOEM pursuant to 15 CFR part 930, subpart D.”

**Comment:** A commenter requested that BOEM “codify the concept that a bid awardee from a state solicitation process is the only qualified applicant for the Right-of-Way/Right-of-Use and Easement (ROW/RUE) grant for the relevant OSW transmission project(s) and therefore, there is no competitive interest for that grant.” The commenter said this is necessary to ensure projects are not delayed due to an unnecessary competitive grant process. The commenter reasoned that a key factor in determining competitive interest is whether a party is “qualified” to hold a ROW/RUE grant, and BOEM can reasonably determine that transmission developers who were unsuccessful in the State solicitation process are not

qualified. Next, the commenter said BOEM would determine whether there is a conflict for the proposed project area. The commenter said it is unlikely that BOEM would determine that there is a conflict for the proposed area, because ROW and RUE grants are non-exclusive rights and therefore unlikely to exclude future uses of the area.

**Response:** The commenter has highlighted an important issue related to determining competition for a ROW/RUE and the interaction of this process with State processes where the OCS project crosses into State jurisdictional waters. However, the qualifications process suggested by the commenter is not the best way to address such issues. Any grantee or lessee is required to be qualified legally, technically, and financially prior to issuance of a grant or lease. A company is permitted to qualify as a prospective company at any time, including prior to entering any State solicitation process. Therefore, being qualified to acquire a lease or grant is not a good indicator of competitive interest.

BOEM currently has the authority to issue a ROW/RUE grant either competitively, or non-competitively as described in §§ 585.300–585.316, after coordinating and consulting with relevant Federal agencies, the Governor of any affected State, and the executive of any affected local government. BOEM must first determine if there is competitive interest, which is accomplished by publishing a public notice describing the parameters of the project, to give affected and interested parties an opportunity to comment on the proposed grant area. BOEM currently has the authority to work with a State seeking a ROW/RUE grant for purposes of transmission, and as the ROW would necessarily need to be continued through State waters and land for the purpose of interconnection to the grid, there is a need to align these processes. However, BOEM agrees that regulatory clarity is helpful in this instance and has revised § 585.307(c) of the final rule to acknowledge the complications that may arise in determining competitive interest for transmission projects and to note that coordination with projects authorized on State submerged lands may be taken into consideration in making competitive interest determinations.

**Comment:** A few commenters suggested that a BOEM-run auction is not the only option for a competitive process that would meet OCSLA requirements. One commenter suggested that BOEM allow a State to hold a competitive solicitation process and award a lease to the winner of that

auction process. This commenter also suggested that BOEM include in the final rule that any legally binding agreements to undertake future shared lease investment should be disclosed to BOEM prior to the sale but does not create an affiliate definition. The commenter further suggested that BOEM exclude from auctions any person who has entered into such an agreement when there are restrictions in the FSN.

**Response:** BOEM appreciates the creative thinking on meeting OCSLA's competitive mandate. BOEM has considered adopting a State competitive process as meeting the competitive requirement for issuing a lease, however, BOEM has also identified several important challenges with such an approach, including timing (State solicitations normally require that applicants demonstrate site control) and challenges around coordinating with State RFPs, and the fact that most State RFPs contain requirements and considerations that would not normally be found in a Federal offering.

BOEM acknowledges the concern about drafting a definition of affiliation that does not unnecessarily restrict joint ventures and otherwise permissible forms of collaboration on OSW but has declined to include such language in the final rule, preferring to address this in individual lease sales.

**Comment:** A commenter said that it seems like a logical outgrowth of BOEM's proposed revisions to § 585.222 to add information about the appropriate process to update qualification materials during BOEM's review or after BOEM's confirmation of qualification. The commenter said that only changes to corporate form or identity of the bidder, and changes that materially reduce the technical or financial capabilities of the bidder should merit notice to BOEM.

Accordingly, the commenter requested that BOEM include a provision in § 585.222 describing when BOEM must be updated and how/when eligible bidders must notify BOEM of relevant changes. The commenter suggested further revision to § 585.222 to allow for joint bidding in lease sales and to define an "affiliate." The commenter provided draft regulatory text that would implement these modifications.

**Response:** BOEM has added language to § 585.222 describing new triggers for qualification determinations. BOEM has declined to add a definition of "affiliate" to the regulations at this time. BOEM's sale notices provide the specific requirements in instances where bidders are participating in joint ventures. BOEM does not see a need to

establish these requirements by regulation.

### 3. What is the Department finalizing?

#### (a) § 585.106 *What happens if I fail to comply with this part?*

BOEM is finalizing the proposed clarifications of its process surrounding the imposition of civil penalties. BOEM made minor revisions to this provision to ensure consistency with OCSLA.

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

BOEM is largely finalizing the NPRM proposal to reorganize, simplify, and clarify the regulatory sections detailing the steps leading to an OCS renewable energy auction. The final rule preserves the concept of a "provisional winner" that was introduced in the NPRM, referring to a successful bidder before the execution of a lease, at which point a "provisional winner" can become a "lessee." Revised § 585.225 combines the reconsideration and appeals provisions into a single paragraph (e). BOEM also removed the requirement to execute three copies of the lease, which is appropriate given the more widespread adoption of electronic forms, which was already underway in 2020, but accelerated during the COVID-19 period.

BOEM is eliminating the "Request for Interest," which was similar enough in name and purpose as to be frequently confused with the "Request for Information." BOEM retains the Request for Information, described in § 585.116, which BOEM may use to gather any manner of information from industry, federally recognized Tribes, State and local agencies, and other interested entities. Accordingly, the Request for Information can easily be employed to gather the same public input that would once have been solicited in a Request for Interest.

BOEM reviewed the request to include "archaeological and/or culturally significant sites on the seabed or nearshore, including viewsheds and traditional cultural landscapes and properties." BOEM determined that the final rule will require this information to be included in SAP, COP and GAP. The list to which the commenter requested to add the specified language is merely suggestive of the kind of information that BOEM *may* request. The regulations list a few of the kinds of information that BOEM can specifically request in these notices, but the intent is not to provide a list of all the information that BOEM could request. In practice, BOEM does request other kinds of information. For example, in a recent California Call for

Information and Nominations (86 FR 40869), BOEM requested that the public submit information on viewshed, archaeological and cultural resources sites, and historic properties. In other words, BOEM is already requesting the information that the commenter has asked BOEM to add to the regulations.

#### (c) § 585.213 *What information is included in the PSN?*

#### (d) § 585.214 *What information is included in the FSN?*

The final rule simplifies and clarifies auction regulations, mostly as proposed in the NPRM. The final rule replaces the lists of permissible auction formats, bid variables, and bidding processes with a more flexible process consistent with current BOEM practices. Under the revised regulations in § 585.213, BOEM will propose auction procedures for 60-calendar day comment in a PSN, including auction format and lease terms and conditions. Final auction details, under 30 CFR 585.214, will be published in the FSN at least 30 calendar days before the auction. These changes would permit BOEM to hold lease sales that do not conform to the previously enumerated auction formats and bidding systems, should circumstances warrant, though BOEM has no immediate plans to do so.

#### (d) § 585.216 *How are bidding credits awarded and used?*

BOEM is finalizing provisions pertaining to multiple factor auctions and bidding credits in § 585.216. These were permitted under BOEM's existing regulations; however, the final rule establishes bidding credit authority that better reflects how these have been implemented in BOEM's lease sales. Bidding credits permit the agency to recognize other policy priorities, like advancing a domestic supply chain or promoting workforce training, in addition to monetary bid amounts. BOEM may design bidding credits that are based on actions the bidder has already taken or for commitments to take future actions. The final rule also specifies in § 585.225(g) that BOEM can force a bidder to repay the amount of the bidding credit, with interest, if it does not meet the applicable commitments. This authority is backed up by its authority to assess civil penalties under § 585.106(e). BOEM's bidding credits provisions are included in revised § 585.216. BOEM lists a half dozen examples of bidding credits that the agency could choose to implement in a lease sale. BOEM declined to add to this list, despite comments requesting the addition of specific other bidding credits. However, the list is not exhaustive, permitting the agency to offer bidding credits in future lease sales

for “any other factor or criteria to further development of offshore renewable energy, as identified by BOEM in the PSN and FSN.”

*(e) § 585.222 What other auction rules must bidders follow?*

BOEM is not finalizing the provision proposed in new § 585.222(f) that would have prohibited a bidder from disclosing auction strategies or economic valuations of a lease area. BOEM may still prohibit such communications in the auction rules published pursuant to individual lease sales, however, commenters raised questions about the definition proposed by BOEM, and given BOEM’s authority to regulate this in individual lease sales, the agency has decided not to finalize the prohibited communications provision at this time.

*(f) § 585.224 What will BOEM do after the auction?*

Post-auction procedures are likewise revised, largely tracking the proposals detailed in the NPRM. In § 585.225(f), BOEM changed the due date for payment of the first 12 months’ rent on a new lease to 45 calendar days after the winning bidder receives a copy of the executed lease from BOEM.

*(g) § 585.225 What happens if BOEM accepts a bid?*

Section 585.225 addresses obligations of provisional winners after the auction and before execution of a lease. From the date of receipt of the unsigned lease, the provisional winner has 10 business days in which to execute and return the lease to BOEM, file the required financial assurance, and pay the amount due. The provisional winner may request an extension of the 10-day deadline in writing.

*(h) § 585.226 What happens if the provisional winner fails to meet its obligations?*

The final rule adds clarifications on what actions BOEM may take if the provisional winner fails to timely complete these steps. Section 585.226(a) authorizes BOEM to decline to execute the lease, decline to execute other leases that the provisional winner may have won in the auction, require forfeiture of the bid deposit, refer the matter for suspension or debarment review, or impose other remedies. Further, under § 585.226(b), BOEM may award the lease to the next highest bidder, repeat the auction under § 585.224(f), or use any other procedures specified in the FSN.

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

The final rule adopts proposed § 585.438, which describes actions that

BOEM may take if a lease or grant is relinquished, contracted, or cancelled. Before this rulemaking, the regulations were silent about how BOEM would address such cases. Under paragraph (a) of this section, BOEM may restart the competitive process at a stage that BOEM deems reasonable (e.g., from the beginning, from the Call, Area Identification, PSN, or FSN). Under paragraph (b), if the lease or grant is relinquished, contracted, or cancelled within six months of the lease sale, BOEM may reoffer it to the next highest bidder.

*G. Risk Management and Financial Assurance*

1. What did the Department propose?

§§ 585.516; 585.520; 585.521; 585.526; 585.527; 585.528; 585.529.

BOEM proposed four main amendments and requested comment on two concepts in the NPRM preamble (88 FR 5987). The four main amendments were: a) eliminating the COP approval financial assurance requirement (§ 585.516); b) revising lease-specific financial assurance amounts (removal of § 585.515 and changes to §§ 585.520 and 585.521); c) accepting additional types of financial assurance instruments (§§ 585.526 and 585.528); and d) funding of decommissioning accounts based on a BOEM-approved schedule (§§ 585.516 and 585.529). BOEM also requested public comment on these two concepts: e) using a minimum credit rating threshold for BOEM’s evaluation of the financial strength and reliability of a lessee, grant holder, or third-party guarantor (§ 585.527); and f) explicitly relying on financial strength and reliability evaluation of joint and severally liable parties when determining the need for financial assurance.

2. What are the key public comments?

*(a) § 585.516 Elimination of COP approval financial assurance requirements.*

*Comment:* Multiple commenters expressed support for BOEM’s proposal to eliminate the supplemental financial assurance currently required before COP approval. The commenters stated that the proposed change would encourage offshore wind development by reducing overly burdensome financial assurance requirements while continuing to protect the public against risks of default. Additionally, commenters highlighted that decommissioning liabilities do not accrue from COP approval, only with the commencement of approved activities on the OCS.

*Response:* BOEM has finalized moving the deadline for complying with financial assurance requirements from the COP stage to prior to starting construction. BOEM feels that an adequate balance between the need to protect the U.S. taxpayers and not overburden the industry with financial requests that do not reflect the actual risk that is being mitigated, is in accordance with the proposed elimination of supplemental financial assurance before there is an actual liability that needs to be covered by financial assurance.

*Comment:* A commenter expressed opposition to elimination of the COP approval financial assurance requirement and stated that it was an irresponsible proposal by BOEM. The commenter stated that “the proposal presumes financial project viability and consistent ongoing revenues for a period of 35 years or more with disregard for uncertain financial, environmental, engineering, legal, and weather-related risks.” They further stated that “[e]nergy-utility projects are in essence traditional public-private partnerships where technical and financial risks are transferred to the private sector in exchange for the opportunity to generate revenues and profit. Under the proposed rule, the Federal government is instead transferring risks associated with decommissioning to the consumer rather than to the private sector.”

The commenter states that “[w]hile BOEM believes that if a developer becomes insolvent during commercial activity that a solvent entity would assume or purchase control, the County believes this is a risky assumption as the most likely reason for default is that a constructed wind farm developer is unable to meet its contractual obligations set forth under a Power Purchase Agreement (PPA) because its energy production revenues are not in excess of its operating costs. A change of hands would not remove these circumstances or make the project profitable.”

*Response:* The first part of this comment discusses financial assurance requirements at COP approval, which occurs prior to any offshore facility installation. Since BOEM’s financial assurance requirements reflect a project’s liabilities, there is no reason to require financial assurance until facility installations begin. BOEM does not agree with the commenter that the period between COP approval and installation presumes a level of viability, that it would last 35 years, or that this proposal transfers all risk to the consumer rather than the private sector.

The second part of this comment relates to the provisions that allow lessees to fund a decommissioning financial assurance account over time on a schedule approved by BOEM. BOEM does not agree with the commenter that it would be a “risky assumption” that a project’s energy production revenues would exceed its operating costs. Renewable energy projects typically have low operating expenses since there is no cost for fuel and the equipment only needs to be maintained. Therefore, the energy production revenue is several multiples of the operating expense. Having a decommissioning financial assurance account funded over time from that revenue should greatly reduce the chance that a lessee will not have sufficient resources to meet its decommissioning plans at the end of the lease.

*(b) §§ 585.520–585.521 Lease-specific financial assurance amount.*

*Comment:* Multiple commenters expressed support for BOEM’s proposed revision of the lease-specific financial assurance amounts and concurred this action would not compromise taxpayer protection. One commenter stated that under the current rule, BOEM is exposed to the risk of default only during the period between lease issuance and rent payment, and that risk is mitigated by BOEM’s prequalification metrics, and the likely interest of the next highest bidder. An additional commenter stated that the lease-specific financial assurance amount revision should also address later stages of a lease, including the full decommissioning amount.

*Response:* BOEM agrees that the proposed changes should reduce the upfront capital burden on lessees without compromising taxpayer protection. BOEM is finalizing the revisions to lease-specific financial assurance amounts as proposed. BOEM disagrees with the assertion that the lease-specific financial assurance amount proposed changes should also include decommissioning funds since there is no decommissioning liability associated with the mere act of purchasing a lease without facilities installed on it.

*Comment:* A commenter stated that the lease specific financial assurance amount revision should also address later stages of a lease, including the full decommissioning amount.

*Response:* BOEM disagrees with the commenter’s assertion that the lease-specific financial assurance amount proposed changes should also include decommissioning funds since there is no immediate decommissioning liability

associated with purchasing a new lease. Once there is decommissioning liability on a lease, following a COP approval, financial assurance will still be required. If the commenter is referring to § 585.520, BOEM did not propose to eliminate any financial assurance requirement, it only proposed to require financial assurance by stages, to the moment in which the actual risk/liability exists, otherwise BOEM would be requiring financial assurance for a liability or risk that does not yet exist.

*(c) §§ 585.526; 585.528 Additional authorized financial assurance instruments.*

*Comment:* Several commenters expressed support for BOEM’s proposal to authorize additional financial assurance instruments, including letters of credit and other instruments not currently listed. One of those commenters stated that “securities such as parent guarantees or bonds should be acceptable financial assurance in all circumstances . . . subject to reasonable negotiation. . . .”

*Response:* BOEM is finalizing the proposed provisions, which will provide flexibility for lessees to fulfill their obligations. This ensures that lease obligations are fulfilled while providing flexibility for lessees to comply with their obligations.

*Comment:* A commenter did “not object” to allowing letters of credit as financial assurance instruments, however, the commenter did object to the proposed catch-all provision that would grant BOEM authority to accept instruments not explicitly listed. The commenter cautioned against the use of a combination of instruments, other than a trust account combined with one other instrument, reasoning that it would be difficult to construct a layered combination that would provide the necessary financial assurance. The commenter discussed recent bank failures, claiming that not many companies could be relied upon for such large sums of money over the 30+ year span required for these projects. Additionally, the commenter objected to BOEM’s proposal to allow guarantors to cap their liability at a specific amount, because it would require BOEM to accurately determine the dollar amount that will be needed in the future, which would put taxpayers at risk if BOEM underestimated the needed amount due to inflation or other unforeseen circumstances.

*Response:* The proposed rule proposed to add catch-all provisions clarifying that BOEM may accept instruments not explicitly listed as well as combinations of different instruments; however, these

instruments would need to meet BOEM’s general requirements for financial assurance. BOEM was unable to determine why the commenter believes it would be difficult to layer a combination of financial assurance or why the reference to bank failures is applicable to the OSW industry, so BOEM cannot respond to those portions of the comment.

Regarding the risk of underestimating the decommissioning liability, the risk is similar if a guarantor has limited its liability to a specific amount, if a surety bond provider has supplied a bond with a specific limit, or if the lessee has a fully-funded decommissioning account—the cost of decommissioning may exceed the original estimate and the lessee is still responsible for meeting that obligation. Since the risk is similar in each of these financial assurance instruments, BOEM is finalizing these amendments as proposed.

*Comment:* A commenter stated that financial assurance “could be provided with a combination of authorized financial instruments, but a fully funded trust account would be preferable from the public protection perspective.” Additionally, they noted that “the total amount they guarantee should from the start be the full decommissioning amount. If a trust fund is built up over time with operating revenues, then the additional financial supports could be reduced by a comparable amount.”

*Response:* BOEM agrees that a fully funded trust account would provide a high level of protection. This approach could be too risk-averse in some cases, however, and lead to unnecessary costs and administrative burdens placed on lessees. There could be other risk-reduction factors present including insurance, performance guarantees, manufacturer warranties, or power purchase agreements that reduce the risk of non-performance and it is important to consider these in the overall financial assurance evaluation.

*(d) §§ 585.516 and 585.529 Staged funding of decommissioning accounts.*

*Comment:* Three commenters stated that the decommissioning process is unclear, adding that industry should be required to obtain bonds to cover future decommissioning for both towers and offshore export cable corridors.

*Response:* As discussed in the preamble to the proposed rule (at 88 FR 5987), under the existing subpart E of part 585, BOEM requires lessees and grant holders to provide financial assurance, in the form of a bond or other instrument, in an amount sufficient to guarantee compliance with terms and conditions of their leases and grants, including decommissioning. BOEM’s

approach requires supplemental financial assurance to cover decommissioning when there is a risk that the current lessee will not be able to meet its performance obligations. BSEE's regulations at 30 CFR part 285, subpart I require that, within 2 years following termination of a lease or grant, the owner must decommission all facilities, projects, cables, pipelines, and obstructions on their lease. BOEM and BSEE disagree that these requirements are unclear or that bonds are not required and have not made any changes due to these comments.

**Comment:** Multiple comments were submitted both supporting and opposing the proposed amendments to allow staged funding of decommissioning accounts. Several commenters stated that current decommissioning requirements place an undue burden on the lessee, while the proposed staged funding reduces the burden on developers while continuing to protect taxpayers. Several commenters generally supported staged decommissioning but stated that BOEM should monitor the approach to ensure its assumptions hold true, and that risks to taxpayers remain low. Another commenter expressed support for staged decommissioning funding and suggested BOEM should schedule the funding to begin toward the end of the revenue contract term, stating that “[d]uring the life of the revenue contract a project will have substantial guarantee of cashflow and solvency which make funding decommissioning in a lump sum premature.”

In contrast, several commenters were concerned that staged decommissioning could result in situations where the account may be unable to cover early decommissioning costs in the event of unforeseen circumstances (*e.g.*, extreme weather, lawsuits, etc.), bankruptcy, or at the conclusion of the lease. Commenters expressed concern that if a company were to go out of business (*i.e.*, the developer files for bankruptcy prior to the end of the lease term) without providing decommissioning costs upfront, the decommissioning account may not be fully funded.

In the NPRM, BOEM also identified differences that reduce the decommissioning account risk for renewable energy projects compared to oil and gas projects. In response to those differences, one commenter said the history of OSW suggests a decreasing level of power generation over time, another said production could be unreliable due to changing weather and wind conditions, and another said the expected turbine life is uncertain and that “manufacturers do not warrant the

turbines for a 30-year life.” This risk of variable or even under-performance could lead to reduced project revenue.

**Response:** BOEM seeks to balance offshore development while protecting taxpayers by requiring financial assurance when there is a greater risk. BOEM is finalizing the proposed provisions, which will provide flexibility for lessees to fulfill their obligations while ensuring that U.S. taxpayers are protected and lease obligations completely fulfilled. BOEM’s proposed approach seeks to target risk without being overly burdensome. BOEM can adjust the amount and timing of required financial assurance as it continues to monitor a lessee’s financial health.

Regarding hurricanes and other weather risks, these have been incorporated into the most recent recommended practice for North American offshore wind turbines (Offshore Compliance Recommended Practices: 2022 Edition (OCRP-1-2022)). In addition to the updated design practices, projects may also have insurance, warranties, and/or performance guarantees that mitigate the risk of unforeseen circumstances. In the event of a turbine needing to be decommissioned in an unforeseen event, BOEM’s financial assurance policies would ensure that insurance or some other type of coverage would provide funding for decommissioning or that significant revenue potential still exists on the lease so that a lessee would be incentivized to repair or replace the damaged turbine to continue operations.

**Comment:** A commenter expressed concern that if a company were to go out of business (*i.e.*, the developer file for bankruptcy prior to the end of the lease term) without providing decommissioning costs upfront, the decommissioning account may not be fully funded. A few commenters said this could result in decommissioning costs falling to taxpayers or ratepayers. Some commenters urged BOEM to require full decommissioning funds before construction begins. A commenter encouraged BOEM to consider a requirement to fully fund decommissioning at an earlier stage in the project life, particularly because this scenario could cause safety issues for mariners. For example, “[o]ne fisherman in California discussed that on the West Coast most activities are bottom fishing activities, requiring the use of trawling and other equipment. As a result, when developers drape cables and transmission lines on the ocean floor, these fishermen cannot fish at all so long as the equipment is in the water. If developers were to simply cut these

lines and leave them at the bottom of the ocean floor, this would pose a safety hazard to these fishermen.” The commenter recommended that “BOEM revisit the incremental funding model and instead ensure that developers have adequate funds to decommission a structure when the structure is introduced into the ocean. This will give other small business ocean users certainty that the developer will have the ability to remove the structure if and when it becomes necessary to do so.”

**Response:** BOEM will regularly monitor incremental funding of the decommissioning account. If BOEM determines that the amounts have changed or the funding needs to be completed sooner, BOEM reserves the right to update the funding amount and schedule. The proposed amendments seek to balance encouraging development while protecting taxpayers by requiring financial assurance when there is a greater risk. BOEM is finalizing the proposed provisions which will provide flexibility for lessees to fulfill their obligations.

**Comment:** A commenter asked BOEM to explain its process should a facility require decommissioning due to unforeseen circumstances when financial assurances for decommissioning do not cover the actual cost.

**Response:** BOEM would seek performance of decommissioning by the current lessee(s) under the applicable regulations. Lessee(s) are still liable for decommissioning regardless of the status of financial assurance, and BOEM evaluates the financial strength of lessees on a continual basis.

**Comment:** In response to BOEM’s discussion of differences between the renewable energy sector and the oil and gas sector, a commenter said the history of OSW does not suggest a consistent level of power would be generated over time, rather a reduction of perhaps 4.5 percent per year is more realistic. Additionally, the commenter stated that “no one knows what a reasonable lifetime for these turbines will be—the manufacturers do not warrant the turbines for a 30-year life . . . if the capacity is reduced due to operational difficulties, so will be the revenue collected.” Another commenter said that BOEM should recognize that OSW production is unreliable due to unreliable weather and wind conditions, so developers cannot guarantee consistent revenues. The commenter cited multiple years where OSW farms in Europe faced “wind-droughts.” The commenter also stated that PPA’s are only a reliable revenue source when developers are able to

deliver power. Similarly, another commenter discussed current power purchase agreements that developers want to re-negotiate due to unforeseen increases in project costs that make current rates economically unfeasible. The commenter asked how developers operating at a loss could accurately predict decommissioning costs.

**Response:** BOEM will consider the operational experience and profitability of each project when assessing the need for financial assurance. This evaluation will occur at least annually, which will allow for performance reduction and weather variations to be considered. BOEM acknowledges several PPAs are being re-negotiated due to increases in project costs, but those costs are mainly related to construction and installation, not operations. Once a project is operational, the revenues are expected to exceed the operational costs, even with the current PPA price levels.

**Comment:** A commenter stated that “with developers already alleging that projects will suffer losses at currently contracted rates” it is not likely that “if a lessee became insolvent during its commercial operations period, it would likely be able to transfer a functioning OCS renewable energy facility to a solvent entity because the revenues would be expected to exceed operating costs.” Additionally, they stated that “[t]he US taxpayer should not be responsible for the shortfalls of OSW companies, nor should the US commercial fishing industry suffer the consequences if funds fall short of removing all project components.”

**Response:** BOEM acknowledges several PPAs are being re-negotiated due to increases in project costs and notes that these negotiations are occurring prior to construction and installation. Once a project is installed and operational, the revenues are expected to exceed the operational costs, even with the current PPA price levels. If a lessee became insolvent during commercial operations, the project itself could still be profitable, therefore, BOEM considers it likely that another entity would purchase it and continue its operations. BOEM seeks to protect the taxpayer from any costs associated with offshore development and will conduct at a minimum, an annual financial review of lessees and offshore projects to ensure the continued financial strength and economic viability.

*(e) § 585.527 Other financial assurance provisions—credit ratings.*

**Comment:** One commenter said a credit rating from a nationally recognized statistical rating organization (NRSRO) would be more reliable than

BOEM’s current assessment of financial strength. Another commenter supported the use of public and proxy credit ratings to determine the need for financial assurance, and investment grade credit ratings to meet financial assurance requirements. One commenter preferred the use of NRSRO credit ratings, which are determined on a forward-looking basis opposed to the current backward-looking assessment.

A commenter stated that the viability of switching to an external credit rating depends on the number and source of ratings. Additionally, the commenter said that BOEM must consider the minimum acceptable rating and the impacts of a downgrade. A commenter stated that a minimum credit rating should not be the only method for financial assurance. The commenter suggested that BOEM maintain a flexible approach for financial assurance through a combination of credit ratings review and other factors, such as audited financial statements.

**Response:** BOEM is requiring an investment grade credit rating from an NRSRO (§ 585.527(a)) or an equivalent proxy credit rating determined by BOEM using a credit model (§ 585.527(b)). A downgrade in credit rating or proxy credit rating would require the lessee to provide a separate form of financial assurance for the lease and result in financial assurance demands to cover the cost of decommissioning. BOEM’s use of NRSRO credit ratings and proxy credit ratings is a flexible approach and incorporates other factors such as audited financial statements.

**Comment:** A commenter preferred the use of NSRSO credit ratings on a forward-looking basis as opposed to the current backwards-looking assessment, but noted the approach has limitations. The commenter said BOEM should not act as a proxy to the rating agencies, because BOEM has a conflict of interest and lacks the necessary expertise. Additionally, the commenter asked how BOEM would respond to material changes in a guarantor’s financial situation.

**Response:** When a proxy credit rating is needed, BOEM will use a credit model that considers the same factors as a credit rating issued by an NRSRO. If material changes cause a guarantor to fall below an investment grade credit rating, the lessee would need to provide a separate form of financial assurance for the lease.

*(f) § 585.527 Other financial assurance provisions—joint and several liability.*

**Comment:** Multiple commenters said joint and several liability should be an

additional support if all current owners’ default, not a substitute or basis for reducing financial assurance requirements for current owners.

Another commenter expressed concern that basing the need for, and amount of, financial assurance amounts on the financial strength of co-lessees would undermine the security provided by joint and several liability. A separate commenter requested that the final rule “require BOEM to use existing financial security (where BOEM is the beneficiary) before looking to predecessors to meet the obligations of a current owner in default . . . [and] require that predecessor lessees and grantees be named as beneficiaries on security (“dual obligee” security) so that predecessors can use the security to satisfy the current owner’s obligations in the case of their default.”

**Response:** BOEM will not explicitly consider predecessor financial strength to meet the financial assurance requirements. Current co-owner financial strength will be considered since those entities would also have joint and several liability for any obligations. BOEM is finalizing, as proposed, that the financial health of lessees with retained joint and several liability will not be evaluated when determining a current lessee’s financial responsibility. Dual-obligee specific policies were not considered in the proposed rule; therefore, no changes will be made to the final rule. BOEM plans to utilize any existing financial security from current lessees in the event of a default. There is no requirement that a predecessor be named as a beneficiary although BOEM notes that a current lessee could make that a condition of any sale or transfer.

**3. What is the Department finalizing?**

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

BOEM is finalizing these regulations as proposed and will require financial assurance prior to facility installation instead of at COP approval. The updated regulations reflect that BOEM’s financial assurance requirements are intended to accrue on a timeline that matches the increases in a project’s liabilities.

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

BOEM is finalizing the revisions to lease-specific financial assurance amounts as proposed. The updated calculation method will better align the amount of financial assurance required with the potential liability.

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

BOEM is finalizing the revisions to lease-specific financial assurance amounts as proposed. The updated calculation method will better align the amount of financial assurance required with the potential liability.

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

BOEM is finalizing this section as proposed, which will provide flexibility for lessees to fulfill their obligations. BOEM will continue to require that all types of financial assurance instruments provide adequate coverage matched with the lease and/or grant obligations.

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

BOEM is finalizing this section as proposed, except as changed by the Reorganization Rule. Also as discussed in the NPRM preamble at 88 FR 5988, the amendments as proposed would grant BOEM the discretion to approve a third-party guaranty to cover only a specific amount. BOEM is finalizing these amendments as well.

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

BOEM is finalizing the proposed revisions to allow decommissioning trust accounts to be incrementally funded pursuant to a BOEM-approved schedule, while reserving the right to modify the amount of financial assurance if circumstances change. BOEM's approach seeks to reduce risk without being overly burdensome and to treat offshore lessees fairly, equitably, and with transparency, while also recognizing that offshore lessees and projects are not identical. BOEM will regularly monitor each lessee's financial health and can adjust the amount and timing of required financial assurance as needed.

In response to comments regarding the potential for U.S. taxpayers being forced to pay for decommissioning due to bankruptcies and/or other unforeseen circumstances, BOEM seeks to maintain a balance between protecting the taxpayer from costs associated with development on the OCS and not being overly burdensome. BOEM acknowledges there are risks to offshore renewable energy projects and that some of these risks are similar to offshore oil and gas while others are distinct. For

both types of projects, BOEM reserves the right to require financial assurance at any point, should it be deemed necessary, and actively monitors risks associated with all offshore development. This approach allows BOEM to take project-specific conditions into account when determining what kind of decommissioning account is appropriate for a particular project. BOEM may, for example, consider the duration of executed PPAs or offshore renewable energy credits, and require that a decommissioning account be fully funded before the expiration of such benefits.

*(g) § 585.527 May I demonstrate financial strength and reliability to meet the financial assurance requirement for lease or grant activities?*

BOEM has finalized the use of credit ratings issued by an NRSRO in the final rule based upon its determination that an investment grade credit rating or equivalent proxy credit rating provides BOEM sufficient protection. BOEM is also requiring third-party guarantors to meet the same investment grade rating requirements to provide a third-party guaranty. Material changes in a lessee's or guarantor's financial situation that cause the entity to fall below an investment grade credit rating or proxy credit rating will require them to provide BOEM with alternative financial assurance.

BOEM will also evaluate financial strength requirements based on the financial strength and reliability of the current lessee(s), even if there is a predecessor that is jointly and severally liable. The majority of comments on this concept were in support of this approach.

#### *H. §§ 285.810–285.812 Safety Management Systems (SMS)*

##### **1. What did the Department propose?**

**(a) Clarifying safety management system regulations (§§ 285.810–285.812).**

The proposed rule would clarify the information requirements for safety management systems (SMS). It proposed to add a provision to incentivize lessees and grantees to obtain a safety management certification from recognized accreditation organizations to reduce the frequency and intensity of regulatory oversight activities. It would clarify the scope of work that requires a functioning safety management system and added two safety reporting requirements. The Department would be able to request the certification report from the accredited organization in lieu of requiring additional audits.

Existing regulations require a lessee to conduct its operations safely and to provide BOEM a description of its SMS, usually at the COP stage. The proposed changes to §§ 285.810 and 285.810 were intended to clarify that a lessee or grantee must use an SMS when conducting any activity pursuant to a lease or grant, even prior to SMS submission to the Department, and would specify the contents of an SMS. The proposed rule would require lessees or grantees to submit their SMS to the Department with their COP, for SAP- and GAP-approved facilities, and activities that the Department deems to be complex and significant. The proposed SMS contents are consistent with industry standard safety practices and with the guidance BSEE currently provides lessees and grantees.

Therefore, the Department does not expect these proposed SMS changes to increase the burden of compliance on lessees and grantees.

##### ***(b) Why the Existing Regulations Should Be Updated.***

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

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

Upon SMS receipt, the Department would engage with the lessee or grantee to understand what risks the safety system is designed to mitigate and how the system would function. The rule would provide transparency regarding the types of information that the Department considers necessary in a satisfactory SMS and would clarify that the Department expects the lessee or grantee to design, implement, and maintain the SMS according to generally accepted standard practices such as those in API RP 75 (4th ed.), American National Standards Institute (ANSI), Z10, and ISO 45001.

Clarification of necessary SMS information would help prospective OCS renewable energy developers understand the Department's SMS expectations.

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

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

SMS engagement with the lessee or grantees will focus on risk identification and how the safety system is designed to reduce or mitigate those risks to people, property, and the environment. The proposed rule would define what the Department considers necessary in a satisfactory SMS and would clarify that the Department expects the lessee or grantee to design, implement, and maintain the SMS according to accepted standard practices. A lessee or grantee whose SMS has been certified would be eligible for streamlined oversight in recognition of the increased rigor in the development and implementation of its SMS. While such certifications would not be required and cannot guarantee streamlined oversight in all instances, the Department anticipates that most lessees and grantees would pursue certification as a best practice.

## 2. What are the key public comments?

**Comment:** Multiple commenters expressed support for the proposed shift to performance-based approaches for SMS, particularly related to incentives for obtaining certification or accreditation for SMS, streamlined oversight, clearer safety expectations, coordination of enforcement within the Department, requirements for more detail to be included in the SMS, and reporting requirements to allow comparisons of safety industry-wide.

**Response:** BSEE supports the continued focus on performance-based

approach to SMS. BSEE is continually evaluating improvements to the performance-based approach that have been integrated into this rulemaking and additional improvements may also be considered in future rulemakings.

**Comment:** A commenter expressed concerns that the proposal could reduce the frequency and intensity of regulatory oversight on safety issues and requested that the Department share any information related to requirements for Contingency Plans for potential catastrophic events at OSW development sites.

**Response:** Regulatory oversight ensuring the safety of offshore workers and responsible environmental stewardship of offshore wind activities is a primary focus of BSEE and these SMS regulations reflect this focus. Section 285.812(b) provides for "regular demonstration" that the SMS is used and implemented effectively via annual activity reports to BSEE and triannual reports summarizing the lessees or grantees most recent SMS audit results, including corrective actions, and an updated description of the lessees or grantees SMS highlighting changes made since the last submission. With regard to potential catastrophic events, BSEE requires the development and functionality of Emergency Response Procedures in § 285.810(c) and the proposed § 285.812.

**Comment:** Several commenters stated that safety programs and reports, including information about oil or fluid leaks, should be made available to the public. Some commenters remarked that oil or other fluid leaks, in particular, must be made available to the public immediately, and especially to the fishing industry to avoid inadvertent harvesting of product(s) that may be harmful to consume. Other commenters asserted that the Department should require an annual summary of safety performance data covering all site assessment, construction, operations, or decommissioning activities; and a report summarizing the results of the most recent SMS audit that describes corrective actions and any SMS changes made.

**Response:** The U.S. Coast Guard requires oil spill reporting through the National Response Center and makes the information available to the public at [nrc.uscg.mil](http://nrc.uscg.mil). BSEE will require safety performance data be submitted to BSEE through proposed § 285.812(b)(1). BSEE plans to publish combined data on a regular basis.

**Comment:** Multiple commenters suggested that the Department clarify that the SMS also apply to the safety of mariners, including fishermen, within

and near an OSW facility. Several commenters requested clarification on SMS scope, review, approval, certification standards, definitions, submissions, and oversight roles.

**Response:** BSEE recognizes the importance of consistent safety programs and risk mitigations and their potential impacts to the fishing and recreation industries, and how they influence performance-based regulatory programs. BSEE considers environmental safety to be within the scope of an SMS. While the SMS regulations themselves do not apply to mariners, including fishermen, the intent of the SMS regulations are to ensure the safety of personnel or anyone else near or on the facilities.

Regarding comments seeking clarification on SMS generally, BSEE has provided guidance to the industry related to these comments in Safety Management System Expectations for Renewable Energy Companies Operating on the OCS, which is posted on the BSEE website at <https://www.bsee.gov/technical-presentations/ooc-presentation-sms-in-ocs-renewable-projects-may-13>. This guidance includes information about submissions, frameworks, and reviews.

**Comment:** Several commenters stated that the Department should protect workers and workers' rights by requiring Labor Peace Agreements (LPAs) for operations and maintenance workers as a condition of all renewable OSW leases and ensure developer commitments do not discriminate or retaliate against workers or contractors who raise health and safety concerns. One commenter provided background information to show the importance of improving workers' rights, stating that in the construction industry alone, union worksites have 31% fewer health and safety violations. The commenter asserted that without Department action, operations and maintenance workers would have few protections at either the State or Federal levels.

**Response:** While BOEM has jurisdiction over lease terms, BSEE agrees that a positive safety culture includes the right to stop unsafe work and that retaliation leads to a negative safety culture. To ensure the safety of lessees and grantee personnel or anyone else on their facilities, § 285.810(a)(5) requires them to submit procedures as part of the SMS for personnel or visitors to report unsafe work areas or conditions to both the lessee, grantee, or designated operator and BSEE. BSEE will verify workers have a means of reporting unsafe working conditions. BSEE also offers a means of reporting unsafe working conditions via the BSEE

Safety and Incident Investigations Division (SIID) Hotline: (877) 440-0173 or (202) 208-5646. Section 285.813(b)(1) requires lessees to provide a written report to BSEE of any injury in which a person is unable to return to work or perform their normal duties the following day.

**Comment:** A commenter discussed a third-party SMS, including accreditation and upcoming revisions to a standards document, SEMS API RP 75 (4th ed.), and suggested that the Department acknowledge this document and recognize the commenter's program for accreditation as suitable for SMS certification. Changes the commenter recommended to the proposed rule include:

- In proposed § 285.811, include API RP 75 in the parenthetical examples of acceptable health and safety standards and modify the first sentence such that it reads: "You are not required to obtain a certificate that your SMS meets acceptable health and safety standards (e.g., API RP 75, ANSI Z10, ISO 45001) from a recognized accreditation organization (e.g., COS, ANAB)."

- In the corresponding preamble, provide supporting information in the preamble for proposed §§ 285.810 through 285.812 supporting API RP 75 as an acceptable health and safety standard, and recognize COS's accreditation program for ASP and COS's SEMS certificate program as suitable for lessees or grantees to receive incentives for their SMS.

**Response:** BSEE agrees that API RP 75 (4th ed.) is one acceptable SMS framework standard and has included it as an example of an acceptable standard in § 285.811. This rulemaking does not specify any recognized accreditation organization. BSEE has taken a performance-based approach and declined to specify standard and accreditation organizations at this point in time. The process implemented here provides flexibility to both the lessee and BSEE.

**Comment:** Several commenters provided editorial revisions to the language in the proposed rule related to shut-downs, new language to define the contents of as-built submissions, and details included in SMS descriptions in plans. One such example revises certain language in § 285.810(b)(5) from "shutdown of one or more facilities" to "manual shut-down of one or more facilities for the preservation of safety."

**Response:** BSEE agrees that all conditions might not be available while the COP is still in the approval process and that it will change over time as the program matures. The objective of this requirement is that lessees demonstrate

an awareness of conditions that could lead to a shutdown of one or more facilities and that they have in place specific measures to control or mitigate risks. BSEE supports the continued focus on performance-based approaches to Safety Management Systems. BSEE is declining to update the regulations regarding as-builts in this final rule. BSEE may issue an NTL to clarify the as-built requirements or update the regulations in the future should additional requirements be necessary. BSEE is declining to change the language proposed limiting shutdown of facilities to only manual shutdowns. Other types of shutdowns are critical for safety and should be included in the SMS.

### 3. What is the Department finalizing?

#### (a) § 285.810 When must I submit a Safety Management System (SMS) and what must I include in my SMS?

The Department is finalizing this section, consistent with proposed § 285.810, with minor revisions. For added clarity, BSEE is including items required in the SMS under paragraphs (a) through (f). Additionally, BSEE is revising the language in paragraph (a)(1) to clarify that the health and safety risk provisions in this paragraph also apply to anyone "engaged in lease activities." In paragraph (a)(3), BSEE is clarifying that nationally or internationally recognized standards are applicable to ensure the safety of the activities covered by the SMS. BSEE is also making minor edits to this section to apply the transfer of authority from BOEM to BSEE and make corresponding corrections to regulation references.

Lessees and grantees are required to use a SMS for activities conducted on the OCS to develop or operate a lease, from met buoy placement and site assessment work through decommissioning, and to provide the SMS to BSEE upon request. They must also submit a detailed description of the SMS with their COP (as provided under § 285.627(d)) and, when required, with their SAP (as provided in § 285.614(b)) or GAP (as provided in § 285.651).

An acceptable SMS must address how the lessee or grantee will ensure the safety of their personnel or anyone else on their facilities or engaged in lease activities, specific policies and strategies to control risks, and methods that will be used to monitor the implementation of the SMS and maintain the safety of activities covered by the SMS, including management of change and stop work practices; and procedures for personnel to report unsafe work conditions both to the

lessee, grantee, or their designated operator and to BSEE.

Additional SMS elements include remote monitoring, control, and shutdown capabilities; emergency response procedures, fire suppression equipment and how and when it will be used, as needed; how and when the lessee or grantee will test its SMS; auditing of the SMS; testing of critical SMS components including remote shutdown capabilities as well as emergency response readiness; and required training for personnel who conduct activities on the facilities and provision of knowledge and skills to ensure that personnel perform duties safely for the duration of activities.

#### (b) § 285.811 Am I required to obtain a certification of my SMS?

The Department is finalizing this regulation, consistent with proposed § 285.811. BSEE is revising this regulation to update the transfer of authority from BOEM to BSEE for considering certifications in determining the frequency and scope of SMS-related inspections under this subpart, as well as the scope and nature of its oversight over any audit-induced corrective actions. The final rule revises the list of examples of acceptable health and safety standards to also include API RP 75.

BSEE encourages lessees and grantees to obtain a certification for their SMS to meet acceptable health and safety standards from a recognized accreditation organization (e.g., ANSI Z10, API RP 75, ISO 45001). However, lessees and grantees are not required to obtain a certification from such organizations. BSEE will nonetheless consider such certification in determining the frequency and scope of SMS-related inspections that it conducts under this subpart, as well as the scope and nature of its oversight over any audit-induced corrective actions.

#### (c) § 285.812 How must I implement my SMS?

The Department is finalizing this regulation, consistent with proposed § 285.812.

This section requires that a lessee's or grant holder's SMS must be functional before they begin and must remain functional while they perform any activity on the OCS, from met buoy placement and site assessment work to decommissioning, or for any activities described in their approved SAP, COP, or GAP. Lessees and grant holders must regularly demonstrate to BSEE that their SMS is being implemented effectively by submitting annual and triennial reports to BSEE in accordance with § 285.110.

### I. Inspections

#### 1. What did the Department propose?

Existing regulations state that the Department, acting through BOEM and BSEE, as applicable, will inspect facilities and vessels engaged in renewable energy activities to verify compliance with applicable terms, conditions, laws, and regulations, and to determine whether safety equipment has been properly installed and operated. The existing regulations that require the lessee to conduct self-inspections are limited to inspections of structures, mooring systems, and monitoring of corrosion protection. Changes in the proposed rule would expand the scope of Department inspections to cover Critical Safety Systems and Equipment.

##### *(a) Why the Existing Regulations Should Be Updated.*

OCSLA requires the Department to promulgate regulations to provide for scheduled onsite inspection, at least once a year, of each facility on the OCS (43 U.S.C. 1348(c)). Existing Department regulations require BSEE to perform a scheduled onsite inspection of all renewable energy facilities on the OCS and inspect all safety equipment designed to prevent or ameliorate fires, spills, or other major accidents.

To ensure that the OCSLA mandate of an annual onsite inspection is met, the Department is revising § 285.824 to require the lessee to conduct annual onsite self-inspections. The lessee would also be required to maintain records of its self-inspections and to provide these records to the Department upon request pursuant to § 285.824. This would make the lessee accountable for ensuring safety and protection of the environment. In addition, the Department would retain the ability to conduct inspections at any time.

This revision would allow the Department to focus resources on conducting inspections, both scheduled and unscheduled, based on criteria such as operational risk severity and probability, results of the lessee required annual self-inspections, industry trends, incident data, analytical data, safety management system implementation and audits, and other observations. Collectively, these inputs provide compliance-based, risk-based, and performance-based data that will enable BSEE to tailor inspection scope, protocol, location, and frequency leading to high value-added BSEE inspections of facilities, vessels, and renewable energy operations.

This revision would also reduce logistical and human resource burdens on the lessees by allowing them to

schedule their annual self-inspections with maximum efficiency by incorporating the inspections into scheduled onsite activities.

#### 2. What are the key public comments?

##### *(a) Self-Inspection Requirements.*

*Comment:* Several commenters stated that more clarity is needed regarding which vessels would be subject to Department inspections; the roles of BOEM, BSEE, USCG, and independent inspection companies contracted by lessees to conduct inspections; the intensity and focus of inspections; and how inspections would address operational safety, environmental risk, and engineering.

*Response:* BSEE-led inspections are limited to vessels conducting lease activities in Federal waters that occur either on the lease or an associated easement. Both BSEE-led inspections and self-inspections will focus on ensuring that lease activities are being conducted in compliance with the regulations, which are written to provide protections to human safety and the environment. As described above, BSEE's analysis of compliance, risk, and performance data will enable it to tailor its scheduled and unscheduled inspections, including utilization of remote inspections, remote testing, witnessing, and review of self-inspection, allowing for comprehensive oversight.

*Comment:* Approximately 20 commenters discussed self-inspection requirements. Multiple commenters supported the proposal to allow lessees to conduct self-inspections. One commenter remarked that existing regulations limit self-inspections to structures, mooring systems, and monitoring of corrosion protection. The commenter noted that shifting inspection responsibility to the lessee would allow for the Department to focus its resources on conducting inspections based on designated criteria while reducing logistical and human resource burdens on lessees.

*Response:* BSEE is committed to a performance-based inspection framework that is tailored to the operation, developer, location, and associated risk. BSEE agrees that self-inspections allow the Department to better use limited resources and create operational efficiencies.

*Comment:* Multiple commenters opposed the proposal to allow lessees to conduct self-inspections, asserting that this could lead to safety and environmental impact issues as the lessees would be primarily responsible for conducting inspections, rather than BOEM and BSEE. The commenters

suggested that the agencies increase oversight, including mandating inspections and self-inspections, providing public access to report findings, and enforcing appropriate repercussions if lessees fail to comply.

*Response:* BSEE is mandating self-inspections and will oversee the self-inspection process. BSEE has determined that using compliance, risk, and performance-based data to prioritize onsite BSEE inspection frequency, remote inspections, remote testing, witnessing, and review of self-inspection will be more effective than BSEE onsite inspections alone and will allow for more comprehensive oversight. Allowing self-inspection to occur during maintenance visits reduces personnel risk exposure and facility downtime. BSEE has determined that its inspection approach will allow for proactive identification of hazardous condition.

BSEE currently releases performance statistics on the BSEE website (<https://www.bsee.gov/reporting-and-prevention/safety-and-environmental-management-systems>) which track trends and provides incidents analysis and safety and health performance for Oil and Gas Operations from performance data gathered by BSEE as required under 30 CFR 250.1929. BSEE plans to release similar information for renewable energy facilities based on the performance data collected under § 285.812. Section 285.812 requires that key safety and operational statistics are captured by the lessees and reported to BSEE. BSEE uses this information to calculate a variety of annual, OCS-wide, performance indices and to track industry performance. These indices calculated by BSEE allow lessees to benchmark their performance against aggregate industry data, as well for BSEE to provide the public with OCS performance trends information.

*Comment:* Multiple commenters suggested that the Department should consider remote condition monitoring using technology in conjunction with targeted inspections to reduce the burden of yearly physical inspections or should allow lessees to conduct less frequent inspections coordinated with routine maintenance activities. Multiple commenters provided revised text to include in the final rule reflecting these changes. A commenter suggested that the Department should allow lessees to provide justification for a self-inspection period greater than one year.

*Response:* OCSLA requires an annual onsite inspection of all safety equipment designed to prevent or ameliorate fires, spillages, or other major accidents. Accordingly, BSEE lacks authority to

increase the time between inspections beyond one year. BSEE supports the use of remote condition monitoring by lessees to inform their productivity and compliance efforts. BSEE's inspection program considers compliance, risk, and performance-based data, which may be collected by remote monitoring technology, as well as the prescriptive annual onsite inspection as required by the OCSLA.

**Comment:** A commenter suggested that the Department provide more information on the efficacy of self-inspections in relation to operational safety. A commenter stated that the Department should provide clarity on what should be included in a comprehensive self-inspection plan. The commenter remarked that the scope of self-inspections is expanded in the proposed rule to include "all safety equipment designed to prevent or ameliorate fires, spillages, or other major accidents," however, this phrase is not illustrated or explained in the preamble to the rule. Further, under the proposed rule, a self-inspection "must include, but is not limited to," all such safety equipment.

**Response:** BSEE has explained in 30 CFR 285.824 what the self-inspection plans must include. BSEE is requiring that the self-inspection plan development include risk-based evaluation and identification of equipment designed to prevent or ameliorate fires, spillages, or other major accidents. Requiring lessees to identify this equipment, which is now defined as "Critical Safety Systems and Equipment" in 30 CFR 285.112, allows for the regulatory requirements to remain adaptive to new and emerging technologies. The "but is not limited to" language allows lessees to add any equipment they deem important to the self-inspection plan even if it may not meet the definition of Critical Safety Systems and Equipment.

**Comment:** Some commenters stated that while they welcome SMS certification from an accredited safety and environmental Conformity Assessment Body (CAB), the Department should not rely on such third-party certifications for assurance of SMS compliance in lieu of direct inspection by the agencies. If BSEE does permit self-inspection, third-party SMS certification from safety and environmental CABs should be required, and the third-party inspection reports should be attested to, filed with the agency, and made accessible to the public on the agency's website.

**Response:** BSEE does not rely solely on third-party certifications for assurance of SMS compliance, nor does

it rely solely on self-inspections for assurance of operational regulatory compliance. A lessee SMS certification will be considered by BSEE during its inspection data analysis, but it does not eliminate BSEE's ability to conduct direct inspections. BSEE intends to publish combined data on its website on a regular basis. BSEE is not requiring third-party SMS certification, but third-party certification is encouraged. BSEE has multiple ways to conduct safety oversight of projects, including self-inspections, BSEE direct inspections, SMS third-party audits, BSEE led SMS reviews, and remote inspections. BSEE has determined that utilizing a performance-based approach to inspection frequency will be more effective and allow for more comprehensive oversight. BSEE has determined that the performance-based approach will allow for proactive identification of hazardous conditions.

*(b) Other Comments on Inspections.*

**Comment:** Several commenters suggested that the Department provide more clarity on the definition of "facility," (e.g., single turbines or the whole of the site layout offshore), the level and type of inspections needed (consider allowing an independent inspection company to perform work on behalf of a lessee), and the possibility of remote inspections to reduce emissions and the overall exposure of industry and agency personnel offshore.

**Response:** BSEE defines "facility" in § 285.122 as 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 often designed as a single facility. BSEE may decide that the complexity of the installations justifies their classification as separate facilities.

BSEE's inspection model includes the option of remote monitoring technology as well as the prescriptive annual onsite inspection required by the OCSLA. As performance-based inspection by lessees and operators using remote inspection technology is found to be successful in reducing risks to industry personnel, BSEE may consider future changes to inspection activities.

**Comment:** A commenter stated that while the preamble language discussing the proposed rules appears to indicate that the Department would continue to conduct regular inspections, as written

the proposed rules do not require the Department to do so. The commenter recommended that the Department's regulations provide some minimum frequency for conducting onsite inspections to ensure adequate oversight of OCS facilities.

**Response:** OCSLA requires an annual onsite inspection of all safety equipment designed to prevent or ameliorate fires, spillages, or other major incidents. BSEE's inspection model may include remote monitoring technology as well as requiring the lessee to perform the prescriptive annual onsite inspection as required by the OCSLA. The results of those and other additional mandated inspections will be evaluated along with lessee's performance record to determine the frequency of onsite inspections by BSEE personnel. BSEE has determined that prescribing a minimum frequency for BSEE inspections is not necessary at this time. BSEE will use compliance, risk, and performance-based data to remain adaptive as the renewable energy industry matures.

3. What is the Department finalizing?

*(a) § 285.820 Will BSEE conduct inspections?*

This regulation was revised to state that BSEE may inspect OCS facilities and any vessels engaged in activities authorized under this part.

*(b) § 285.821 Will BSEE conduct scheduled and unscheduled inspections?*

BSEE is finalizing this section as proposed in the NPRM. BSEE may conduct both scheduled and unscheduled inspections.

*(c) § 285.822 What must I do when BSEE conducts an inspection?*

BSEE is finalizing this section as proposed in the NPRM. When BSEE conducts an inspection, you must provide access to all facilities on your lease (including your project easement) or grant, and any vessels engaged in activities authorized under this part.

*(d) § 285.824 How must I conduct self-inspections?*

BSEE is finalizing this section as proposed in the NPRM with small modifications from the NPRM. As proposed in the NPRM, § 285.824 requires the lessee to develop a comprehensive self-inspection plan covering all of their facilities. The lessee must keep a copy of their self-inspection plan wherever they keep their records and make it available to BSEE upon request. This self-inspection plan must specify how they will fulfill the requirement for an annual onsite inspection of all Critical Safety Systems and Equipment.

The regulation also now requires lessees to conduct an onsite inspection of each of their facilities at least once a year as proposed in the NPRM. The inspection must include, but is not limited to, all Critical Safety Systems and Equipment. The lessee must develop and retain summary reports for all such inspections for each calendar year. The summary report must note any failures of operability, any required maintenance of Critical Safety Systems and Equipment, or required replacement of the Critical Safety Systems and Equipment identified during inspection. The lessee must also retain records of inspections and summary reports for the previous 2 calendar years and make them available to BSEE on request.

Under this section, lessees must include a list of facilities inspected for structural condition and corrosion protection in their annual reports as proposed in the NPRM.

*(e) § 285.830 What are my incident reporting requirements?*

BSEE is finalizing this section as proposed in the NPRM. BSEE requires that you must report all spills of oil or other liquid pollutants in accordance with 30 CFR 250.187(d).

*J. Other General Comments Related to Part 285*

*Comment:* A few commenters suggested that the Department consider appointing a Health and Safety Committee to provide consistency in public access to information and provide input on CVA and engineering reports.

*Response:* Forming a Health and Safety Committee is outside of the scope of this rulemaking. BSEE notes the comment and may take it into consideration in the event that BSEE initiates a relevant rulemaking process in the future.

*K. Other Proposed Changes in Part 585*

**1. What did the Department propose?**

BOEM proposed additional regulatory changes that did not fall within the eight previously discussed categories. Here is a short description of those regulatory changes.

*(a) BOEM's responsibilities under OCSLA.*

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

Section 585.102(a) specifies that BOEM will authorize renewable energy activities in accordance with OCSLA subsection 8(p)(4), as enumerated in § 585.102(a)(1) through (12). BOEM proposed amending this regulation to clarify that none of the enumerated requirements is intended to outweigh or

supplant any other. The purpose of proposed change was to clarify that BOEM takes all of these relevant factors into consideration in planning its renewable energy program and that no one factor or consideration, by itself, should outweigh the other relevant considerations.

*(b) Lease Structure.*

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

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

*(c) Lease Segregation and Consolidation.*

The following provisions are discussed under this section.

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

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

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

*• § 585.413 How do I consolidate leases or grants?*

BOEM has received requests from lessees to segregate single leases into multiple leases, held by different subsidiaries, as well as to consolidate multiple adjacent leases into a single lease. BOEM regulations allow such segregations and consolidations, and the NPRM proposed amendments that would expand upon the existing regulations at § 585.409 regarding assignments by establishing specific procedures for lease segregation and consolidation.

*(d) Civil Penalties.*

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

The Department's renewable energy regulations do not explicitly provide for assessing immediate civil penalties for violations that constitute or constituted a threat of serious, irreparable, or immediate harm or damage to life, property, or the marine, coastal, or

human environment, without notice and an opportunity to correct. However, the authority for doing so is set forth in the OCSLA. The NPRM proposed amendments to the Department's regulations to ensure that its civil penalty regulations are coextensive with its statutory authority.

*(e) Standardize Annual Rental Rates for Grants.*

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

The NPRM proposed to standardize the annual rental rate for most grants. Under the proposed rule, BOEM would apply a \$5 per acre annual rental rate for both ROWs and RUEs, unless specified otherwise in the grant.

*(f) Technical Corrections and Clarifications.*

Finally, the NPRM proposed numerous minor technical changes. These technical revisions maintain consistency with proposed changes elsewhere in the regulations, clarify ambiguities, correct technical errors, and improve organization. Examples of proposed changes in this category are discussed in the NPRM at 88 FR 5991.

The following are the specific sections affected by these changes:

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

The proposed rule clarified that under 30 CFR 585.103(a)(1), regulatory departures may be granted when necessary to facilitate programmatic activities before, during and after lease termination.

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

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

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

BOEM proposed to eliminate its paper copy requirement and rely primarily on electronic submissions. The paper requirement has proven unwieldy for voluminous plan submittals that contain multiple appendices and may be subject to multiple revisions before they are finalized. However, BOEM proposed to reserve the authority to require paper copies of certain documents (such as maps and charts) if necessary.

The proposed rule also proposed eliminating the specific BOEM mailing address to avoid the need for future

technical corrections if BOEM's mailing address changes again. Instead, the mailing addresses for BOEM submissions would be listed for the appropriate contacts on BOEM's website.

**§ 585.417 When may BOEM order a suspension?**

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

**§ 585.607 How do I submit my SAP?**

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

**§ 585.622 How do I submit my COP?**

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

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

The proposed rule proposed to eliminate the paper copy requirement consistent with BOEM's proposed changes to § 585.110.

**§ 585.642 How do I submit my GAP?**

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

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

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

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

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

**§ 585.712 What are the CVA's or project engineer's reporting requirements?**

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

**2. What are the key public comments?**

**(a) BOEM's responsibilities under OCSLA.**

*Comment:* A commentator stated that BOEM exceeded its statutory authority by making substantive changes to the statutory criteria for lease suspension and cancellation. Therefore, the commenter said the modernization rule should include regulatory changes to correct differences between the current regulatory criteria for lease suspension (§ 285.417) and cancellation (§§ 585.422(b)(4) and 285.437(b)(4)) and the statutory (OCSLA) criteria.

*Response:* This rulemaking is not proposing to change these provisions

because we view them as consistent with OCSLA.

*Comment:* A commenter expressed support for proposed revisions related to the application of the section 8(p)(4) factors in § 585.102. The commenter suggested that BOEM should provide clarity on its approach to "rationally" balancing factors. The commenter also requested clarification of specific terms and topics related to prevention of waste factors, BOEM's compliance with law and regulations, environmental benefits of OSW development, and the ability of Tribal Nations to hold leases and grants, for consistency with referenced opinions, articles, and regulations.

*Response:* With regard to § 585.102 language, BOEM agrees that clarifying the meaning of "prevention of waste" as well as the incorporation of balancing into the text of this section provides greater understanding of how the 12 factors in this section are considered in BOEM's decision-making. The Secretary must consider certain factors before approving activities under subsection 8(p). Subsection 8(p)(4) of OCSLA requires only that the Secretary strike a rational balance between Congress's enumerated goals, *i.e.*, a variety of uses of the OCS. In making this determination, the Secretary retains wide discretion to weigh those goals as an application of her technical expertise and policy judgment. Moreover, the Secretary has the authority to define by regulation how the factors in subsection 8(p)(4) are to be administered.

BOEM did not add clarifications about the ability of Tribal Nations to hold leases and grants because the regulations are already clear that nothing prohibits Tribal entities from participating in BOEM's processes as state-chartered tribal corporations.

*Comment:* A commentator discussed that subsection 8(p)(4) of OCSLA does not require BOEM to ensure that OCSLA's goals are achieved to a particular degree, but instead requires that BOEM employ its discretion to achieve a balance among the statute's several factors, considering Congress's direction to authorize renewable energy development on the OCS, leaving "striking the proper balance . . . up to the Secretary of the Interior," so long as that balance is rational. The commenter also suggested that the final regulatory preamble should acknowledge the caselaw supporting BOEM's proposed revision to § 585.102(a), which would provide that BOEM will ensure that any activities authorized in this part are carried out in a manner that provides for and reaches a rational balance among the 12 enumerated factors, none of

which inherently outweighs or supplants any other.

*Response:* The Department agrees that the proposed rule is strongly rooted in and supported by Federal case law.<sup>14</sup> As discussed in the preamble, BOEM is amending these regulations to clarify that none of the enumerated requirements is intended to outweigh or supplant any other. The purpose of this change is to clarify that BOEM takes all of these relevant factors into consideration in planning and administering its renewable energy program and that no one factor or consideration, by itself, should outweigh the other relevant considerations.

**(b) Lease Structure.**

*Comment:* As an alternative to a 30-year default operations period, a commenter recommended the lessees be able to specify a duration for the operations period for review and approval in the COP. The commenter said the lessees must have certainty on extensions before investing in facilities with longer lifetimes than the default operations period. According to the commenter, the option to request an extension following COP approval can be burdensome as it is likely to trigger new NEPA reviews if not already part of the original PDE. The commenter suggested the following revised language at 585.235(a)(4): "Operations period: A commercial lease has an operations period of 30 years, the duration specified in the lease, or the duration included and approved as part of your COP." Further, the commenter recommended revising §§ 585.626 through 585.639 to include details on what information would be needed in the COP to justify an operational period exceeding the default duration. Similarly, another commenter recommended adding an option to extend the operating period to match the asset's life, which would maximize economic benefit, rather than risk retiring projects prematurely.

Another commenter said, "585.235(b) could be clearer that an extension of the operational period is not necessary if a longer duration of operational period is already included and approved in the COP." The commenter recommended the following revised language at § 585.235(b): "You may request an

<sup>14</sup> See *Commonwealth of Mass. v. Andrus*, 594 F.2d 872, 889 (1st Cir. 1979) (reading list of general policy priorities in former section 3 of OCSLA to mean that "where . . . sets of interests conflict . . . , the Secretary must determine which interests must give way, and to what degree, in order to achieve a proper balance," a task that "rules out a policy based on sacrificing one interest to the other").

extension of any of the lease periods outlined in paragraph (a) of this section for good cause or by including an alternative period in your COP.”

Similarly, another commenter recommended the following textual revision: “You may request an extension of any of the lease periods outlined in paragraph (a) of this section for good cause [add: including if the project is designed and verified for a longer duration].” Given the likelihood of future technological advancements and the potential for generating energy beyond 30 years, another commenter said the proposed rule should guarantee extension of the operations period if certain conditions are met, and BOEM should retain the discretion to extend the operations period for good cause even if the conditions are not met.

**Response:** BOEM agrees with the recommended revision to § 585.235(a)(4): “A commercial lease has an operations period of 35 years; or the duration specified in the lease; or the duration included and approved as part of your COP.” The revised text would facilitate efficient technical and environmental reviews that match the applicant’s goals (reducing the likelihood of requiring future supplemental environmental reviews) and the technical review could ensure the proposed period is supported by the design life of the proposed facilities and/or require conditions to safely extend their operations.

**Comment:** For consistency, a commenter recommended that section 585.408 echo the concept laid out in BOEM’s proposed paragraph at § 585.235(d) that would allow the assignee to propose new lease periods. The comment suggested adding “(9) Any request to modify the default lease schedule as a result of the assignment” to the existing list of 8 pieces of information required for an assignment.

**Response:** BOEM agrees with this addition in light of the revisions to § 585.235(b) and has added similar language to the rule text at § 585.408(a).

**Comment:** A commenter stated that the proposed mandatory one-year time frame for lessees to resolve issues identified as incomplete within their COPs should be revised or removed as it may not be feasible to resolve issues in this time, given that BOEM may take several months to provide lessees with comments, and resolving issues may require surveys, fieldwork, and modeling. Another commenter suggested that BOEM establish a timeline for its initial COP review in order to allow lessees to make revisions within the one-year time frame.

**Response:** The proposed rule stated, “The COP review period begins when BOEM receives a COP from the lessee and ends upon COP approval, disapproval, or approval with modifications . . . During the COP review period, BOEM conducts the necessary reviews and consultations associated with the COP. The lessee must resolve issues identified as incomplete in the COP by BOEM within the first year of the COP review period.” BOEM recognizes the concerns raised by several commenters with the requirement to “resolve issues identified as incomplete in the COP by BOEM within the first year of the COP review period.” Upon further consideration, BOEM is eliminating this provision because it is too inflexible to accommodate the potential need for additional survey campaigns to be completed. Further the proposed rule was not clear on the consequences for failing to resolve issues and the phrasing “resolve issues” in itself is vague. BOEM will rely on its guidance when considering whether a COP is ready for the issuance of an NOI and BOEM can measure the maturity and completeness of the applications before it in accordance its guidance.<sup>15</sup>

**Comment:** A commenter stated that BOEM should allow the sale of electricity generated during commissioning and testing and this should not trigger the beginning of the lease operation period to avoid delayed energy production and to allow the lessee to use the full life of the project. Related to § 585.235(a)(4), a commenter recommended replacing “at the start of commercial operations” with the following, “The operations period begins when (i) the final constructed facility necessary for production of electricity or other energy product has completed installation and commissioning activities, and (ii) BSEE has received and non-objected to documentation of critical system safety commissioning and your PVR. The operations period will be deemed to have started if BOEM reasonably determines that the facilities are substantially complete and the PVR is unduly delayed.”

**Response:** BOEM and BSEE agree that the transmission and sale of electricity generated during commissioning and testing should not trigger the beginning of the lease operation period. Section

585.235(a)(4) has been revised to disconnect the beginning of the operations period from the commencement of commercial operations of any facility. Instead, the operations period commences when the requirements of § 285.637 are met for an entire project area through the submission of final reports and records. In addition, BOEM ensured the final rule accommodates phased development under § 585.238 by requiring COPs that incorporate phased development to propose lease period schedules under § 585.235(c). This provision requires a lessee to propose a lease period schedule for latter phase(s) that could include an operations period that does not commence when the requirements of 30 CFR 285.637 were only met for the first project phase. Consequently, for a phased development COP, each phase will have its own lease period schedule that is informed by the lessee’s request, BOEM’s review of the request, and the resulting BOEM-approved schedule. Consistent with the changes BOEM made to § 585.235(a)(4) in response to these comments, BOEM also revised the end point for the design and construction period at § 585.235(a)(3) which immediately precedes the operations period. Instead of ending the design and construction period “either when commercial operations begin or at the expiration of the period set forth in the approved COP as modified” the final rule ends the design and construction period “when the operations period begins” as described in § 585.235(a)(4).

#### (c) Lease Segregation and Consolidation.

**Comment:** A commenter stated that if lease changes are considered, then impacts to risk management and financial assurance must be considered for public protection. The commenter also said that the potential impact on future licensing must be considered because the current EIS process does not permit consideration of alternative sites outside the one being considered and reducing the size of the lease reduces the possible size and location alternatives.

**Response:** Segregating or merging leases should not have a direct impact on the potential liability that the project poses to the government, or the need for additional financial assurance to offset it because the cost of decommissioning facilities, regardless of the size of the lease area, is the key driver to the amount of financial assurance that is required. However, BOEM retains at all times the authority to review and adjust financial assurance, so if liability

<sup>15</sup> See Information Needed for Issuance of a Notice of Intent (NOI) Under the National Environmental Policy Act (NEPA) for a Construction and Operations Plan (COP), (Aug. 2023), available at <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/BOEM%20NOI%20Checklist.pdf>.

impacts are identified, BOEM can increase the amount of financial assurance required, if necessary. Therefore, BOEM did not make any changes to rule provisions based on this comment.

*Comment:* A commenter expressed concern that lease period extensions and schedule modifications of segregated or consolidated leases could lead to decisions made without complete information, and suggested that BOEM allow time within the schedule for review of complete information prior to any approvals.

*Response:* Lease segregation or consolidation does not include the guaranteed right to develop the resulting lease area. The scope of the COP, which must include significant detail under BOEM's regulations, informs BOEM's decision whether to approve development. If descriptions of activities occurring in latter phases are incomplete, then BOEM would require the submission of complete information before authorizing those latter phases.

*Comment:* A few commenters provided editorial revision requests and suggestions for the proposed rule language, including clearer statements related to formal or informal agreements between entities, effects of lease segregation on ongoing COP reviews, and revisions to conditions for approved COPs. A commenter suggested that BOEM explicitly allow the lessee to assign all or part of the lease area to other entities. The commenter also suggested that the assignment provision provide BOEM flexibility to ensure the proper terms and conditions follow the relevant lease areas. Similarly, the commenter recommended tailoring financial obligations of assignees and the remaining obligations of assignors to track the scope of interest being transferred. The commenter proposed a new § 585.408(f), describing BOEM's cooperation in these transfers.

*Response:* BOEM considered the editorial requests and suggestions and decided to eliminate paragraph (b) altogether and added "to one or more parties" to paragraph (a). The information in paragraph (b) is duplicative of the existing § 585.409, and what is already on Forms BOEM-0003 and BOEM-0004. The addition of "to one or more parties" to paragraph (a) was added because BOEM agreed with the comment requesting clarity regarding assigning all or parts of a lease to other entities. Both renewable and conventional leases may be held by multiple entities. Assignment of part of a lease under this final rule results in lease segregation. The ability to segregate a lease and assign undivided

interests simplifies issues like terms and conditions and financial obligations. BOEM declined to incorporate the commenter's proposed § 585.408(f) because it was more appropriate for incorporation into an internal process than a regulation. BOEM agreed with comments clarifying that separate plan approvals may be issued for a lease that becomes segregated and added § 585.410(c) accordingly.

*Comment:* A commenter stated that BOEM exceeded its statutory authority by making substantive changes to the statutory criteria for lease suspension and cancellation.

*Response:* This rulemaking did not propose to change these provisions because the Department views them as consistent with OCSLA. Some suspension provisions were moved to BSEE-administered regulations as part of the Reorganization Rule. For additional details refer to the *Section-by-Section Analysis* for §§ 585.417 and 285.417 of Section V.

*(d) Civil Penalties.*

*Comment:* Several commenters expressed support for the proposed paragraph at § 585.400(f)(2) authorizing the Department to assess civil penalties for certain violations. A commenter expressed that "civil penalties. . . should be hard enough to prevent lessees from accepting the existence of violations and simply taking the financial hit." However, another commenter requested that the Department "take steps to ensure that the penalty is reserved for truly serious circumstances and require agency notice at some reasonable time after the assessment of the civil penalty and prior to the accrual of any interest."

*Response:* The paragraph of § 585.400 that is referenced was moved to §§ 585.106 and 586.106, respectively due to the issuance of "Reorganization of Title 30—Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf." The Department has significant experience and a process governing the assessment of civil penalties under OCSLA that should adequately address the comments received.

BOEM may invoke a civil penalty if an operator does not correct a violation or if the violation posed a threat or harm to safety or the environment. The maximum civil penalty is set by law, but BOEM determines the amount for a specific violation based on its severity, duration, and other factors. Lessees have the right to request informal resolution of the decision from the Bureau and to file an appeal with the Interior Board of Land Appeals.

*(e) Standardize Annual Rental Rates for Grants.*

*Comment:* One commenter requested that BOEM reconsider its proposal [§ 585.508] to change the rental rate for ROW grants to match RUE grants because the proposal could increase costs for ratepayers and would not facilitate development.

*Response:* The final rule does not change rental rate dramatically. BOEM believes the \$5 per acre annual rate proposed remains modest when viewed next to other project costs, and it will simplify the regulatory treatment of ROWs, RUEs, and project easements.

*(f) Technical Corrections and Clarifications.*

*Comment:* A commenter expressed opposition to the proposed language relating to regulatory departures at § 585.103, stating that the criteria were not well-defined and should only be applied in pre-determined and narrow circumstances.

*Response:* Writing regulatory requirements will always be an imperfect process. It is impossible to foresee the specific fact scenario that will arise when the regulations are put into practice. Departures are how the agency can account for unforeseen situations where strict application of the regulations would be unfair, impractical, unnecessary or even impossible (for example, unforeseen contradictions in regulatory provisions). Drafting the departure section to apply only to "pre-determined and narrow circumstances" would risk leaving the bureau and the regulated community unable to respond to unforeseen circumstances outside such pre-determined and narrow circumstances.

*Comment:* A commenter pointed to inconsistencies between § 585.102(b) and § 585.628(f), stating that it is unclear whether BOEM can modify a COP, or approve a COP with conditions. The commenter recommended revising § 585.628(f) to clarify that BOEM does have the ability to approve, disapprove, or approve a COP with conditions. Another commenter discussed 43 U.S.C. 1334(a)(1) and (2) and recommended that the language in the proposed rule preamble Section B.3 (Administration of Leases and Grants) be amended to match the language of the statute.

*Response:* BOEM agrees that §§ 585.102(b) and 585.628(f) should use the same terminology and that "approve a COP with conditions" should be the consistent phrase used in both regulations. BOEM currently approves COPs with conditions and does not modify a proposal or re-design a proposed project, thus the use of

"conditions" both enhances clarity and is consistent with current practices.

*Comment:* A commenter stated, "BOEM does not have the authority [under § 585.103] to prescribe or approve deviations from its own Federal consistency obligations under the CZMA, nor those of leaseholders." Further, the commenter stated that BOEM does not have authority to change the information that a leaseholder must submit for State review, limit the rights of states to request additional information, or reduce the time available for consistency review; this, in addition to being outside of BOEM's statutory authority, would impair the rights of states as third parties, and without such State participation could not guarantee protection of the environment and the public health and safety to the same degree as if there was no approved departure.

*Response:* BOEM and BSEE are mindful of their obligations under the Coastal Zone Management Act (CZMA). Nothing in the proposed rule will impair the rights of states under this important authority. BOEM may prescribe departures from its own regulations under the departure authority in § 585.103. However, BOEM's departure authority cannot be used to exempt a lessee from other agencies' requirements. Last, we agree that BOEM's and BSEE's regulations cannot amend the regulations in 15 CFR part 930 and, therefore, it is BOEM's and BSEE's position that the final rule does not affect any rights or obligations under the CZMA.

*Comment:* A commenter said that under OCSLA, management of such activities should consider economic, social, and environmental values of renewable and non-renewable resources contained within the OCS. Proper consideration must also be given to other uses of the seabed, including fisheries navigation and marine productivity.

*Response:* BOEM appreciates this comment and endeavors to give appropriate consideration of other uses of the seabed, including those cited in the comment, in accordance with its responsibilities under subsection 8(p)(4) of OCSLA and BOEM's implementing regulations at § 585.102. Further, nothing in the proposed rule and implemented in the final rule will change the importance of these considerations in BOEM's program.

*Comment:* A commenter provided several suggestions for technical clarifications in § 585.506 and provided the following recommendations for revision: (1) clarify that operating fees

would also be owed when the developer obtains compensation for electricity put onto the grid, (2) add a provision that operating fees "for the design and construction period be paid in a single lump sum within 90 days of the start of "commercial operations" based on the volume of electricity sold prior to "commercial operations" as measured at the delivery point for the project."

*Response:* With regard to operating fee language, specifics regarding the timing of when operating fees are incurred are governed in the lease instrument. Current leases provide that operating fees are incurred once the lessee delivers power to the grid for sale.

*Comment:* The commenter requested that the rule clarify the definition of "commercial activities." The commenter states that "the proposed rule includes requirements to submit a new report, the "Project Verification Report," at 30 CFR 585.704 and 585.708(a)(5)." The commenter recommends formalizing the Project Verification Report and consistently referring to it as such or "PVR." The commenter also asks the Department to formalize the name of the Critical Safety Systems Commissioning Records (CSSCR) throughout the rule.

*Response:* The final rule defines "commercial activities" in §§ 285.112 and 285.113. Project verification report is consistently spelled out in the final rule. CSSCR or a derivation of such are only used in §§ 285.637, 285.710, and 285.714 and BSEE does not feel formalization is required.

### 3. What is the Department finalizing?

#### (a) BOEM's responsibilities under OCSLA.

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

The proposed rule clarified that none of the enumerated goals are intended to outweigh or supplant any other. The final rule clarifies further that BOEM needs to reach a rational balance among the goals to the extent they conflict or are otherwise in tension. The final rule also clarifies that BOEM's responsibility to prevent waste on the OCS includes the obligation to prevent economic waste and physical waste of energy resources from sources other than oil and gas. This clarification is supported by provisions in OCSLA regarding the meaning of prevention of waste of hydrocarbons.<sup>16</sup> The Reorganization Rule added "and approved plans" to paragraph (b) to clarify that BOEM will require compliance with approved plans as well as all applicable laws,

regulations, other requirements, and the terms of the lease.

#### (a) Lease Structure.

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

In § 585.235 of the final rule, as in the NPRM, BOEM finalized a significant change in the structure of future leases, which will be divided into periods instead of terms. Commercial leases under the final rule have a Preliminary Period of up to five years, during which the lessee prepares and submits the COP. Submission of a COP triggers the beginning of the COP Review Period, during which time BOEM conducts its NEPA analysis and consultations.

If the COP is approved, this approval will begin the Design and Construction Period, during which BSEE completes the FDR and FIR review(s), and the lessee undertakes project construction.

Once the requirements of § 285.637(a) are satisfied, the lease begins the Operations Period. Previously, § 285.637 provided that commercial operations may commence 30 calendar days after "the CVA or project engineer has submitted to BOEM the final Fabrication and Installation Report for the fabrication and installation review, as provided in § 285.708." However, § 285.708(a)(5)(ii) allowed the lessee to commence commercial operations 30 calendar days after BSEE receives the CVA verification report unless BSEE raises objections with the lessee during that time. This final rule remedies the inconsistency by moving the provision from § 285.708(a)(5)(ii) into § 285.637.

Section 285.637 has been revised to allow lessees to produce and sell power prior to final FIR non-objection. The lessees and CVAs must submit information to demonstrate that facilities installed prior to first producing commercial power have been fabricated and installed and that Critical Safety Systems and Equipment have been commissioned properly. The lessee may continue to keep producing as long as the lessee and CVA continue to submit information demonstrating the additional facilities have been fabricated and installed and that Critical Safety Systems and Equipment have been commissioned properly as they come online. Finally, to improve organization, this final rule has moved the prior § 285.713 requirement to notify BSEE within 10 business days of starting commercial operations into § 285.637.

The Operations Period lasts 35 years, unless a different duration is specified in the lease, or unless a different duration is specified in an approved COP. A 35-year default Operations Period is longer than the previous default construction and operations

<sup>16</sup> e.g., 43 U.S.C. 1334(j)(1)(A).

term, which was 25 years. This is appropriate based on the advancements of technology that have occurred since the original renewable energy regulations were published in 2009.

*(b) Lease Segregation and Consolidation.*

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

*§ 585.413 How do I consolidate leases or grants?*

As proposed, the final rule explicitly provides for lease segregation and consolidation in §§ 585.410 and 585.413, respectively. These sections clarify BOEM's procedures for segregating and consolidating leases.

*(c) Civil Penalties.*

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

The previous § 585.400 was moved to § 585.106 by the Reorganization Rule. The final rule specifies the civil penalty authority of both BOEM, in § 585.106, and BSEE, in § 285.400(f).

*(d) Standardize Annual Rental Rates for Grants.*

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

The final rule does not change the rental rate dramatically. BOEM believes the proposed \$5 per acre annual rate remains modest when viewed next to other project costs, and it will simplify the regulatory treatment of ROWs, RUEs, and project easements.

*(e) Technical Corrections and Clarifications.*

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

*§ 585.231 Will BOEM issue leases noncompetitively?*

BOEM finalized many proposed technical changes, as identified in the NPRM. In addition to these, BOEM includes a minor update for issuing commercial leases competitively and non-competitively, eliminating the requirement to execute multiple paper copies of the lease. When BOEM promulgated the regulations in 2009, BOEM anticipated a process that would create three original versions of the document: two to be held at BOEM and the third to be given to the lessee. However, widespread adoption of electronic copies has made this process obsolete, and the requirement to execute leases in triplicate is no longer needed. Accordingly, we have updated the regulations to remove this requirement. In § 585.225(b), BOEM removed references to BOEM sending three unsigned copies of the lease form to the provisional winner and removed the provisional winner's obligation to execute three copies. BOEM no longer

needs to sign three copies, and BOEM will send the new lessee an electronic version of the executed lease. Corresponding changes were made in § 585.231(h) for noncompetitive leases.

*§ 585.110 When must I notify BOEM of mergers, name changes, or changes of business form?*

The final rule also revises § 285.110, as specified in the Reorganization Rule (88 FR 6376), to require you to submit one electronic copy of all plans, applications, reports, or notices to BSEE. BSEE will inform you if it requires paper copies of specific documents.

*L. Potential Revisions to Regulations Governing Research Activities*

1. What did the Department propose?

*§ 585.239 Are there any other renewable energy research activities that will be allowed on the OCS? [previously § 585.238]*

BOEM did not propose specific revisions to regulations governing research activities but solicited comment on "whether the lease process for research activities in existing § 585.238 warrants amendment." BOEM stated that it was interested in comments on the following: "whether it should create a specific regulatory framework for research leases and planning whether it should expand the criteria for who can hold research leases; whether the Determination of No Competitive Interest (DNCI) requirement can or should be relaxed for research activities; and whether any other aspects of this section deter OCS renewable energy research" (88 FR 5991).

2. What are the key public comments?

There were no significant comments relevant to this section.

3. What is the Department finalizing?

BOEM did not materially update its regulations on the issuance of research leases, though renumbering has moved the section from § 585.238 to § 585.239.

*M. Potential Revisions to Regulations Governing Transmission*

1. What did the Department propose?

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

*Subpart D—ROW and RUE Grants for Renewable Energy Activities.*

BOEM did not propose specific revisions to regulations governing transmission, however it recognized in the NPRM preamble the need to minimize impacts to the environment and natural and cultural resources, while maximizing the utility of land-

based points of interconnection. BOEM also noted that it was continuing efforts to explore a coordinated approach to transmission. BOEM specifically solicited comment "on the types of regulatory changes that would be appropriate to better accommodate these options and to minimize impacts to environmental, natural, and cultural resources" (88 FR 5991). Further, BOEM included the following example "should 30 CFR 585.200(b) be modified to allow BOEM to encourage or require use of such options where they are available and allow for full enjoyment of the lease? What approaches or options should BOEM consider advancing in 30 CFR 585.200(b) to facilitate interconnection for lessees, while minimize impacts to important resources?"

2. What are the key public comments?

*Comment:* A commenter recommended requiring "spatial separation standards for submarine cables and renewable energy infrastructure, to alleviate cable crowding, overlapping, and potential cable breakage that may disrupt communication and energy supply, and damage to the marine environment" and spacing leases to allow for designated cable corridors between lease areas.

*Response:* The appropriateness of spacing may be dependent on local conditions and technologies employed. Therefore, this information is more appropriate for guidance and technical standards than codifying in regulations. BOEM published OSW cable spacing guidance in 2015, which is available here: Offshore Wind Submarine Cable Spacing Guidance | Bureau of Ocean Energy Management: <https://www.boem.gov/newsroom/notes-stakeholders/offshore-wind-submarine-cable-spacing-guidance>.

*Comment:* A commenter recommended aligning transmission policies with State policy initiatives and RTO/ISO grid planning processes to avoid delays.

*Response:* BOEM currently has the authority to issue a ROW/RUE Grant either competitively, or non-competitively as described in §§ 585.300–585.316, after coordinating and consulting with relevant Federal agencies, the Governor of any affected State, and the executive of any affected local government. BOEM must first determine if there is competitive interest, which is accomplished by publishing a public notice describing the parameters of the project, to give affected and interested parties an opportunity to comment on the proposed grant area. BOEM currently

has the authority to work with a State seeking a ROW/RUE grant for purposes of transmission, and as the ROW would necessarily need to be continued through State waters and land for the purpose of interconnection to the grid, there is the need to align processes. However, BOEM agrees that regulatory clarity is helpful in this instance, and added clarifications to the final rule that includes a discussion of how State, RTO/ISO, and Federal processes may be better aligned.

*Comment:* A commenter recommended allowing more time for the submission of GAPS “upon a sufficient showing of good cause” due to the “complexity of designing and planning shared transmission solutions.”

*Response:* The final rule in § 585.236(b) states, as proposed, that the preliminary period may be extended if the requested extension can be justified for “good cause.”

### 3. What is the Department finalizing?

BOEM is continuing to develop and implement a planned approach to transmission that includes the use of shared transmission infrastructure and corridors, meshed systems, and the development of an offshore grid, where appropriate. On September 19, 2023, DOE and BOEM released *An Action Plan for Offshore Wind Transmission Development in the U.S. Atlantic Region* (<https://www.energy.gov/gdo/atlantic-offshore-wind-transmission-action-plan>), which included a set of actions to support offshore wind energy.

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

**§ 585.212 What is area identification?**

BOEM agrees with the importance of a comprehensive and coordinated spatial planning effort. Sections 585.203 and 585.212 identify what is evaluated during area identification and with whom BOEM will consult before the issuance of a lease. These two touchpoints are critical for the review of other available offshore resources and the potential for avoidance or minimization of impacts to these resources. BOEM plans to increase internal coordination between programs and will investigate potential guidance for renewable energy that could help mitigate potential sand borrow resource area impacts from renewable energy transmission and development.

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

**§ 585.214 What information is included in the FSN?**

In response to the suggestion to use bid credits to promote shared

transmission lines, BOEM will develop and propose any bidding credits in the PSN, and later confirm the availability of those credits in the FSN, which allows for comments and potential modification. BOEM might offer such bidding credits in future lease sales when it deems appropriate, however, this is beyond the scope of the current rulemaking.

### §§ 585.300–585.316 ROW Grants and RUE Grants.

BOEM currently has the authority to issue a ROW/RUE grant either competitively, or non-competitively, as described in subpart D, §§ 585.300 through 585.316, after coordinating and consulting with relevant Federal agencies, the Governor of any affected State, and the executive of any affected local government. BOEM must first determine if there is competitive interest, which is accomplished by publishing a public notice describing the parameters of the project, to give affected and interested parties an opportunity to comment on the proposed grant area. BOEM currently has the authority to work with a State seeking a ROW/RUE grant for purposes of transmission, and as the ROW would necessarily need to be continued through State waters and land for the purpose of interconnection to the grid, there is the need to align processes. However, BOEM agrees that regulatory clarity is helpful in this instance, and has added language in § 585.307(c), which describes the process BOEM may use to consider transmission projects initiated by states or ISO/RTOs where a ROW/RUE would be required. This provision clarifies how BOEM can consider decisions by the state/RTO/ISO in the determination of competitive interest.

### § 585.307 How will BOEM determine whether competitive interest exists for ROW grants and RUE grants?

Under this section in the final rule, BOEM may consider a state’s or Regional Transmission Operator/Independent System Operator’s process that identifies a transmission project that needs a ROW and/or a RUE grant to achieve its intended purpose. BOEM may determine that there is no competitive interest that would be consistent with OCSLA’s goal of allowing the expeditious and orderly development of OCS energy projects, if offering the ROW and/or RUE competitively could challenge the viability of the transmission project intended to be located on State submerged lands and the OCS (e.g., technical and economic feasibility or practicality concerns, including significant delays, by having different

entities holding the right to develop the transmission project in State submerged lands and the OCS).

In response to the comment recommending defining roles between BOEM, DOE, FERC, and RTO/ISO, BOEM agrees that coordination among these entities is critical to the transmission planning process and will continue to take steps to further refine roles and responsibilities as the industry continues to develop. Additionally, BOEM and FERC signed a Memorandum of Understanding (MOU) on April 9, 2009. The purpose of this MOU was to clarify jurisdictional understanding regarding renewable energy projects in offshore waters on the OCS, in order to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic (i.e., wave, tidal, and ocean current) energy projects.

In response to commenters’ suggestions of identifying buffer areas around offshore lease areas for use by competitively bid transmission development and offshore substations, BOEM does not believe that buffer areas are required for this purpose as rights granted through leases are non-exclusive provided other uses do not unreasonably interfere with the lessee’s activities.

## N. General Comments and Responses

This section describes a summary of the general comments that commenters have provided on the NPRM, in addition to those comments classified elsewhere.

### 1. The Offshore Wind (OSW) Development Process

*Comment:* Some commenters expressed concern for, and opposition to, streamlining BOEM’s processes for OSW development. They said the proposed rule will increase the risk of harm to the environment, natural resources, and cultural resources near the Yurok Ancestral Lands in order to expedite and lower the costs for OSW energy projects. Commenters discussed impacts to the fishing industry. A commenter stated the OSW process must be halted until a full review and analysis ensures that OSW development will not destroy fisheries and marine ecosystems. The commenter also discussed the lack of engagement with the fishing industry and impacts on the fishing industry that the commenter claims will be removed from fishing areas due to OSW development. Another commenter discussed the comments from fishing industry expressing concern with OSW planning processes under the existing regulatory

framework which, according to the commenter, lease the health of the marine environment and fishing industry to the OSW industry. The commenter expressed frustration with BOEM favoring interests of the regulated industry over those of the public and existing ocean users who are impacted by BOEM's regulated activities and OSW energy development.

**Response:** The Department acknowledges the opposing comments received from the commenters and have finalized the proposed rule with changes that take into account public feedback, as discussed further in this document.

The comment states opposition to the rulemaking invoking potential harms but does not indicate which revisions will have purported negative effects or why. The final rule streamlines the Department's process and creates efficiencies without increasing negative impacts on fisheries and without increasing the risk of harm to the environment, cultural resources, or Tribal ancestral lands. We strongly disagree that this rule favors the interests of regulated industry over those of the public or existing ocean users who are impacted by the Department's regulated activities. The final rule does not streamline or reduce the Department's consultation processes, environmental reviews, or stakeholder engagement.

**Comment:** A commenter stated that OCSLA provides BOEM with room to amend existing leases to incorporate an operating fee credit. Specifically, the commenter noted that they are not aware of any statutes or regulations that prevent BOEM from amending the existing regulations at § 585.506 to establish an operating fee credit that could be used to reduce operating fee obligations. The commenter remarked that providing for such an operating fee credit would represent a logical outgrowth of BOEM's formalization of the multiple factor auction format via the proposed rule and would be consistent with the IRA's apprenticeship requirement for renewable energy facilities.

**Response:** BOEM has not adopted modifications to the final rule that would be required for the agency to amend existing leases to implement operating fee credits. BOEM has not seen a need to expand its authority such as would be needed to amend the leases as suggested—existing authority can promote policy objectives via bidding credits and lease stipulations. BOEM is currently incorporating the use of bidding credits in its lease auction procedures and can choose to evaluate

individual projects on their workforce utilization as the projects are proposed. However, BOEM has not made changes in the final rule to add operating fee credits for employers meeting the IRA apprenticeship requirements.

**Comment:** A commenter remarked that, except for the Safety Management System (SMS) section, every section of the proposed rule is designed to increase flexibility for developers without considering the impact on other stakeholders. The commenter stated that, "BOEM quotes E.O. 14008 as justification for further streamlining the OSW process for the benefit of developers." However, the commenter believed this would "be inconsistent with the April 6, 2023, E.O., *Modernizing Regulatory Review*, which states, "Public trust in the regulatory process depends on protecting regulatory development from the risk or appearance of disparate and undue influence," and that agencies "shall incorporate" in the development of regulatory agendas an "expansion of public capacity for engaging in the rulemaking process." The commenter stated that BOEM's proposed Renewable Energy Modernization Rule does the opposite, by, for example, allowing developers to submit a COP without proposed turbine locations, which makes public input on various Alternatives difficult to impossible, particularly as changing turbine locations materially affect the "viability" of other Alternatives. The commenter stated that BOEM has not changed its process to increase the assurance of safety or protection of commercial fisheries and species in its process. The commenter stated further that BOEM has given deference to developers even in creating a purpose and need statement for NEPA review, consistently overridden cooperating agencies in favor of developer generated "science" and other documents. Finally, the commenter stated that this is inappropriate but is the clear trajectory of BOEM's approach, furthered by the proposed rule.

**Response:** BOEM is deferring only the submission of deep borings used for final engineering and design at every foundation location until after project approval, when the positions approved by BOEM for actual installation would be finalized. This is distinct from "allowing developers to submit a COP without proposed turbine locations." To the contrary, a COP will still need to include the areas within the lease that are proposed for development, one or more indicative layouts including proposed spacing between turbines, a maximum number of positions and

other significant details for consideration by the public. This information provides the public with sufficient detail to comment on areas to avoid, navigational safety concerns with the proposed layout, and many other aspects. Further, as part of the COP's environmental review under NEPA, the public is free to describe impacts to stakeholders for BOEM's consideration, propose one or more specific alternative turbine layouts, or provide other relevant comments. Lastly, the purpose and need statements in BOEM's environmental impact statements for COPs are consistent with applicable NEPA law, which allows for an agency to consider the goals of the applicant.

**Comment:** A commenter noted the need for rulemaking in terms of the growing concerns related to OSW and the need to support communities, like delivery of benefits to Tribes and stakeholders. The commenter discussed Pacific Wind Lease Sale 1 where the commenter claimed that successful bidders did not engage local Tribes to ensure equitable development of OSW.

**Response:** The rulemaking process offers multiple opportunities for BOEM and BSEE to listen and respond to Tribes' and other stakeholders' concerns about OSW permitting and development. BOEM and BSEE encourage early communication between parties interested in OSW development and potentially impacted Tribal Nations. BOEM and BSEE are committed to an open and transparent process and ensuring that Tribes have the opportunity for meaningful participation. BOEM invited federally recognized Tribes to consult on this rulemaking and held government-to-government meetings with several Tribes that requested to meet with BOEM leadership. Lessees are required to make reasonable efforts to engage with local Tribes after lease issuance for direct conversations about equitable development, and to report to BOEM on the status of engagement and communicate how tribal input has been used in the project. BOEM welcomes consultation at all stages of the authorization process.

**Comment:** A few commenters supported the proposed amendments that would align the NEPA and CZMA review processes and asked for clarification or revisions regarding this change. A commenter asked BOEM to clarify how this would apply to existing OSW projects in different stages of the planning and reviewing process. A commenter said that BOEM should outline a notification process to inform states of whether a lessee intends to voluntarily submit a consistency

certification. The commenter also suggested that BOEM should ensure that the Federal consistency application forwarded to states includes the consistency certification and all necessary data and information. A commenter suggested clarifying the preamble by stating that BOEM “will make the draft NEPA analysis available at the same time as the submission of NDI [necessary data and information] for CZMA review, and that the draft NEPA analysis functions as NDI in the review process.” The commenter also agreed with BOEM that the amendment would implicate the “active application” provision at 15 CFR 930.51(f), however, the commenter recommended cross referencing § 930.58(a) in the final rule, as this is the relevant section of the CZMA for establishing the Federal consistency review start date. The comment also suggested that BOEM revise the amended language at § 585.628(c) regarding information requirements to apply to pre- and post- lease COPs, despite the rare occurrence of an applicant submitting a COP prior to issuance of a lease. Furthermore, the commenter stated that the Federal consistency application materials sent to the State should include the consistency certification, draft NEPA analysis, and all necessary data and information.

**Response:** For projects that are already in the review process, implementation questions will be addressed on a case-by-case basis, in coordination with states and lessees. To avoid delays in the application process, BOEM will encourage lessees who propose to voluntarily submit consistency certifications to states to coordinate with the State coastal management program at their earliest convenience. If the activity requires a consistency review under 15 CFR part 930, subpart D, the applicant will coordinate with BOEM and the State coastal management program to ensure all of the necessary data and information along with the consistency certification, as required in 15 CFR 930.58(a), is submitted in a timely manner. Based on the current proposed revisions, this would include, at a minimum, an analysis of environmental factors listed by the State’s coastal management program. A State’s coastal management program may utilize a draft Programmatic NEPA analysis in the form of an EA or EIS; or use a Determination of NEPA Adequacy as its source for the required environmental analysis to conduct an adequate consistency review.

BOEM agrees that amending the language at § 585.628(c) regarding information requirements to apply to pre- and post- lease COPs be held to the same necessary data and information requirements in 15 CFR 930.58(a), which would include the draft NEPA analysis (despite how unlikely it is in practice that an applicant would submit a COP prior to lease issuance). It is noted that, if the COP is submitted post-lease, it would fall under the requirements of 15 CFR part 930, subpart E, and the applicant would submit the necessary data and information, along with the consistency certification to BOEM. BOEM would ensure that all of the necessary data and information and consistency certification are included in the application for the State coastal management program to conduct an adequate consistency review. Once it is determined that the application contains all of the required information, BOEM would submit the application to the State for consistency review.

**Comment:** A commenter recommended revising § 585.210 to clarify that the competitive lease process will include public meetings for oral comment.

**Response:** BOEM sees public input as a critical component of the safe and responsible development of offshore resources. Public engagement and comment are an integral part of the leasing process. BOEM strives to make meetings convenient and easily accessible to the public. BOEM acknowledges the commenter’s concerns and will continue to plan meetings to provide the opportunity for public participation with both virtual and in person meetings. Although this may not involve opportunities for oral comment, those interested in commenting will have opportunities to do so.

**Comment:** Three commenters requested extensions to the public comment period for the NPRM, including:

- A request for a 45-day extension due to the critical importance of the regulations, the length and complexity of the proposed rule and impacts on the fish and wildlife species that are under State agency authority to manage.
- A request for a 30-day extension given the scope and magnitude of the rulemaking.
- A request for an unspecified extension of the comment period and withdrawal of the rule.

**Response:** BOEM published the NPRM entitled “Renewable Energy Modernization Rule” on January 30, 2023, with a comment period of 60 days

ending on March 31, 2023. In response to several requests to extend the comment period, BOEM published a notice on March 30, 2023, notifying interested parties that the comment period was being extended an additional 30 days to a total of 90 days and ending on May 1, 2023.

**Comment:** A commenter suggested BOEM has a conflict of interest in both developing potential OSW properties while also regulating the development in a safe manner that includes the interests of the public and developers. The commenter mentioned the distinction between BSEE’s regulation of operational safety of the projects but noted there should also be a safety function that includes development and construction safety as well.

**Response:** The Secretary has delegated authority to BSEE for safety and environmental oversight and enforcement related to OSW, including at the development, construction and operations stages of development. Since the proposed rule was published for public comment, the administration of the Department regulations related to OSW safety and enforcement have now been transferred to BSEE.

We disagree that BOEM’s role creates the conflict of interest, as described in the comment. First, BOEM does not “develop potential OSW properties.” Instead, its Mission Statement is to “manage development of U.S. Outer Continental Shelf energy, mineral, and geological resources in an environmentally and economically responsible way.” Responsible development means allowing access to the OCS for development in a way that does not endanger safety, other ocean uses, environmental resources, etc.

BSEE’s role in the safety of projects is not confined to operational safety. BSEE also has oversight of development, construction, operation, and decommissioning.

**Comment:** A commenter expressed support for an addition to the renewable energy modernization rule that allows the use of Federal funds from lease auctions to further the goals of the DOE’s Strategy to Accelerate and Expand Domestic OSW Deployment and address challenges with supply chains and workforce development.

**Response:** BOEM would need additional statutory authority to apply Federal funds from lease auctions to other policy purposes, including the advancement of worthy goals like the ones articulated in the comment. Therefore, BOEM decided not to incorporate the commenter’s suggestion into the final rule.

*Comment:* A commenter opposed the proposed rule, stating that the changes result in the “elimination of important research, leaving data gaps unfilled, and skipping robust scientific analysis in favor of highly questionable assumptive choices” that could impact fishing industries and the health of the oceans and marine ecosystems. Similarly, a commenter stated that draft EIS documents have decreased in quality, containing such little analysis that there is no distinction between Alternatives.

*Response:* The Department disagrees that any of the provisions in the proposed rule would have the effects described. The comment fails to describe how the rule might eliminate important research. BOEM and BSEE fund research, and will continue to do so, and nothing in this final rule is expected to impact the amount of important research taking place. The comment says the final rule will leave data gaps unfilled but does not say which of the changes being finalized here would have that effect. The comment says the revised regulations will skip robust scientific analysis in favor of highly questionable assumptive choices, but nothing finalized in this rule would do that. BOEM’s NEPA reviews are extraordinarily time-intensive products that occupy teams of subject matter experts, contractors, and other Federal and State authorities. BOEM proposes numerous alternatives in each document, in excess of what is required by law. BOEM disagrees with the commenter’s characterization of the documents that BOEM has prepared under NEPA and notes that such comments are outside the scope of the current rulemaking.

*Comment:* A few commenters suggested that BOEM include a domestic supply chain requirement for construction materials for OSW projects and should require a Step Certification document to ensure compliance with supply chain requirements. The commenters suggested that BOEM has authority to and should stipulate the use of American-produced construction material in lease agreements and approvals for COPs to ensure the maximum return to the government from the lease sale, provide environmental benefits due to a reduced carbon footprint from OSW development and potentially cleaner production processes, improve national security, create jobs and support communities, and comply with executive orders requiring Federal agencies to combat climate change. The commenters suggested that if BOEM does not support the development of a domestic supply chain, there could be

delays in construction and operations, a loss of jobs, and a lower financial return to the government.

*Response:* BOEM is very interested in ensuring that the U.S. supply chain is adequately developed and capable of cost-effectively serving the needs of the U.S. OSW industry. The most important factor within BOEM’s control that can contribute to the supply chain is to facilitate a reliable pipeline of OSW projects. BOEM strives to make suitable offshore acreage available for this purpose, but it is also important that the cost of OSW energy is low enough for states and utilities to support it. This means balancing the desire to accelerate domestic sourcing with controlling OSW development costs. Accordingly, BOEM has investigated other methods of promoting the domestic supply chain, such as bidding credits, over potentially more costly options, such as a requirement to source materials domestically. However, we do not believe it is appropriate to impose domestic sourcing requirements as requested in this comment.

*Comment:* A commenter stated that BOEM should stipulate that lessees must enter into PLAs that provide for skilled laborers, avoid labor disputes, and increase efficiency for obtaining construction materials and completing projects.

*Response:* BOEM strongly supports union labor and tools like project labor agreements. This support has recently been reflected in leases, which promote the use of PLAs. However, requiring the use of PLAs for all projects is outside the scope of the current rulemaking.

*Comment:* A commenter suggested that BOEM use the regional ocean planning process to address conflicts upfront and ensure informed siting decisions that balance the needs of states, Federal agency missions and objectives, ocean users, Tribal governments, communities, and the Fishery Management Councils. The commenter suggested that BOEM consider developing a coordination framework to allow government and public coordination prior to the required public comment periods and include not just Federal, Tribal, State(s), and local agencies, but also ocean users, communities, and other potentially interested parties. The commenter suggested that this coordination could aid in efficiency of reviews and improve working relationships among all parties.

*Response:* BOEM is an active member of several Regional Ocean Partnerships (ROPs), including the Northeast Regional Ocean Council (NROC), the Mid-Atlantic Council on the Ocean (MACO), and Pacific West Coast Ocean

Alliance (WCOA). These bodies serve as regional fora for coordination, providing data and information via Ocean Data Portals, and developing and communicating best practices for decision-making. For example, NROC is drafting a set of best practices that can be implemented in ocean permitting and management processes that enhance stakeholder engagement, agency and interjurisdictional coordination, the use of data and information, and regulatory pre-application practices. ROPs also host efforts like the Regional Wildlife Science Collaborative, a partnership among States, Federal agencies, environmental groups and the OSW industry to coordinate science and monitoring related to wildlife and OSW on the Atlantic coast. Regional ocean planning is a key component of BOEM’s intergovernmental coordination and collaboration, and our ongoing stakeholder engagement efforts. BOEM’s participation in ROPs has resulted in enhanced coordination among Federal, Tribal State, and stakeholders on ocean and coastal issues. BOEM will continue to participate in ROPs to enhance interjurisdictional coordination, provide additional opportunities to engage stakeholders, ensure expertise and resources are being leveraged, and utilize the regional ocean data portals.

## 2. Environmental Reviews and Evaluations

*Comment:* One commenter suggested that “subsurface and airborne monitoring for endangered, threatened, and protected species should be required at all stages” of OSW development.

*Response:* The Department’s regulations do not require the lessee to perform specific studies but instead requires the results of studies to support submission of a plan. Specific methodologies to achieve these goals have been detailed in guidance documents to lessees available on BOEM’s Guidance Portal under the Renewable Energy Guidance Tab at <https://www.boem.gov/about-boem/regulations-guidance/guidance-portal>. Appropriate monitoring methodologies are ordinarily developed on a case-by-case basis as part of the environmental reviews and associated consultations, such as ESA section 7 consultations with NMFS.

*Comment:* A commenter asserted that the proposed rule does not adequately incorporate a rigorous environmental review process into the renewable energy program planning process. Here, the commenter suggested that an earlier NEPA analysis would be necessary to account for the impacts of OSW

development on marine ecosystems. Further, the commenter asserted that BOEM “undertake a cumulative impacts analysis” for at-risk species before issuing leases. Similarly, a commenter asserted that a NEPA analysis should be completed prior to finalization of the rule, reasoning that small fishing industries and small coastal communities would be impacted by the rule as it could disincentivize developers from working with these businesses and communities and could fast-track projects without full consideration of their impacts. Another commenter asserted that BOEM has inadequately considered the impacts of marine spatial planning on fishing communities. Here, the commenter argued that BOEM’s rationale against further NEPA analysis—that the four-stage permitting system for offshore development ensures no construction may take place “prior to issuing a Constructions and Operations Permit” does not adequately justify BOEM’s assertion that NEPA analysis is not necessary.

**Response:** BOEM is not using this final rule to change its approach to environmental reviews in the area identification process. BOEM’s existing area identification process does not require completion of an EIS to analyze the potential impacts of building out OSW generation facilities because identifying areas and holding a lease sale do not constitute an irreversible and irretrievable commitment of resources. BOEM does conduct extensive data collection and public engagement during this process, but at the time lease areas are identified, no project has been proposed, the technology used for any facilities that may later be installed is not known, and the surveys that lessees conduct in preparing a COP is not available. An EIS conducted under such circumstances would need to be at a high level of generality, would be highly speculative, likely would not provide adequate NEPA analysis for the decision to approve a COP, and would result in the need for an additional NEPA to be conducted at a later time.

**Comment:** A commenter requested a period of public comment on any proposed EA prior to a final decision on the rule.

**Response:** BOEM conducted an initial NEPA analysis for the proposed rulemaking and determined that the proposed rule met the criteria for categorical exclusion under 43 CFR 46.210(i) of DOI’s implementing NEPA regulations. The regulations set forth in this rule are “. . . of an administrative,

financial, legal, technical, or procedural nature.”

**Comment:** Multiple commenters stated that BOEM should conduct regional studies or a Programmatic Environmental Impact Statement (PEIS) to analyze the potential impacts of OSW development, including along the West Coast of the United States and the Gulf of Maine. Commenters stated that a regional PEIS completed at the early stages of lease planning could help BOEM, developers, and reviewers better understand cumulative impacts, improve the efficiency of the environmental review process, provide opportunities for siting a wider range of potential alternatives, speed up the permitting process, and address potential conflicts early in the review process. A few commenters suggested that the proposed rule should require that BOEM conduct a PEIS before determining lease areas and should consider socioeconomic impacts on coastal communities, an economic study of fisheries, a fair market assessment of capital assets necessary for commercial fishing activities, and impacts on upwelling, food web productivity, and carbon capture. A commenter suggested that BOEM develop a comprehensive regional plan for wind energy development on the West Coast to describe collaborative actions and best practices “to inform and guide Federal, State, Tribal, and Fishery Management Council activities under existing authorities.”

**Response:** BOEM is supportive of PEISs, but also maintains that timing and purpose are key considerations. Prior to the leasing stage, BOEM collects and analyzes available data and information to delineate areas of least conflict and conducts environmental reviews before deciding whether a lease may be issued. BOEM is best equipped to undertake an EIS analysis when BOEM has adequate information to inform how leases in the area are likely to be developed based on a final lease area size and location, including site-specific conditions.

BOEM is incorporating the latest in modeling science and technology to examine potential impacts of leasing decisions in a holistic, dynamic, and forward-looking way. To accomplish this, BOEM is working with NOAA’s National Centers for Coastal Ocean Science (NCCOS), to synthesize and model collected ocean use, conservation, and fishing data. BOEM has used and will continue to use this ocean planning tool to help identify areas of the U.S. OCS with minimal conflicts, and to inform the development of Call Areas and WEAs

for public review and comment prior to final designations, as a general practice. In conjunction with the NCCOS modeling, BOEM is also funding the Standardizing Integrated Ecosystem-Based Assessments (SIEBA) study, which will create an ecosystem-based management (EBM) framework to help us identify more ways to manage ocean resources in an ecologically and economically responsible manner. Both the NCCOS modeling and the SIEBA study provide BOEM with additional tools in its OSW energy planning and leasing process.

**Comment:** A commenter asserted that the proposed rule ignores requests for environmental studies.

**Response:** The final rule does not affect the manner in which BOEM conducts environmental studies and reviews of the activities it authorizes on the OCS. Also, the final rule does not authorize any activities on the OCS. It should be noted that, through its environmental studies program (ESP), BOEM funds millions of dollars in research each year, much of it devoted to impacts associated with OSW development. BOEM develops, funds, and manages rigorous scientific research specifically to establish information needed for assessing and managing environmental impacts of energy and mineral development on the human, marine, and coastal environments. Mandated by section 20 of OCSLA, the ESP is an indispensable requirement informing how BOEM manages offshore oil and gas, offshore renewable energy, and the marine minerals program for coastal restoration. The ESP has provided over \$1 billion for research since its inception in 1973. Research covers physical oceanography, atmospheric sciences, biology, protected species, social sciences and economics, submerged cultural resources, environmental fates and effects, oil spills, and more.

All OCS wind development is subject to environmental review. BOEM is supportive of PEISs, but also maintains that timing and purpose are key considerations. Prior to the leasing stage, BOEM collects and analyzes available data and information to delineate areas of least conflict and conducts environmental reviews before deciding whether a lease may be issued. BOEM is best equipped to undertake an EIS analysis when BOEM has adequate information to inform how leases in the area are likely to be developed based on a final lease area size and location as well as site-specific conditions.

**Comment:** A commenter stated that BOEM should ensure that adequate information is developed through the

COP NEPA analysis “for states to understand and review the coastal effects of all design options, in order to maintain efficiencies within the review process and avoid the need for supplemental consistency review when final design decisions are made.”

**Response:** The final rule clarifies procedures for providing NEPA analyses to states as part of the CZMA consistency review.

**Comment:** A commenter suggested BOEM revise § 585.627 to clarify that the requirements set out by this section are necessary to ensure BOEM analyzes activities expected to significantly affect the environment, including actions that are not within BOEM’s siting authority or jurisdiction.

**Response:** Most of the commenter’s suggestions were accepted and appropriate changes were made in reflection of the comments. BOEM also made parallel edits to the relevant SAP regulations at § 585.611(b) and the relevant GAP regulations at § 585.646(a) and (b) because BOEM’s plan requirements have parallel structures regarding NEPA. For specific details, see discussion at Section V. Section-by-Section Analysis, § 585.627.

**Comment:** A commenter concluded that the proposed rule raises multiple concerns about the protection of the marine ecosystem and warrants NEPA review. A commenter stated that ESA consultation should be reinitiated and asserted that BOEM has failed to rely on the best available scientific data, particularly with respect to the critically endangered North Atlantic right whale, and failed to include sufficient measures to avoid, minimize, and mitigate the impacts to the point where they are not likely to adversely affect this critically endangered species.

**Response:** The final rule is of an administrative nature, does not authorize any activity on the OCS and, therefore, is categorically excluded from the need to prepare an Environmental Impact Statement. ESA consultation for the promulgation of the final rule is unwarranted because the final rule does not authorize any activities and, therefore, the Department’s action has no effect on threatened or endangered species protected by the ESA.

**Comment:** A commenter said that BOEM should incorporate into the proposed rule a requirement for a full EIS before BOEM decides on the wind areas for potential leases to allow for meaningful input from the public on the sites and potential alternative locations.

**Response:** BOEM disagrees that opportunities for meaningful input are not available in BOEM’s current area identification process, consultations and

repeated engagement with Federal agencies, Tribes, State agencies, industries, and stakeholder groups. BOEM ordinarily starts the process with a Request for Information with a comment period, along with intense consultation with other Federal agencies, Tribes, State and local governments at meetings that are open to the public. During this time, the agency ordinarily also holds public and private meetings with stakeholder groups and nongovernmental organizations. BOEM’s current policy is to also publish the area identification in draft form for comment prior to publication of Wind Energy Areas. This marks the end of the area identification process, though BOEM continues stakeholder engagement and public outreach, and lease areas often continue to be refined during the stages that follow, which includes meetings related to a lease sale environmental assessment, as well as the Proposed Sale Notice comment period.

Moreover, an EIS at the area identification stage of development (which is not required) would be limited in several important ways. Actual development would not take place for a significant time, meaning the technology that would be used is likely to evolve—perhaps dramatically—before facilities can be deployed. BOEM would not be able to analyze the potential impacts of yet-to-be-specified (or maybe even invented) technology. Further, a great deal of the project design is dependent on site-specific data that cost tens of millions of dollars to obtain. Such data are currently generated by lessees, who make these investments with the hope of developing a project that will repay that investment. Thus, the specificity and usefulness of an area identification EIS would be limited, such that an additional EIS would likely be required once the data were available and development more imminent. BOEM seeks a maximally informed decision-making process without unnecessarily repeating NEPA analyses.

**Comment:** A commenter stated that BOEM should maintain opportunities for public comment and review in the final rule by ensuring that any findings from deferred survey work that show environmental impacts are sufficiently subject to public review and scrutiny.

**Response:** The final rule will allow lessees to defer some deep borings to a later stage of development. However, this is not meant to affect the level of public availability of information; only the timing of when a subset of the geotechnical information is required to be submitted. Further, the deferred

information is not necessary to assess environmental impacts or whether the facilities can be safely installed. The partial deferral of geotechnical survey information is more relevant to the technical design of the facility.

**Comment:** A commenter requested a public comment period and preparation of an environmental analysis of the rulemaking before BOEM decides whether to publish a final rule and what to include in it.

**Response:** A NEPA analysis is not required because the proposed rule is covered by a categorical exclusion (see 43 CFR 46.205). The final rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental categorical exclusion and the Department has also determined that the final rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. Therefore, a public comment period on a NEPA analysis of the proposed rule will not be provided.

### 3. Procedural Matters

**Comment:** A commenter asserted that BOEM’s definition of the baseline scenario in the existing regulatory framework does not consider the impacts to small fishing businesses and small coastal communities and suggested that BOEM conduct a regulatory impact analysis due to these potential impacts.

Asserting that Public Law 104–121, Title II, 110 Stat. 857 (1996), requires BOEM to consider input from small businesses and entities, another commenter suggested that the agency has not responded to comments from these entities regarding the impact the proposal would have on their businesses. The commenter asserted that BOEM must include a response to written comments in any explanation or discussion accompanying the final rule’s publication in the **Federal Register** in accordance with the Small Business Jobs Act of 2010. Here, the commenter argued that the statutory regime requires BOEM to assess the impact of its proposed rule on small businesses.

**Response:** The commenter references the Small Business Jobs Act of 2010; however, the Department assumes they intended to reference the Regulatory Flexibility Act, which instructs agencies to assess how their proposed regulations will directly affect the entities they regulate. The potential indirect effects of existing regulations should not be used as the basis to support or reject an agency’s current proposal. Commenters critical of the proposed rule based on the Regulatory Flexibility Act argue

generally that the proposal either lacks provisions to adequately safeguard secondarily affected small entities from baseline activity, or that it falls short in doing so. However, they do not specifically claim that any of the proposed provisions directly and unnecessarily burden small, regulated entities.

The Department agrees that agencies should consistently monitor both the immediate and indirect consequences of its regulatory framework on small entities. Yet, the Department should not be prevented from implementing necessary changes in some areas simply because regulatory improvements might still be available in others.

**Comment:** Reasoning that the proposed rule constitutes a major Federal action, and that the proposal carries financial risks to public interest and potential environmental impacts, a commenter suggested that the rule requires assessment under the Congressional Review Act.

**Response:** The Congressional Review Act (CRA), 5 U.S.C. 801–808, establishes a mechanism to expedite congressional review of agency rules. The CRA generally provides that, before a rule may take effect, the bureau promulgating the rule must submit a rule report, including a copy of the rule, to each House of the Congress and to the Comptroller General of the United States (Comptroller General). The CRA applies only to final rules, therefore, the NPRM was not submitted to Congress or the Comptroller General under the CRA. The final rule will be subject to the CRA and the Department will submit a rule report, including a copy of the final rule, to each House of Congress and to the Comptroller General.

**Comment:** A commenter recommended that BOEM maintain the more-stringent alternative for anticipatory geotechnical investigations, which has been removed from the proposed rule. The commenter stated this alternative “retains the requirement for boring at every turbine location, while allowing these investigations to occur later in the process” and suggested that the alternative would partially increase savings for the lessee or grant-holder, “but not to the full extent that would be saved under the proposed rule.”

**Response:** The commenter recommends the retention of the more stringent alternative concerning geotechnical borings. This alternative retains the requirement for borings at each turbine location but proposes to postpone them to a later stage in the process. However, the rationale behind the preference for this alternative is not

outlined in the comment. The Department observes that the proposed rule defaults to this approach, and developers seeking greater flexibility must demonstrate, subject to bureau approval, the rationale and suitability for omitting certain investigations. Further information regarding geotechnical and geophysical surveys is elaborated in section 3.3 above.

Lastly, the commenter advocates for the agency to continue its evaluation of the costs and benefits associated with the rulemaking beyond enactment. The Department concurs with the notion that regulatory agencies should consistently monitor the effectiveness of their regulations and revise them when deemed inadequate or excessively burdensome. In fact, this principle underpins the Department’s current endeavor, which stems from its recognition of substantial enhancements attainable through continued scrutiny of its existing regulations.

#### 4. Tribal and Other Government Engagement

**Comment:** A commenter stated BOEM’s Tribal engagement process has fallen short of the requirements in E.O. 13175 as meetings between BOEM and the Hoh Tribe and other Tribes have not included BOEM officials with Federal decision-making authority. The commenter asserted that all OSW development should be immediately halted until BOEM conducts meaningful consultation with all affected Tribes. The commenter discussed the Treaty of Olympia and the rights afforded to Tribes within that Treaty.

Another commenter asserted that the proposed rule does not adequately address the impacts on coastal communities and fisheries, thus requiring consultation. The commenter recommended that BOEM use this rule to build in additional, meaningful, and more explicit triggers for consultation with Indian Tribal Governments. Also, in support of incorporating tribal consultation requirements in the rule, a commenter said such consultation should be comprehensive and give deference to tribal concerns.

A third commenter asserted that BOEM’s leasing process is “broken” and “needs to be dismantled and rebuilt” to include consultation with Tribes and others.

**Response:** The Department agrees that OSW must be developed responsibly and in collaboration with potentially affected Tribal governments, and through meaningful engagement with local communities, and may not come at the expense of treaty rights, resources, and cultural practices. The Department

is committed to fulfilling the Federal tribal trust responsibility, and complying with E.O. 13175, and DOI policy and procedures for consulting with Indian Tribes and ANCSA Corporations. BOEM invited federally recognized Tribes and ANCSA Corporations to consult on the proposed renewable energy modernization rule in a Dear Tribal Leader/ANCSA Leader letter dated February 28, 2023. BOEM met with Tribes who requested government-to-government or staff level meetings on the proposed rule.

In addition to the requirements in E.O. 13175, the Department’s existing and proposed regulations also require consultation with affected Tribes at several points during the OSW leasing process. The regulations require Tribal coordination and consultation with the Tribal leadership for Tribes that may be affected by any leases, easements or ROWs BOEM issues (§ 585.102(e)); prior to the issuance of any lease (§ 585.203); and during the area identification process that takes place prior to the competitive issuance of leases (§ 585.211(b)). The proposed and final rules do not diminish any of the Department’s coordination or consultation responsibilities with Tribes, but rather specifically identify points when coordination and consultation is necessary.

**Comment:** Some commenters requested consultation with BOEM to discuss the proposed rule and expressed disagreement with the statement that the rule would not have substantial direct effects on Tribes and, therefore, does not require government-to-government consultation. Commenters stated they would like to discuss the impact of the rule on cultural resources, environmental resources, traditional practices, and sacred sites and features of significance to the Tribes; treaty rights, resources, and interests, including fishing rights and ecosystems impacts that may affect these; and food security, human health, and environmental justice.

**Response:** The Department strives to strengthen its government-to-government relationships with American Indian and Alaska Native Tribes through a commitment to consultation with those Tribes and recognition of their right to self-governance and tribal sovereignty. For additional information, see Section H of the preamble.

BOEM invited federally recognized Tribes and ANCSA Corporations to consult on the proposed renewable energy modernization rule in a Dear Tribal Leader/ANCSA Leader letter dated February 28, 2023. In response to

requests from Tribal Nations, BOEM held multiple formal government-to-government consultations with Tribes as well as staff-level information sharing meetings with Tribal staff. These consultations and meetings included the following:

- Confederated Tribes of Coos, Lower Umpqua Tribe, and Siuslaw Indian Tribe (CTCLUSI)—consultation held on May 4, 2023;
- Hoh Indian Tribe—consultation held on June 30, 2023;
- Makah Tribe—consultation held on June 29, 2023, with staff-level meetings held on May 17 and June 12, 2023;
- Resighini Rancheria—staff-level meeting held May 24, 2023; and
- Shinnecock Indian Nation—consultation held on April 17, 2023.

The meeting notes from these consultations and staff-level meetings are available in the docket (Docket ID. BOEM–2023–0005).

*Comment:* A commenter suggested that BOEM consult with Tribes at each stage of the OSW leasing and development process prior to making any decisions, including reviews of surveys, SAPs, COPs, and other decisions. The commenter suggested that BOEM should require bidders to consult with Tribes on Tribal concerns to be eligible for the bid process and stated that the final rule should include early coordination with Tribes, and they “should not be asked to provide comment on a proposed Lease or Permit before we know if there are substantial conflicts that need to be assessed prior to identification of a Call Area or Wind Energy Area.”

*Response:* The current and proposed regulations require the Department to consult with affected Tribes at several points during the OSW leasing process and the Department welcomes additional tribal consultation requests at any time. The regulations require Tribal coordination and consultation with the Tribal leadership for Tribes that may be affected by any leases, easements, or ROWs BOEM issues (§ 585.102(e)); prior to the issuance of any lease (§ 585.203); and during the area identification process that takes place prior to the competitive issuance of leases (§ 585.211(b)). The Department also consults with tribal historic preservation officers pursuant to the NHPA.

*Comment:* A commenter asserted that BOEM should include in the rule a requirement for consultation with the U.S. Fish and Wildlife Service and the NMFS under the ESA early in the planning process to eliminate or reduce potential harm. The commenter asserted that due to the “passage of the right

whale extinction rider in the FY23 Omnibus, BOEM must reinitiate consultation under the Endangered Species Act” as this rider constitutes new information and may indicate a take of Northern Atlantic right whales.

*Response:* BOEM does not promulgate regulations regarding endangered species, including the North Atlantic right whale. Regulations under the Endangered Species Act (ESA) are promulgated by the NMFS and the U.S. Fish and Wildlife Service. The text of the 2023 fiscal year omnibus spending bill does not implicate the final rule. ESA consultation for the promulgation of the final rule is unwarranted because the final rule does not authorize any activities and, therefore, the Department’s action has no effect on threatened or endangered species protected by the ESA.

The Department has and will continue to comply with all applicable regulations throughout the entire leasing process, including those under the ESA. The promulgation of this final rule does not authorize any activities and therefore, the Department’s action has no effect on threatened or endangered species protected by the ESA. BOEM performs the necessary consultations at the lease sale and COP approval stages.

*Comment:* A commenter recommended that the rule explicitly require consultation with indigenous people (e.g., Native Hawaiians) wherever consultation with Federal and State agencies, local governments, tribes, and other stakeholders is required.

*Response:* BOEM agrees and revised § 585.203 (With whom will BOEM consult before issuance of leases?) to include any affected Native Hawaiian Community or Alaska Native Corporation. Congress expressly requires Federal agencies to consult with the Native Hawaiian Community under specific statutes such as the Native American Graves Protection and Repatriation Act (NAGPRA) and section 106 of the NHPA, and to consult before taking actions that have the potential to significantly affect Native Hawaiian resources, rights, or lands. Additionally, in October 2022, DOI issued a draft consultation policy (DM part 513 part 1 and part 2) and announced that it will require formal consultation with the Native Hawaiian Community. BOEM is committed to following DOI policy on Consultation with the Native Hawaiian Community and will follow those draft guidelines.

*Comment:* A commenter said that early Federal agency coordination is needed for sand resource needs and data. The commenter said that if sand

resources are to be crossed with offshore export cable corridor’s the applicant should detail the reasonableness of doing so, and why other options are not practical.

*Response:* BOEM agrees with the importance of early coordination for sand resource needs and data. Sections 585.212 and 585.203 identify what is evaluated for the area identification and with whom BOEM will consult before the issuance of a lease. These two touchpoints are critical for the review of other available offshore resources and the potential for avoidance or minimization of impacts to these resources. However, BOEM has not finalized additional requirements for lessees regarding the reasonableness of crossing sand resources. We believe this issue can continue to be addressed without the imposition of additional requirements on lessees.

*Comment:* A commenter thanked BOEM for proposed modifications that would improve Federal and State agency collaboration to ensure that regulatory actions affecting coastal resources are conducted according to the best available science. However, the commenter expressed concern that the proposed rule would diminish the states’ role in the NEPA process and decrease their ability to conduct efficient and comprehensive consistency reviews. The commenter also stated their concern for how proposed changes may impact the consideration of environmental and coastal resource impacts that must be considered under NEPA, and other related laws. A commenter recommended early coordination between BOEM, project developers, and the State to determine the necessary data and information that would be needed to support the Federal consistency determination.

*Response:* The NEPA and CZMA roles are two separate processes. The requirements under NEPA for public comments provides the states with multiple opportunities to request additional information and data be analyzed that have been identified through a state’s coastal management program as necessary data and information. If that information is not included in the NEPA document, the Department still has the responsibility to ensure this necessary data and information is included in the consistency determinations and/or consistency reviews.

The Department agrees that early and continuous coordination with the states and project developers take place throughout the project timeframe. Lastly, this final rule does not modify

the Department's obligations under NEPA and the CZMA.

*Comment:* A commenter stated that BOEM has not changed its process to increase the assurance of safety or protection of commercial fisheries and species in its process, despite concerns from NOAA. The commenter expressed opposition to BOEM's deference to developers over cooperating agencies in creating a purpose and need statement for NEPA review.

*Response:* The Department works closely and frequently with NOAA on many issues relating to commercial fisheries, marine mammals, and other resources. NOAA did not submit comments related to the Department's regulations. The comment on the purpose and need statement in individual NEPA reviews is outside the scope of this rulemaking. BOEM complies with the requirements of NEPA and the CEQ regulations when developing a purpose and need statement for NEPA review.

*Comment:* A commenter said they would like BOEM to commit to both formal and informal consultation with Tribes. Additionally, the commenter said that it is important to provide coastal communities with a forum to provide input on the proposed rules and proposed development activities that the rule would facilitate.

*Response:* The current and proposed regulations require Tribal consultation at several stages in the OSW leasing process. The Department is committed to following DOI policy to consult with Tribes for departmental actions with Tribal implications, as well as consulting with Tribes as required by statute, such as NEPA and the NHPA. The Department consults with Tribes at the Tribal leader and staff level and is committed to fulfilling the government's tribal trust responsibilities. BOEM initiated and held government-to-government consultations and staff-level meetings with five Indian Tribes to discuss potential impacts and to solicit and fully consider their views on the proposed rulemaking. In addition, the Department is always open to requested formal consultation and ongoing information consultation and dialogue with Tribal nations.

*Comment:* A couple of commenters discussed public engagement and the renewable energy leasing schedule. A commenter recommended that in creating a schedule, BOEM should provide a process to ensure stakeholder engagement. A commenter said the renewable energy leasing schedule would help inform Tribes and stakeholders of opportunities for engagement. The commenter said that

more information about OSW development processes and formal public comment opportunities could improve public knowledge on projects and facilitate deep and meaningful engagements.

*Response:* BOEM has not included a requirement for a comment period prior to publishing the leasing schedule every two years. The leasing schedule is meant to shed light on the state of BOEM's current thinking rather than being the culmination of a detailed decision-making process. Note that areas identified in a leasing schedule will likely not see actual development for at least another 10–15 years, during which many comment periods, public meetings, consultations, government-to-government consultations, meetings, publications, studies, plans and other activities must take place. The leasing schedule sits at the beginning of this process and is intended to let the public know where BOEM plans to focus its attention on the consideration of new areas.

*Comment:* A commenter said that BOEM needs to clarify when engagement with potentially impacted parties is required in the noncompetitive leasing process.

*Response:* Subsection 8(p)(3) of OCSLA requires BOEM to award leases competitively, unless BOEM determines that there is no competitive interest. An RFI issued pursuant to § 585.210 of BOEM's existing regulations is a preliminary step to assist BOEM in determining potential interest in OSW energy development in the RFI Area. At the same time, the RFI requests specific and detailed comments from the public and other interested or affected parties regarding the features, activities, mitigations, or concerns within or around the RFI Area.

Whether the leasing process is competitive or noncompetitive, BOEM includes opportunities for the public to provide input. BOEM must comply with all required consultations and environmental analyses before issuing a lease noncompetitively, as required by § 585.231. Further, BOEM will coordinate and consult, as appropriate, with relevant Federal agencies, federally recognized Tribes, affected State and local governments, and other affected or interested parties in formulating lease terms, conditions, and stipulations.

## 5. Technical Comments

*Comment:* One commenter suggested that BOEM require "a bond sufficient to disassemble and remove any structure or other components and restore the offshore area at the end of its useful life, or if the impacts to the ocean are

significantly adverse, greater than the intensity predicted in its analysis, or cannot be otherwise mitigated."

*Response:* This comment highlights an important consideration and one to which BOEM already dedicates considerable resources. BOEM will ensure that its authority is implemented in a way that adequately mitigates the risk of stranded OCS assets.

*Comment:* A commenter stated that BOEM should revise the definition of "energy product" in the proposed rule to clarify that the part 585 regulations are applicable to hydrogen products and that hydrogen produced offshore is regulated by BOEM and BSEE, regardless of end use.

*Response:* BOEM does consider hydrogen as an "energy product" potentially subject to BOEM's regulatory oversight. This is consistent with the approach that BOEM announced in the preamble to the 2009 regulations when it said, "In the future, other types of renewable energy projects may be pursued on the OCS, including solar energy and hydrogen production projects. These regulations were developed to allow for a broad spectrum of renewable energy development without specific requirements for each type of energy production." 74 FR 19638 at 19646 (Apr. 29, 2009). BOEM is not revising the definition of "energy product" in the final rule.

*Comment:* A few commenters suggested revisions related to plans. A commenter stated that BOEM should include the modifications at § 585.628(c) related to Federal review periods in the requirements for GAPs. A commenter suggested that BOEM include milestones for its COP review process and proposed the following milestones:

- BOEM should hold a pre-COP filing meeting to review the proposed project and ensure a coordinated review;
- BOEM should include a nominal timeline for its determination that a submitted COP is complete and sufficient;
- BOEM should include a nominal timeline for its determination that a submitted COP is complete and sufficient;
- BOEM should include a timeline to describe consultation with cooperating agencies and outline when alternatives are to be analyzed in the NEPA document.

*Response:* As the commenters are aware, BOEM recently published guidance recommending pre-COP filing meetings between the lessee and Federal agencies, including BOEM, and describing milestones leading to the determination that a COP is complete

and sufficient.<sup>17</sup> Further, BOEM shares the commenter's belief in the importance of predictability and reasonable timelines. However, BOEM declines to commit by rule to additional timelines, beyond those already required by authorities like FAST-41 and the Fiscal Responsibility Act of 2023. These laws already impose deadlines and scheduling requirements on BOEM and other Federal agencies reviewing offshore wind projects, and additional timelines would do little to promote the expedited development of OCS resources. BOEM's guidance allows for flexibility while also setting out milestones for the submission of COPs and an orderly review process.

*Comment:* A commenter suggested that BOEM include a provision "to offer lessees conforming amendments to their leases" after the rule is finalized and allow lessees to opt out of some or all proposed changes.

*Response:* Existing leases require compliance with BOEM's regulations, including "regulations promulgated thereafter, except to the extent that they explicitly conflict with an express provision of this lease." Accordingly, existing lessees cannot "opt out" of requirements imposed by later-promulgated regulations. However, bilateral lease amendments can be negotiated between BOEM and lessees at any time, and BOEM is open to discussing conforming lease amendments as suggested by the commenter. For example, to take advantage of certain benefits included in these regulations that conflict with existing lease provisions, BOEM declines to make such a broad offer of conforming edits in the rule itself.

*Comment:* A commenter suggested that BOEM define "competing uses" with an example (offshore sand resources) included in the definition.

*Response:* BOEM declines to define the term "competing uses." While BOEM agrees that something like offshore sand resources could be a use of the OCS that may compete with OSW development (for example in export cable siting), the common meaning of the term is not ambiguous, and the addition of examples may raise questions about why those examples and not others were included.

*Comment:* A commenter suggested that BOEM define "project engineer" in subpart G or remove the term.

<sup>17</sup> See Recommendations for Pre-Notice of Intent (NOI) Federal Interagency Engagement on Construction and Operations Plans (COP) for Offshore Wind, (Aug. 2023), available at <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/BOEM%20NOI%20Checklist.pdf>.

*Response:* BOEM understands the term "project engineer" to be an accepted term in the engineering profession for the licensed engineer responsible for the design of the project. Without understanding further why the commenter thinks that the term is unclear, BOEM declines to remove it.

*Comment:* Another commenter suggested that BOEM define "fair return to the US taxpayer" so that the readers know that "the proposed rule would advance the Department of the Interior energy policies in a safe and environmentally sound manner that would provide a fair return to the U.S. taxpayer." The commenter believes the "cost of offshore wind as part of the fair return calculation" should include:

(1) The cost to taxpayers of paying above-market rates for electricity from offshore wind.

(2) The cost to taxpayers of the subsidies for manufacturing credits and port facilities to stage construction.

(3) The cost to taxpayers of additional backup generation (reserve margin) that is required when the wind doesn't blow.

(4) The cost to taxpayers of the additional grid infrastructure and transmission lines to connect the geographically spread out offshore wind turbines.

(5) The cost to taxpayers of the 30% ITC provided to the offshore wind developers.

*Response:* BOEM declines to define "fair return to the US taxpayer" in this final rule. OCSLA requires that the government obtain a "fair return to the United States for any lease, easement, or right-of-way . . ." The items enumerated in the comment are outside the scope of a lease, easement, or right-of-way issued under OCSLA. The decision to procure OSW power is made by the purchasers of that electricity, in most cases through State legislation, State governors, or state regulatory authorities.

*Comment:* A commenter recommended that BOEM redefine the term "engineered foundation" as a "fixed-bottom structure," excluding equipment like anchors, or remove the term.

*Response:* BOEM has removed the defined term "engineered foundation" from this final rule.

*Comment:* A commenter recommended that BOEM revise the description of call and area identification consistent with editorial revisions that the commenter provided to emphasize that these areas are for commercial development and that development of the areas will consider potential environmental benefits and potential conflicts.

*Response:* BOEM has not followed this recommendation in the final rule. BOEM understands the interest in explicitly describing consideration of environmental benefits in addition to potential conflicts. However, the considerations already listed (e.g., environmental factors or characteristics, stakeholder comments, industry nominations) provide an opportunity for consideration of both benefits and drawbacks of areas under consideration.

#### IV. Summary of Cost, Economic Impacts, and Additional Analyses Conducted

##### A. What are the affected facilities?

The rule affects energy companies with OCS renewable energy leases, as well as future bidders, applicants, lessees, and grantees. (§§ 585.107 through 585.113) The impact on existing lessees depends in part on whether a regulatory change conflicts with an existing lease term. The Department plans to review existing leases for possible conflicts with the final regulations promulgated in this final rule. Where there is no conflict, the final rule will apply equally to existing and future leases. Where conflicts are identified, BOEM may offer to lessees a package of lease amendments that would promote consistency between existing and future lessees.

##### B. What are the economic impacts?

BOEM conducted a Regulatory Impact Analysis, on behalf of the Department, to consider the costs and benefits of the rule. Most of the revisions in the rule have negligible or no cost impact, while others may have second-order benefits that are difficult to quantify. BOEM identified four elements of the rule that have quantifiable effects. Three of those changes (met buoy requirements, financial assurance, and geotechnical survey revisions) provide compliance cost savings and one, Safety Management System reporting, has minor compliance cost. In net, BOEM estimates these changes could save the OCS renewable energy industry approximately \$127 million in annualized cost savings over the 20-year period of analysis (3 percent discounting).

##### C. What are the benefits?

This rule provides additional clarity and certainty, while streamlining the regulatory framework. The changes from this rule will facilitate more expedient and responsible development of offshore renewable energy projects. The regulation provides net compliance cost savings of approximately \$127 million

in annualized cost savings over the 20-year period of analysis (3 percent discounting).

#### D. What Tribal engagement activities were conducted?

On February 27, 2023, BOEM sent a letter to all federally recognized tribes (Tribal Nations) inviting each to government-to-government consultation on the Renewable Energy Modernization Rule. This letter was sent after publication of the NPRM but before the 60-day public comment period closed. After receiving opposition to the determination that the proposed rule would not have substantial direct effects on Tribes, BOEM extended the comment period on the NPRM to allow more time for consultations and to address Tribal concerns.

To date, BOEM's Tribal engagements on the NPRM have included government-to-government consultations conducted jointly with BSEE and staff-level briefings with six Tribal Nations: the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians (held May 4, 2023), the Hoh Indian Tribe (held June 30, 2023), the Makah Tribe (held May 17, June 12, and June 29, 2023), the Resighini Rancheria (held May 24, 2023), the Shinnecock Indian Nation (held April 17, 2023), and the Mashpee Wampanoag Tribe (held March 26, 2024). For more details on these engagements, see the Tribal engagement summary memorandum and the meeting notes for the engagements in the docket (Docket ID No. BOEM-2023-0005).

Several concerns were communicated by the Tribes during the consultations. Tribes indicated that the Department should consult with Tribes at each stage of the rulemaking process prior to making any decisions, requested the development of a programmatic agreement with Tribes to address NHPA section 106 obligations, and maintained that the Department must require the complete removal of turbines after a wind farm ceases to operate. Additionally, Tribes suggested that the Department should develop a Programmatic EIS (PEIS) before offshore wind development proceeds, that the Department conduct meaningful consultation with affected Tribes, and that they have concerns regarding lease obligations related to environmental stewardship.

The Department appreciates the Tribal expertise that has been shared and welcomes continued engagement with Tribes after promulgation of this rule.

#### V. Section-by-Section Analysis

This section-by-section analysis presumes that the reader is generally familiar with what was proposed in the NPRM. In most cases, therefore, the summary below is focused on the changes that were made to the NPRM text as a result of the public comments that were received. This section-by-section analysis also generally does not include any detailed discussion of the technical changes to the NPRM proposed regulations made by the "Reorganization of Title 30—Renewable Energy and Alternative Uses of Existing Facilities on the Outer Continental Shelf" direct final rule (88 FR 6376, January 31, 2023). This direct final rule, also known as the Reorganization Rule, describes the division of administrative responsibilities between BOEM (parts 585 and 586) and BSEE (part 285) for the administration of certain regulations governing renewable energy development and alternate uses of existing facilities on the Outer Continental Shelf. Readers also should be aware that some sections of the part 585 regulations have been duplicated and included, in whole or in part, in part 285 where appropriate and other sections have been partially divided between parts 285 and 585 to reflect the assigned responsibilities of each Bureau. BSEE is also making minor edits to every section to apply the transfer of authority from BOEM to BSEE.

##### A. 30 CFR Part 285

###### *§ 285.102 What are BSEE's responsibilities under this part?*

*Summary of proposed rule provisions:* The Department proposed to revise § 585.102(a) to authorize renewable energy activities in accordance with OCSLA subsection 8(p)(4), as enumerated in § 585.102(a)(1) through (12). The Department proposed amending this regulation to clarify that none of the enumerated requirements are intended to outweigh or supplant any other.

###### *Summary of comments:*

*Comment:* A commenter discussed the Department's statutory authority under OCSLA subsection 8(p)(4) and stated that the proposed rule "is strongly rooted in and supported by Federal case law and the final rule should expressly acknowledge that point." Further, the commenter stated that subsection 8(p)(4) does not require the Department to ensure that OCSLA's goals are achieved to a particular degree, but instead requires that the Department employ its discretion to achieve a balance among the statute's several factors, considering Congress's direction

to authorize renewable energy development on the OCS, leaving "striking the proper balance . . . up to the Secretary of the Interior," so long as that balance is rational.

*Response:* BSEE considered the comment and agrees that BSEE has authority under OCSLA subsection 8(p)(4). BSEE determined the existing language in 30 CFR part 285 adequately and accurately describes BSEE's responsibilities and acknowledges the balance that BSEE is required to maintain under OCSLA.

*Summary of final rule revisions:* The Department did not finalize the proposed language because the existing language in 30 CFR part 285 adequately and accurately describes BSEE's responsibilities and acknowledges the balance that BSEE is required to maintain. The Department did not finalize the parts of § 285.102 that were reassigned to BOEM's administration under the Reorganization Rule.

###### *§ 285.103 When may BSEE prescribe or approve departures from the regulations in this part?*

*Summary of proposed rule provisions:* The Department proposed to modify the § 585.103(a) introductory text and paragraph (a)(1) to specify that the Department may prescribe or approve a departure from the regulations when the Department deems the departure necessary because the applicable provision(s), as applied to a specific circumstance, are impractical or unduly burdensome. The Department determined that the departure provision was necessary to achieve the intended objectives of the renewable energy program and to allow the Department the flexibility to adapt the regulations to the unique circumstances of this new and evolving industry while retaining the consistency and integrity of the regulations as a whole.

###### *Summary of comments:*

*Comment:* Commenters suggested that the departure section should apply only to "pre-determined and narrow circumstances."

*Response:* The Department considered the comments and is finalizing this section as proposed. Regulations cannot foreseeably address all specific scenarios that may arise in practice. Therefore, departures are necessary to provide flexibility in unforeseen situations where strict application of the regulations would be unfair, impractical, unnecessary or even impossible (e.g., unforeseen contradictions in regulatory provisions). Applying the departure section to only "pre-determined and narrow circumstances" would risk leaving the bureau and the regulated community

unable to respond to unforeseen circumstances outside such predetermined and narrow circumstances.

**Summary of final rule revisions:** The Department considered comments on the proposed revisions to § 585.103 and is finalizing the proposed revisions in § 285.103(a) without change. The revisions allow BSEE to prescribe or approve departures from these regulations when necessary because the applicable provisions, as applied to a specific circumstance: (1) are impractical or unduly burdensome and the departure is necessary to achieve the intended objectives of the renewable energy program; (2) fail to conserve the natural resources of the OCS; (3) fail to protect life (including human and wildlife), property, or the marine, coastal, or human environment; or (4) fail to protect sites, structures, or objects of historical or archaeological significance. No changes were proposed to § 585.103(b), which lists additional departure requirements, and no changes were made to § 285.103(b).

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

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

**Summary of comments:** BSEE did not receive any comments regarding this section.

**Summary of final rule revisions:**

The Department is finalizing the proposed revisions in the final rule at § 285.105 with minor clarifications that the named entities must comply with all applicable laws and regulations, the terms of the lease or grant under 30 CFR part 585 or 586; reports, notices, and approved plans prepared under this part, part 585 or 586; and any conditions imposed by BOEM or BSEE through its review of any of these reports, notices, and approved plans. The minor clarifications BSEE made here are administrative edits to reflect changes resulting from the Reorganization Rule.

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

**Summary of proposed rule provisions:** The Department proposed eliminating its paper copy requirement and relying primarily on electronic submissions. The Department proposed to reserve the authority to require paper copies of certain documents (such as maps and charts) if necessary. The Department also proposed eliminating the mailing address to avoid the need for future technical corrections if the mailing address changes and, instead, listing the mailing addresses for the appropriate contacts on the appropriate website.

**Summary of comments:** BSEE did not receive any comments regarding this section.

**Summary of final rule revisions:** The Department is finalizing the proposed revisions in the final rule at § 285.110. BSEE is revising § 285.110 to require lessees to submit one electronic copy of all plans, applications, reports, or notices required by this part to BSEE. The revisions also state that BSEE will inform the lessee if it requires paper copies of specific documents, and that documents should be submitted to the relevant contacts listed on the BSEE website.

BSEE has implemented an electronic submittal system which, except for special situations, eliminates the need for paper copies of submittals. This minimizes the administrative burden on both the industry and the government and ensures the administrative record is properly maintained.

**§ 285.112 Definitions.**

**Summary of proposed rule provisions:**

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

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

The Department proposed modifying the definition of “commercial operations” to state that the term means the generation of electricity or other energy product for commercial use, sale,

and distribution on a commercial lease, but does not mean either generation needed to prepare a final FIR or generation for testing purposes, provided the electricity generated for such testing is not sold on a commercial basis.

The Department proposed adding a new definition for “Critical Safety Systems and Equipment” to mean safety systems and equipment designed to prevent or ameliorate major accidents that could result in harm to health, safety, or the environment associated with the lessee’s or grant holder’s facilities.

The Department proposed adding a definition for the term “engineered foundation,” which would mean any structure installed on the seabed using a fixed-bottom foundation constructed according to a professional engineering design based on an assessment of sedimentary, meteorological, or oceanographic conditions.

The Department also proposed adding a definition for the term “fabrication” which would mean the cutting, fitting, welding, or other assembly of project elements of a custom design conforming to project-specific requirements.

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

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

The Department proposed clarifying that “receipt” of a document as having been deemed to take place, in the absence of documentation to the contrary, (a) 5-business days after the document was given to a mail or delivery service with the proper address and postage; or (b) on the date the document was sent electronically.

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

*Summary of comments:*

*Comment:* A commenter recommended that the Department delete the definition of “engineered foundation” from § 585.600(a)(1) to avoid confusion, given that it only applies to met towers and no other structures.

*Response:* BOEM removed the term “engineered foundation” from § 585.600(a)(1). BSEE agrees with this approach, given that the term “engineered foundation” was intended to be used only in the SAP provisions of the rule and, therefore, the Department is not adding the definition to § 285.112 since the term is no longer used.

*Comment:* A commenter suggested that the Department explicitly define “installation” and “commissioning” similar to the definition of “fabrication” and explain in more detail what is included in Critical Safety Systems and Equipment to better define what is required to be verified by a CVA.

*Response:* BSEE disagrees with the comment because the terms “installation” and “commissioning” are commonly used and understood terms. BSEE did add additional language to the definition of Critical Safety Systems and Equipment to clarify that these devices could be a single piece of equipment or a system and to align more closely with OCSLA.

BSEE did not specify the exact “Critical Safety Systems and Equipment” because of the rapid pace of technology development and differences in systems and equipment between projects. Instead, Critical Safety Systems and Equipment must be identified on a project basis through the risk assessment process that is overseen by the CVA.

*Comment:* A commenter stated that the proposed definition of “commercial operations” should be formulated through collaboration between BOEM and BSEE, grid operators, and project developers to avoid technical risks between commissioning and start of operations.

*Response:* The Department considered all comments on “commercial operations” provided in response to the proposed rule and the Department is not finalizing the proposed language “does not mean either generation needed to prepare a final FIR or generation for testing purposes, provided the electricity generated for such testing is not sold on a commercial basis” because

this is a requirement that should not be included as part of a definition. BSEE removed the requirements from the definition of commercial operations and added them to § 285.637. BSEE is adding “transmission” to the list of operations. BSEE has had discussions with several interested parties concerning commercial operations departure requests. BSEE did not conduct additional collaboration outside of the proposed rule process.

*Comment:* Commenters suggested that the Department make the following revisions: (1) Modify the rule to remove the use of the term “type-certified” as it is unclear what stage of type certification is needed before permission is granted or include “type-certified” as a definition in the final rule; (2) Alternatively, introduce a definition in § 585.112 of type-certified to clarify what is meant by this term. In that case, include that when used in these rules, type-certified may describe components that are provisionally certified or components that are in the process of type certification, so long as the type certification is in place at time of final manufacturing.

*Response:* BSEE has revised the proposed language based on the comment. Type-certified has been removed from the definition of fabrication but remains in the § 285.700 regulation to explain that a type-certified component may be procured prior to FDR and FIR non-objection.

*Comment:* A commenter expressed support for the proposed modifications to the rule define “fabrication” as “cutting, fitting, welding or other assembly or project elements of custom design conforming to project specific requirements” and excluding from the definition the procurement of discrete parts of the project that are commercially available in standardized form.

*Response:* BSEE modified the proposed definition of fabrication to state that, “Fabrication means the cutting, fitting, welding, or other assembly of project elements.” The exclusions previously proposed in the definition are now in the regulations at § 285.700 but were not appropriate for a definition.

*Summary of final rule revisions:*

Based on comments received and BSEE’s experience since the Reorganization Rule publication, the Department is revising the definitions in this section to provide clarity and consistency and to ensure alignment with BOEM’s definitions in 30 CFR part 585. The Department is revising the definitions of “commercial activities”, “commercial operations,”

“decommissioning,” and “site assessment activities,” and adding definitions for “Critical Safety Systems and Equipment,” “fabrication,” and “project design envelope” to 30 CFR part 285.

BSEE is making changes to the definition of commercial activities to maintain consistency with BOEM. The final rule modifies the definition of “commercial activities” to state that such activities are conducted “under” leases and grants rather than “for” them. This clarifies that commercial activities as defined in the rule only apply to on-lease or on-grant activities, and not off-lease or off-grant activities by commercial lessees and grantees.

For the definition of “commercial operations,” the Department is not finalizing the proposed language “does not mean either generation needed to prepare a final FIR or generation for testing purposes, provided the electricity generated for such testing is not sold on a commercial basis” and is adding “transmission” to the list of operations. This revision provides clarification of and consistency with BSEE expectations of commercial operations according to § 285.637.

The Department is adding the definition of “Critical Safety Systems and Equipment” to part 285 to clarify the threshold for systems and equipment to be considered critical for ensuring safety. The Department is revising the proposed rule language by adding “and equipment” to the term and adding fires and spillages to the list of incidents covered by the term. The Department revised the term to include “and equipment” because a single piece of equipment or a system consisting of several pieces of equipment functioning together may be used to prevent or ameliorate fires, spillages, or other major accidents that could result in harm to health, safety, or the environment. The additional revision provides clarity to ensure that major accidents including fire and spillages are included and covered by these systems or equipment and meets the threshold set by OCSLA.

The Department is incorporating the existing definition of “decommissioning” in to § 285.112 and is removing the reference to 30 CFR part 585 to reflect changes in the Reorganization Rule.

The Department is adding a definition for “fabrication” to part 285. BSEE modified the definition for “fabrication” from the proposed rule to “the cutting, fitting, welding, or other assembly of project elements.” BSEE removed the exclusion from custom designs and standardized forms or type-certified

components from the definition of “fabrication.” The exclusion from fabrication requirements for custom designs and standardized forms or type-certified components and from fabrication not on the OCS is part of the regulatory text in § 285.700, which accomplishes the same goal without putting the exception in the definition.

Additionally, the Department includes in the final rule the definitions of “project design envelope” and “site assessment activities,” as proposed in the NPRM at § 585.112, without change.

The definitions for “bidding credits,” “lease area,” “multiple factor auction,” “provisional winner,” and “receipt” proposed in the NPRM at § 585.112 are not finalized in part 285 of this rule. These terms are not used in 30 CFR part 285 and, therefore, do not need to be defined therein. The definition for “engineered foundation” was proposed in the NPRM to apply to the SAP provisions of the regulations but BSEE did not add it here because, as commenters noted, it had the potential to cause confusion within the final rule.

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

**Summary of proposed rule provisions:** The Department proposed a technical change, substituting the word “operations” for “generation” in paragraph (b)(1), so that the Department’s review of the data and information would be done “3 years after the initiation of commercial operations . . . ,” to provide greater consistency with the remainder of the Department’s offshore renewable regulations.

**Summary of comments:** BSEE did not receive any comments regarding this section.

**Summary of final rule revisions:** BSEE is revising paragraph (b)(1) to replace “initiation” with “commencement,” and finalizing the use of the term “commercial operations” in § 285.113, as proposed in the NPRM consistent with the revisions in § 585.114. These are editorial changes made to be consistent with the rest of the regulations.

**§ 285.114 Paperwork Reduction Act statements—information collection.**

**Summary of proposed rule provisions:** The Department proposed updating the table in this section to align with proposed regulations.

**Summary of comments:** BSEE did not receive any comments regarding this section.

**Summary of final rule revisions:** BSEE is not finalizing the proposed revision to § 285.114 and is keeping the provision in the existing regulations. This section

in the existing regulations already reflects the current OMB control numbers recently covered by the Reorganization Rule.

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

**Summary of proposed rule provisions:** The Department proposed combining requests for interest and requests for information in a revised § 585.116 and naming them requests for information. The proposed rule suggested eliminating the request for interest as a step in the leasing process. The Department proposed that, in the event that BOEM wanted to start the leasing process with a solicitation of information from the public, the more general request for information under § 585.116 would be available to serve that purpose.

**Summary of comments:** BSEE did not receive any comments regarding this section.

**Summary of final rule revisions:** BSEE finalized the language proposed in § 285.116(a) in the NPRM to be consistent with the proposed § 585.116(a). BSEE made minor, non-substantive changes, such as removing “(a)” and making the regulation one paragraph because BSEE is not including proposed paragraphs (b), (c), and (d) in this section as those provisions pertain to leasing administration, which BSEE does not administer.

**§ 285.117 Severability.**

**Summary of proposed rule provisions:** Section 285.117 is a new regulation being added in this final rule and that was not included in the proposed rule.

**Summary of comments:** BSEE did not receive any comments regarding this section.

**Summary of final rule revisions:** The Department’s existing regulations in this subpart did not contain a severability provision nor did the Department propose one in the NPRM. However, in this final rule, the Department has included a severability provision in new § 285.117 as follows: “If a court holds any provisions of this subpart or their applicability to any persons or circumstances invalid, the remainder of the provisions and their applicability to any persons or circumstances will not be affected.” While the Department has determined that all of the sections of this subpart and part 585 in this final rule can and do function separately, the Department understands that a court will ultimately determine whether portions of the rule can be severed from others. In the event a court determines a provision was improperly promulgated, this section is designed to

aid that review by demonstrating that the Department intends the various components of this final rule, with various provenances and independent functions, to continue to operate even if one or more of the provisions is declared unlawful.

**§ 285.118 What are my appeal rights?**

**Summary of proposed rule provisions:** The Department proposed combining §§ 585.118 and 585.225 by locating all procedures for review of BOEM renewable energy final decisions or orders in a revised § 585.118. The purpose of this revised section was to maintain the distinction between requesting reconsideration of rejected bids and appeals of other final decisions made under part 585 but revise the regulation to characterize challenges to decisions selecting provisional winners as appeals to the Director, rather than requests for reconsideration.

In the proposed rule, the Department suggested providing appeal rights to any adversely affected bidder of a provisional winner selection decision. The proposed section would also provide provisional winners an opportunity to appeal if they determined there have been any errors or omissions in the selection decision, such as miscalculated or unapplied bidding credits.

This proposed section suggested that BOEM must receive written appeals of a decision selecting the provisional winner within 15-business days after a bidder receives notice of the decision. The proposed section suggested adopting the rules found in the appeal procedures at 30 CFR 590.3 for determining when a selection decision is received.

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

**Summary of comments:** BSEE did not receive any comments regarding this section.

**Summary of final rule revisions:** The Department reviewed proposed § 585.118 and is finalizing the proposed language in § 285.118, with revisions to paragraphs (a) and (b) to reflect changes made in the Reorganization Rule, to clarify the rights to appeal. The regulation addresses a party’s right to appeal a final decision issued by BSEE to the Interior Board of Land Appeals

(IBLA), and that any BSEE final decision will remain in full force and effect while the appeal is pending. BSEE is not including proposed paragraph (c) in this section because those provisions pertain to leasing, which is not administered by BSEE.

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

**Summary of proposed rule provisions:** The Department proposed amending this section to ensure that its civil penalty authority for OCS renewable energy activities addresses a more complete range of violations and is coextensive with the authority that Congress granted to it in OCSLA. The Department proposed adding a new paragraph (f)(2) to address certain situations, such as civil penalties for violations that constitute, or constituted, a threat of serious, irreparable, or immediate harm, and to allow the Department to take appropriate action by assessing civil penalties in the event that a lessee or operator commits such failures.

**Summary of comments:**

**Comment:** One commenter requested that BSEE ensure that civil penalties are reserved for the most serious circumstances. However, another commenter requested that the Department “take steps to ensure that the penalty is reserved for truly serious circumstances and require agency notice at some reasonable time after the assessment of the civil penalty and prior to the accrual of any interest.” Another comment requested that BOEM and BSEE should “commit to developing and applying consistent precedent and interpretations in all areas of shared responsibility” to “ensure that BSEE and BOEM do not take different views of when specific conduct or circumstances constitute a violation.”

**Response:** BSEE has not made changes to the finalized language based on these comments because OCSLA establishes which violations warrant civil penalty consideration and the language of the regulation tracks the language of the statute. BSEE may assess a civil penalty if a lessee does not correct a violation or if the violation posed a threat or harm to safety or the environment. The maximum civil penalty is set by law, but BSEE determines the amount for a specific violation based on its severity, duration, and other factors. Lessees have the right to request informal resolution of the decision from the Bureau and to file an appeal with the Interior Board of Land Appeals. BSEE and BOEM are committed to managing shared responsibilities through cooperation and

communication in the implementation and administration of their authorities.

**Summary of final rule revisions:** BSEE considered comments on the corresponding proposed revisions to § 585.400 and is finalizing the proposed language, with revisions to paragraphs (f)(1) and (2) to reflect the Reorganization Rule and ensure consistency with OCSLA. These administrative changes clarify BSEE’s authority to assess civil penalties if a lessee fails to comply with any provision of this part, or any term of a lease, grant, or order issued under the authority of this part. BSEE may assess the civil penalty after providing the lessee notice of such failure and the expiration of a reasonable period to correct the failure, or if BSEE determines that the failure constitutes a threat of serious, irreparable, or immediate harm or damage to life, property, or the marine, coastal, or human environment.

**§ 285.415 What is a lease or grant suspension?**

**Summary of proposed rule provisions:** The Department proposed to replace the word “term” with “period” in light of its proposed changes to § 585.235.

**Summary of comments:** BSEE did not receive any comments regarding this section.

**Summary of final rule revisions:** BSEE is finalizing paragraph (b) in § 285.415, consistent with proposed § 585.415, to clarify that a suspension extends the expiration date for the relevant period of your lease or grant for the length of time the suspension is in effect.

**§ 285.417 When may BSEE order a suspension?**

**Summary of proposed rule provisions:** The Department proposed to eliminate the paper copy requirement for this regulation, consistent with its proposed changes to § 585.110.

**Summary of comments:**

**Comment:** BOEM [and BSEE] exceeded its statutory authority by making substantive changes to the statutory criteria for lease suspension and cancellation. Therefore, the commenter said the modernization rule should include regulatory changes to correct differences between the current regulatory criteria for lease suspension (§ 285.417) and cancellation (§§ 585.422(b)(4) and 285.437(b)(4)) and the statutory (OCSLA) criteria.

**Response:** This rulemaking is not proposing to make changes to BSEE’s suspension or cancellation authority because we view them as consistent with OCSLA. In the Energy Policy Act of 2005 (EPAct), Congress authorized the Secretary of the Interior (Secretary) to establish a program for renewable

energy activities on the OCS and to promulgate any necessary regulations to carry out that program. Specifically, the EPAct amended OCSLA to add subsection 8(p) (43 U.S.C. 1337(p)). Subsection 8(p) grants the Secretary the authority to issue leases, easements, and ROWs on the OCS for activities that produce or support the production, transportation, storage, or transmission of energy from sources other than oil and gas, or that use existing OCS facilities for energy- or marine-related purposes that are not otherwise authorized by OCSLA or other laws.

**Summary of final rule revisions:** BSEE is revising paragraph (b)(2) of § 285.417, consistent with the proposed § 585.417, to require a lessee to provide an electronic copy of the study and results to BSEE pursuant to § 285.110. This revision will help ensure that BSEE receives the data in electronic format to facilitate appropriate review and streamline submittal. BSEE is also making an administratively corresponding edit to reflect the applicability of this part to BSEE instead of BOEM as identified in the Reorganization Rule.

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

**Summary of proposed rule provisions:** The Department proposed combining paragraphs (b) and (c) of § 585.420 to modify the requirement that directed suspensions will always be accompanied by a fee suspension. As a result of this proposal, all payment suspensions would be at BOEM’s discretion. The Department also proposed clarifying that, regardless of whether a lease or grant suspension is approved or ordered, BOEM would have discretion to “waive or defer” (rather than “suspend”) payments while the lease or grant is suspended.

**Summary of comments:** BSEE did not receive any comments regarding this section.

**Summary of final rule revisions:** The Department reviewed proposed section § 585.420 and is finalizing this section in § 285.420 to clarify, in light of the Reorganization Rule, that if BSEE orders a suspension pursuant to § 285.417, then BOEM may waive or defer a lessee’s payment obligations during the suspension. Additionally, BOEM may decide to waive or defer the payment obligation based, in part, on the reasons for the suspension and the lessee’s responsibility for the circumstances that necessitated the suspension. These changes were made to maintain consistency with the regulations in part 585 and to provide the same flexibility when either BSEE or BOEM orders a suspension.

**§ 285.602 What records must I maintain?**

**Summary of proposed rule provisions:** The Department proposed expanding the recordkeeping requirements to require lessees and grant holders to retain records relating to lease or grant compliance, including SMS requirements.

**Summary of comments:** BSEE did not receive any comments regarding this section.

**Summary of final rule revisions:** The Department is finalizing the language that it proposed in § 285.602, with administrative revisions, to clarify that a lessee must maintain and provide to BSEE, upon request, all data and information related to compliance with the required terms and conditions of its lease, grant, reports submitted under this part, and approved plan until BOEM releases the lessee's financial assurance under § 585.534. This revision, which is now in § 285.602, will help ensure BSEE receives or has access to compliance information for all of the applicable operations and activities. BSEE is making administrative corresponding edits to reflect the applicability of this part to BSEE instead of BOEM as identified in the Reorganization Rule.

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

**Summary of proposed rule provisions:** The Department proposed revising paragraph (b) by adding the word "description" after Safety Management System to clarify that it is a description of the Safety Management System that must be submitted, in conformance with the requirements outlined in § 585.810.

**Summary of comments:** BSEE did not receive any comments regarding this section.

**Summary of final rule revisions:** BSEE is revising paragraph (b) of § 285.614, consistent with the proposed § 585.614, to clarify that a lessee must comply with the requirements of subpart G of this part and submit its SMS description as required by § 285.810 before construction may begin if the lessee is installing a facility or a combination of facilities deemed by BOEM to be complex or significant.

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

**Summary of proposed rule provisions:** The Department proposed moving existing § 585.708(a)(5)(ii) into § 285.637 and changing "certification" to "verification" to maintain consistency with other provisions of the proposed rule. The Department also proposed clarifying that commercial operations

may commence 30-calendar days after the Department deems submitted—rather than receives—the final project verification report as described in proposed §§ 585.704 and 585.708(a)(5), provided that the Department has not notified you within that time frame of any objections to the verification report and that the Department has confirmed receipt of critical safety systems commissioning records, as described in § 585.708(a)(6). The Department proposed revising § 585.713 by moving the requirement to notify the Department within 10-business days of starting commercial operations into § 585.637.

The Department also proposed revising the definition of "commercial operations" to clarify that the generation of electricity needed for the preparation of the final FIR or the generation of electricity for testing purposes would be excluded from the definition, provided that such electricity is not sold on a commercial basis.

**Summary of comments:**

**Comment:** A commenter suggested revising this section to allow lessees to produce and sell power prior to final FIR non-objection.

**Response:** BSEE agrees with the commenter and is revising this section to require that lessees and CVAs submit information to demonstrate that facilities installed prior to first producing commercial power have been fabricated and installed and that Critical Safety Systems and Equipment have been commissioned properly. The lessee may continue to keep producing so long as the lessee and CVA continue to submit information demonstrating the additional facilities been fabricated and installed and that Critical Safety Systems and Equipment have been commissioned properly as they come online. This addresses industry concerns about increased fatigue on the facilities if they are shut down for extended periods of time and concerns about the ability to meet power purchase agreements while balancing the need for BSEE to ensure the safe operation of facilities on the OCS.

**Comment:** A commenter requested clarification on what is to be included in the proposed PVR and when it should be submitted for commercial operations to commence and suggested that CVAs be required to provide a Project Certification Close-out Report within 18 months of commercial operations.

**Response:** BSEE did not create a project certification closeout report to be submitted within 18 months of commercial operations, because some projects, especially large projects, may

not have completed installation of all their facilities within 18 months of commercial operations. BSEE may consider this comment if it is within the scope of future rulemakings. BSEE is updating § 285.637 to allow for power to be produced so long as lessees can demonstrate and continue to demonstrate that their facilities were designed, fabricated, installed, and commissioned properly to protect life and the environment. This update addresses industry concerns about increased fatigue on the facilities if they are shut down for extended periods of time and concerns about the ability to meet power purchase agreements while balancing the need for BSEE to ensure the safe operation of facilities on the OCS. The contents of the project verification report and submission requirements are described in § 285.708.

**Comment:** A commenter requested that BSEE refine the definition to allow lessees to produce and "commercially sell test power produced prior to the FIR non-objection." The commenter asserted that this change would reduce tension in the electricity market rules and prevent developers from defaulting on contractual commitments. The commenter also requested clarification in the final rule that "commercial operations" does not include energy produced after commissioning and testing but prior to the commencement of such operations. The commenter asserted that requiring developers to cease generation during the FIR review could cause damage to turbines, would be unproductive, and would reduce the fair return to taxpayers.

**Response:** BSEE has addressed the concern over commercial operations in § 285.637. The regulation has been revised to allow lessees to produce and sell power prior to final FIR non-objection. The lessees and CVAs must submit information to demonstrate that facilities installed prior to first producing commercial power have been fabricated and installed and that Critical Safety Systems and Equipment have been commissioned properly. The lessee may continue to produce as long as the lessee and CVA continue to submit information demonstrating the additional facilities have been fabricated and installed and that Critical Safety Systems and Equipment have been commissioned properly as the facilities come online. Commercial operations begin the first time the project generates electricity or other energy product for commercial use, sale, or transmission or distribution from a commercial lease.

BSEE also revised § 285.637(a)(1) through (4) and (b) to allow for power to be produced so long as lessees can

demonstrate and continue to demonstrate that their facilities were designed, fabricated, installed, and commissioned properly to protect life and the environment. BSEE revised this regulation because it recognizes that allowing the turbines to spin minimizes fatigue on the turbine and allowing power to be produced to the grid minimizes negative impacts to power purchase agreements.

*Summary of final rule revisions:*

BSEE considered comments on the corresponding proposed revisions to § 285.637 and is finalizing the proposed language in § 285.637, with revisions to paragraphs (a)(1) through (4), (b), and (c) based on the comments. Paragraphs (a)(1) through (4) address when a lessee may commence commercial operations if the lessee is conducting activities on its lease that do not require a FERC license. Under revised paragraph (a), a lessee may commence commercial operations after the following have occurred:

(1) the lessee has submitted information consistent with § 285.702(c) and (d) for facilities installed prior to commencing commercial operations;

(2) the CVA has submitted their PVR, as described in § 285.708(a)(5) including information required by § 285.708 (b)(1), or interim report(s), as described in § 285.712(a), for facilities installed prior to commencing commercial operations;

(3) the CVA has submitted their Critical Safety Systems and Equipment commissioning records, as described in § 285.708(a)(6), or interim report(s), as described in § 285.712(a); and

(4) BSEE has not notified the lessee of any objections to the submittals in paragraphs (a)(1) and (a)(3) of this section within the timeframes in §§ 285.700(d) and 285.712(a), as applicable.

Paragraph (b) allows a lessee to continue commercial operations as additional facilities complete commissioning if the lessee has submitted the information required by paragraphs (a)(1) and (3) of this section for facilities installed after commercial operations have commenced. Lastly, paragraph (c) requires a lessee to notify BSEE within 10 business days after it has commenced commercial operations.

The result of the revisions to § 285.637 is that the lessee can continue to produce electricity, which also minimizes fatigue on the turbines, provided that BSEE continues to receive information demonstrating that the facilities were fabricated, installed, and commissioned properly.

*§ 285.638 What must I do upon completion of my commercial*

*operations as approved in my COP or FERC license?*

*Summary of proposed rule provisions:* The Department proposed revising § 285.638(a) to remove references to §§ 285.905 and 285.906.

*Summary of comments:* BSEE did not receive any comments regarding this section.

*Summary of final rule revisions:* The Department is finalizing the first sentence of paragraph (a) in § 285.638, consistent with proposed § 285.638, to require an operator to decommission its project as set forth in subpart I of this part upon completion of its approved activities under its COP.

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

*Summary of proposed rule provisions:*

The Department proposed clarifying its authority to allow lessees to submit their FDRs and FIRs for review by major component, so long as the lessee explains how all the major components will function together in an integrated manner in accordance with the project design and the integration is verified by a CVA. The Department also proposed clarifying that FDRs and FIRs may be submitted before or after SAP, COP, or GAP approval, though the Department's 60-day review period will not start until the report is deemed submitted and the plan is approved.

The Department also proposed revising § 285.700 by adding new paragraphs (b) and (c), and redesignating paragraphs (b) and (c) as paragraphs (d) and (f). The Department proposed revisions to the language in paragraph (b) of the existing regulations (redesignated as paragraph (d)), and to add a new paragraph (e). Paragraph (d) clarifies that FDRs and FIRs may be submitted before or after SAP, COP, or GAP approval, though the Department's 60-day review period will not start until the report is deemed submitted and the plan is approved. Fabrication and installation activities on the OCS may only commence once a lessee or grant holder has received the Department's non-objection to the FDR and FIR or if no objections were made by the end of the Department's 60-day review.

Proposed new paragraph (e) clarifies that (1) the procurement of discrete parts of the project that are commercially available in standardized form and type-certified components, or fabrication activities that do not take place on the OCS, may commence prior to the submittal of the FDR and FIR or any plans required under the Department's regulations; and (2) any procurement or fabrication of facility

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

Finally, the Department proposed to revise existing paragraph (c) and redesignate it as paragraph (f), to clarify that it has 60 calendar days to object to an FDR or FIR or to request additional information.

*Summary of comments:*

*Comment:* Commenters suggested that the terms "verification" and "certification" are not consistently defined across published standards.

*Response:* BSEE agrees and, after considering various relevant standards and references, is revising these terms as defined in the Oxford Dictionary and contextual usage in relevant standards. The terms "certify" or "certification" describes how the CVA "recognizes that (someone or something) possesses certain qualifications or meets certain standards." BSEE may require a CVA to "certify" that a design or safety component conforms to a defined certification protocol based on criteria from specific quality assurance standards or recognized accepted engineering practices. The terms "verify" or "verification" describes how the CVA demonstrates that something is true, accurate, or justified. BSEE has evaluated each of the CVAs actions, as required by the regulations, and updated the regulations to use the appropriate term.

*Comment:* Commenters suggested allowing a staged submittal of the FDR and FIR. A few commenters stated that the proposal provides improved clarity and flexibility to sequence the submittal to match the fabrication schedule and reduces burden on the regulator and project. A commenter suggested that the Department specifically state that FDRs and FIRs may be organized and submitted by Tier 1 components such as Wind Turbine Generator, Wind Turbine Tower, Wind Turbine foundation structure inclusive of all substructures and appurtenances, Inter-array cables, Offshore Substation topsides, Offshore substation foundation structure inclusive of all substructures & appurtenances, and Export cables.

*Response:* BSEE agrees and is finalizing the proposed language of this section to allow and encourage separate FDR/FIR submittals of integrated asset packages for added flexibility per § 285.700(b).

*Comment:* A commenter suggested amendments to § 285.700(c) to

incentivize a submittal for an early review before the COP approval. This early review of the FDR and FIR for completeness would create efficiencies in the BSEE engineering review and facilitate BSEE's ability to complete its review within the 60-day period. The commenter stated that this is critical for facilitating development post-COP approval, as every day counts where developers are rapidly mobilizing toward the commencement of offshore construction while making major capital expenditures.

**Response:** BSEE disagrees with the suggestion to incentivize a submittal for an early review before the COP approval. FDRs and FIRs cannot be deemed submitted prior to approval of the COP, SAP, or GAP. BSEE must ensure that the FDR and FIR remain within PDE, which is not possible until plan approval.

BSEE is finalizing text proposed in § 585.700(e), now in § 285.700(e), to clarify that procurement of discrete parts of the project, which are commercially available in standardized form or type-certified components may take place prior to submittal of an FDR or FIR. Also, fabrication activities that do not take place on the OCS (e.g., manufacturing) may take place prior to the submittal of an FDR or FIR. However, the developer assumes the risk that BSEE may not allow equipment procured or fabricated prior to BSEE not objecting to the FDR and FIR to be installed on the OCS. Procurement of discrete parts of the project or onshore fabrication that begins prior to FDR or FIR is still subject to CVA verification and may not be accepted later by BSEE.

**Comment:** A commenter disagreed with the Department's proposed changes, stating that these modifications degrade the EIS process by allowing significant investment by energy development companies before the Department can provide decisions on projects, which could lead to conflicts of interest.

**Response:** BSEE disagrees with the commenter and is not revising the rule based on this comment. The EIS is developed by BOEM, as the lead Federal agency, not by an applicant. Likewise, the decision whether to approve a project proposal described in a COP is a Federal decision delegated to BOEM, not the applicant. BOEM and BSEE adhere to the NEPA requirements at 40 CFR 1506.1(b) that limit actions *within the agency's jurisdiction* during the review of an application from a non-Federal entity and the concurrent NEPA process. Investment decisions by energy development companies described by the commenter—such as investments to

other onshore infrastructure, to reserve manufacturing slots, or to reserve vessels and equipment—are not within either bureau's jurisdiction. Companies can choose to wait until BOEM completes the EIS and issues a COP approval and/or until BSEE completes its review of the FDR and FIR and does not object before making any significant investments in procurement or fabrication. Procurement of discrete parts of the project or onshore fabrication that begins is still subject to CVA verification, which includes ensuring the facilities are within what was approved in the COP, SAP, or GAP and the FDR, and may not be accepted later by BSEE.

**Comment:** Commenters suggested that the Department make the following revisions: (1) modify the rule to remove the use of the term "type-certified" as it is unclear what stage of type certification is needed before permission is granted or include "type-certified" as a definition in the final rule; (2) alternatively, introduce a definition in § 585.112 of type-certified to clarify what is meant by this term. In that case, include that when used in these rules, type-certified may describe components that are provisionally certified or components that are in the process of type certification, so long as the type certification is in place at time of final manufacturing; and (3) simplify the approach by stating that the regulations impose no restrictions on fabrication or procurement that does not occur on the OCS.

**Response:** BSEE has revised the proposed language based on the comment. Type-certified has been removed from the definition of fabrication but remains in the § 285.700 regulation to explain that a type-certified component may be procured prior to FDR and FIR non-objection. However, the developer assumes the risk that BSEE may not allow equipment procured or fabricated prior to BSEE not objecting to the FDR and FIR to be installed on the OCS. Any procurement or onshore fabrication that begins prior to FDR or FIR is still subject to CVA verification and may not be accepted later by BSEE. In this case, type-certified means a full type-certification issued by an accredited type-certifier. Type certification is process that is well understood and using the word "type certified" instead of "provisional type certification" clearly means that the full type certification has been achieved. BSEE disagrees with the commenter's assertion of no restrictions on fabrication and has not made any changes to reflect this comment. There are important restrictions on fabrication

and procurement in that anything fabricated or procured prior to non-objection of the FDR and FIR is done at the developer's own risk as explained above.

**Comment:** Several commenters suggested changes that would enable the Department to approve separate FDRs and FIRs for major project components. The commenters stated that these changes would encourage developers to seek CVA review throughout their project design process and would permit the use of specialized CVAs to verify specific project components.

**Response:** The comments support the changes that BSEE has already made. BSEE already allows and encourages separate FDR and FIR submittals of integrated asset packages to allow for flexibility pursuant to § 285.700(b).

**Comment:** Another commenter expressed support for the proposed modifications to the rule as it would allow for staged data submittal, remove existing requirements that a lessee or grant holder begin to fabricate and install only after the Department has notified the lessee or grant holder that it has received the FDR and FIR and that it has no objections, and define "fabrication" as "cutting, fitting, welding or other assembly or project elements of custom design conforming to project specific requirements" and excluding from the definition the procurement of discrete parts of the project that are commercially available in standardized form.

**Response:** The comment supports what the Department proposed and is finalizing. BSEE is allowing staged submittal of FDRs and FIRs based on integrated asset packages. BSEE still must review and not issue an objection to both the FDR and FIR for an integrated asset package before offshore fabrication or installation may begin. BSEE is also clarifying that procurement of discrete parts of the project, which are commercially available in standardized form or type-certified components may take place prior to submittal of an FDR or FIR. Also, fabrication activities that do not take place on the OCS (e.g., manufacturing) may take place prior to the submittal of an FDR or FIR. However, the developer assumes the risk that BSEE may not allow equipment procured or fabricated prior to BSEE not objecting to the FDR and FIR to be installed on the OCS. Any procurement or onshore fabrication that begins is still subject to CVA verification and may not be accepted later by BSEE. BSEE also modified the definition of fabrication to state that, "Fabrication means the cutting, fitting, welding, or other assembly of project

elements.” The exclusions previously proposed in the definition are now in the regulations at § 285.700 but were not appropriate for a definition.

*Comment:* A commenter suggested allowing offshore work to occur within 60 days of notification of objection and removing the language regarding additional requests for information in § 585.700(f). The term “objection” is not a defined term, so it allows the Department to determine what necessitates an objection, which could be the request for additional information.

*Response:* BSEE disagrees with the suggestion of a 60-day time period. A lessee must resolve all objections before work may begin; the timeframe for when offshore work may begin after notification of an objection is dependent upon when sufficient information is sent to BSEE to resolve the objection. If there are unresolved information needs, BSEE will object. BSEE agrees with the commenter regarding removing “requires additional information” from § 285.700(f) and has done so in the final rule. BSEE will object if there are unresolved information needs.

*Comment:* A commenter suggested including both “iFIR” and “fFIR” to reference initial and final FIRs.

*Response:* BSEE did not implement the commenter’s suggestion and did not include “iFIR” and “fFIR” as acronyms in the final rule. BSEE will continue to use the acronym “FIR” and the phrase “final Fabrication and Installation Report” because it sufficiently distinguishes the two types of reports. BSEE will consider updating this in future rulemakings.

*Comment:* A commenter requested clarification on the meaning of “accepted industry or engineering standards” in the reporting requirements before installation in § 285.700(e).

*Response:* Acceptable industry standards include national or international standards that are fit for use in the United States OCS. BSEE, in conjunction with the CVA, reviews the proposed industry standards for use as part of the review process. BSEE did not make a change to the proposed rule based on the comment.

#### *Summary of final rule revisions:*

The Department is finalizing the language in § 285.700, as was proposed § 585.700, with clarifying revisions. Paragraph (a) requires lessees to submit an FDR and FIR before installing facilities in their approved COP, and, when applicable, their approved SAP or GAP. Paragraph (b) allows lessees to submit separate FDR(s) and FIR(s) for integrated asset packages and requires

the FDR(s) and FIR(s) for integrated asset package to be complete along with an explanation of how the FDR or FIR will function effectively in an integrated manner and a CVA verification of such integration. Paragraph (c) allows lessees to submit their FDRs and FIRs before or after SAP, COP, or GAP approval.

Paragraph (d) allows lessees to commence fabrication and installation of facilities, subject to the requirements in paragraph (b), when (1) BSEE deems the lessee’s report submitted before SAP, COP, or GAP approval and notifies the lessee of its non-objection to the FDR and FIR or does not respond within 60 business days of SAP, COP, or GAP approval, or (2) BSEE deems the lessee’s report submitted after SAP, COP, or GAP approval and notifies the lessee of its non-objection to the FDR and FIR or does not respond with objections within 60 business days of the report being deemed submitted.

Paragraph (e) allows lessees to commence procurement of discrete parts of the project that are commercially available in standardized form and type-certified components, or fabrication activities that do not take place on the OCS, prior to submitting the reports required under paragraph (a) subject to CVA verification and certification. BSEE retains authority to object to the installation of said components if certain conditions are not met. The Department proposed changing the word “certification” to “verification” in paragraph (e). After review of comments and careful consideration, BSEE determined that components fabricated before BSEE does not object to the FDR and/or FIR are subject to CVA verification and certification as required by §§ 285.701–285.714.

Under paragraph (f), BSEE will notify a lessee in writing within 60 business days of the report being deemed submitted if BSEE has an objection(s). A lessee cannot commence fabrication or installation activities on the OCS until all objections in such reports are resolved to BSEE’s satisfaction.

Within this provision, BSEE is clarifying that the 60-day FDR and FIR review period in the existing regulation is 60 business days. BSEE determined that a 60-business day review period, rather than the proposed 60-calendar day review period, is necessary to ensure that BSEE has sufficient time to review these complicated and lengthy technical documents.

BSEE responded to comments concerning separating FDR(s) and FIR(s) into integrated asset packages in Section III, D. above. Additional comments and

responses regarding this provision are provided below.

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

##### *Summary of proposed rule provisions:*

The Department proposed replacing the requirements for floating turbines in the existing paragraph (b) with a reworded requirement in proposed paragraph (a)(6). The Department proposed that the FDR include the results of any detailed geotechnical surveys that were deferred as a result of proposed § 585.626(b)(1)(iii). Similarly, the Department proposed that the FDR include the results of any archaeological surveys that were deferred on a case-by-case basis under proposed § 585.626(b)(3). The Department proposed adding a requirement in new paragraph (a)(12) for the lessee to include design standards in the FIR. Also, the Department proposed a new requirement in paragraph (a)(13) for the lessee to include information on critical safety systems, including a risk assessment that identifies the critical safety systems and a description of the identified critical safety systems.

Finally, the Department proposed a catch-all category to cover necessary project-specific information that may not be contained within the listed categories. The Department also proposed to eliminate the third column of the table in paragraph (a) as superfluous, given the Department’s proposed elimination of the paper copy requirement and to replace that column’s content with a new paragraph (b) consistent with the proposed § 585.110.

The remaining proposed changes were technical corrections and included: removal of the word “proposed” from the project easement requirement in paragraph (a)(2)(iii) because the project easement would be approved already at the time of FDR review; substitution of “verification” for “certification” in the description of the CVA’s duties in addition to the CVA verification statement that the facility has been designed to provide for safety, in keeping with other proposed changes in § 285.701(d); and removal of the trade secrets provision in existing paragraph (e) as redundant of § 285.113.

##### *Summary of comments:*

*Comment:* A commenter supported moving geotechnical data to the FDR. Other commenters opposed moving the geotechnical data to the FDR because of how it may impact the Department’s environmental analysis.

*Response:* Both BOEM and BSEE revised proposed amendments to the survey data requirements in the final rule and narrowed them to apply only

to geotechnical survey data that are used for engineering purposes. Geophysical and some geotechnical data that is needed for BOEM to conduct their environmental analysis will still be submitted for the COP. The geotechnical data submitted with the FDR will be used for the site-specific engineering design.

BSEE finalized moving reports and supporting data from geotechnical surveys, *in situ* explorations, laboratory tests, analyses, burial or drivability assessments, and recommended design parameters to § 285.701(a)(10).

**Comment:** Another commenter suggested that, although the proposed rule change in § 285.701(a) allows the lessee to propose respectively design and fabrication standards specific to the project, the proposed change does not present an acceptance criterion, evaluation process definition, or the methodology used on the validation of the proposed standards for the application. The commenter recommended that the Department add language defining the acceptance process to provide clarity to the regulation.

**Response:** Nationally and internationally recognized standards included in the FDR and FIR are reviewed for design applicability and conformance by the CVA and BSEE SMEs. The FDR and FIR should clearly demonstrate the required performance criteria can be met and where the standards were used to support the engineering design, accordingly, BSEE has determined that additional clarity in the regulation is not necessary.

**Comment:** Several commenters also suggested that the final rule provide more flexibility than the proposed rule by stating that data submitted after the COP approval is not required for the Facility Design Report (FDR)/Facility and Installation Report (FIR) to avoid delays in completion of the FDR/FIR process within 60 days.

**Response:** BSEE and BOEM determined that the amount of flexibility proposed and incorporated into the final rule achieves the appropriate balance between efficiency and the need to review site-specific engineering design information. Site-specific geotechnical survey data must be included in the FDR/FIR. The existing requirement to submit site-specific geotechnical data at the COP stage under § 285.626(a) is being modified by both agencies, as proposed. BSEE and BOEM are relocating review of this site-specific data from § 285.626(a) to § 285.701(a). Moving this review from the COP to the FDR provides efficiencies by aligning the

information needs for site specific information at the FDR with the requirements for the geotechnical information. Geotechnical data not submitted in the COP is critical for the site-specific engineering design and is therefore necessary in the FDR to ensure the design is appropriate for the location in which it will be installed.

**Comment:** A commenter requested additional guidance on how a CVA may verify safety and suggested that a “design-basis” approach as described in BOEM’s 2020 COP Guidelines Attachment C could be applied. Another commenter suggested that § 285.701(a)(13) should be revised to “(i) A risk assessment that identifies the Critical Safety Systems and Equipment with the exception of critical safety systems that are incorporated in type approved components or facilities. (ii) A description of the identified critical safety systems.”

**Response:** BSEE considered this comment but determined that the FDR must contain site-specific engineering designs supported by codes and standards, making a “design-basis” approach inappropriate. BSEE did not make changes to the final regulation to incorporate a “design-basis” approach.

BSEE also did not change § 285.701 to exclude critical safety systems that are incorporated in type-approved components or facilities. In order to ensure the safety of workers on the OCS, BSEE needs to understand all the critical safety systems and equipment on the facilities, even if part of type-approved components. BSEE requires that the FDR include a risk assessment that identifies hazards and mitigations, which includes critical safety systems and equipment. Risk assessment results should be integrated into the design, such that the identified hazards have been reduced to an acceptable level of risk. No change was made based on this comment.

**Comment:** A commenter expressed support for the submittal of certain archaeological surveys with the FDR, stating that this would allow flexibility and would allow lessees to tailor the survey program and would reduce the number of surveys and reduce vessel time in the water and associated environmental impacts. The commenter also requested that the Department not extend engagement throughout the design process to address stakeholder preferences.

**Response:** BSEE disagrees with the commenter’s request to allow lessees to postpone archaeological surveys to the FDR. The Department received many comments opposing this, and the Department’s subject matter experts

confirmed that not receiving full geophysical analysis until the FDR would complicate BOEM’s environmental reviews and consultations. Upon review of the comments the Department determined that all archaeological surveys will be required at the COP stage and the proposed change to allow lessees to postpone archaeological resources reports to the FDR was not finalized in § 285.701(a) of the final rule.

**Comment:** A commenter expressed disagreement with the note in the proposed rule suggesting that delayed archaeological surveys could lengthen the NHPA section 106 review process. The commenter asserted that the proposed rule is in line with industry standards and suggested that the Department clarify in the final rule whether any supporting documentation would be required to get a survey strategy approved under the performance-based standard.

**Response:** The Department’s NPRM § 285.626(b)(3) stated that “[o]n a case-by-case basis and subject to terms and conditions of COP approval per § 285.628(f), BOEM may permit you to submit certain surveys of the subsea portions of the area of potential effects with your FDR per § 285.701(a)(11).” Upon consideration of comments received, the Department is eliminating this language. The Department agrees that sufficient geophysical data is necessary to assess potential impacts from offshore wind activities on cultural resources and the introduction of a case-by-case deferral of certain marine archaeological surveys could create uncertainty for some parties participating in consultations conducted according to section 106 of the NHPA. BSEE has removed the referenced regulatory text in § 285.701(a) from the finalized language in § 285.701(a).

**Comment:** Another commenter stated that, although the proposed change to § 285.701(a) would allow the lessee to propose design and fabrication standards specific to the project, the change does not present an acceptance criterion, evaluation process definition, or the methodology used on the validation of the proposed standards for the application. The commenter recommended that the Department define the acceptance process to provide clarity to the regulation.

**Response:** The Department is finalizing as proposed the flexibility for proposing standards. The CVA and BSEE subject matter experts review the national and international standards included in the FDR for design applicability and conformance. The FDR should clearly demonstrate that the

required performance criteria can be met and where the standards were applied to support the engineering design.

BSEE declined to add specific criteria as industry standards are changing and still being developed, especially U.S.-specific standards. The CVA must review and agree that the standards are appropriate. BSEE must have a chance to review the standards also.

*Comment:* A commenter expressed concern that the definition of “critical safety systems” is too vague and suggested several changes to FDRs and FIRs to alleviate those concerns. Additionally, the commenter requested that the Department clarify the content required for FDRs and FIRs, and the approval process for separately submitted FDRs and FIRs.

*Response:* Because technologies are constantly changing, BSEE has determined that maintaining flexibility by requiring lessees to identify Critical Safety Systems and Equipment on a project basis through a risk assessment process is needed. Accordingly, BSEE has not made any changes to the definition of “Critical Safety Systems and Equipment” in § 285.112 in response to this comment. The CVA must oversee the risk assessment and associated results. Sections 285.701 and 285.702 clearly lay out BSEE’s expectations for the content of the FDR and FIR, respectively. The approval process for separate FDRs and FIRs is the same as for a single FDR and FIR.

*Comment:* A commenter requested that the Department revise §§ 285.701(a)(12) and 285.105 to require only the most relevant industry standards that apply to the project be submitted in the FDR and FIR. The commenter also suggested BSEE should remain the authority to determine if a sufficient level of detail is covered in the submitted standards.

*Response:* BSEE is not revising § 285.701 to require only the most relevant industry standards because “most relevant” is an ambiguous term. BSEE will consider updates to standards requirements in future rulemakings.

*Comment:* A commenter stated that there is ambiguity in the content required in the FDR and FIR and suggests that the Department remove the requirement that CVA’s must conduct independent assessments of other pertinent parameters of proposed designs.

*Response:* BSEE provides the requirements of what must be included in an FDR in § 285.701 and in an FIR in § 285.702. Designs are constantly changing so the need to require an “independent assessment of other

pertinent parameters of proposed designs” is necessary to ensure there is sufficient information to verify the safety of the proposed design.

*Comment:* A commenter suggested deleting “catch-all” provisions in the list of FDR and FIR content requirements §§ 285.701(a)(14) and 285.702(a)(10).

*Response:* The provisions list a requirement to include other information in §§ 285.701(a)(13) and 285.702(a)(10) because technologies are constantly changing and BSEE must be able to request information to verify the safety of the proposed design. Accordingly, BSEE is not deleting these provisions.

*Summary of final rule revisions:*

The Department is finalizing the language in proposed § 285.701, including revisions to paragraphs (a)(1) through (10); the addition of paragraphs (a)(11) through (13); and removal of paragraph (e). BSEE is revising paragraphs (a)(4), (6), and (9) to include “tendon”. The revisions address how the design report demonstrates that the design conforms to key responsibilities listed in § 285.105(a) and the required documents in the report; require submission of an FDR to BSEE pursuant to § 285.110 and identification of the location of records; and include a certification statement with accompanying justification in the FDR if the lessee is required to use a CVA.

BSEE is not finalizing the removal of the reference to the U.S. Coast Guard for structural integrity and stability in paragraph (b).

Geotechnical information, previously submitted as part of the COP, is revised to be submitted as part of the FDR pursuant to § 285.700(a)(10). The Department proposed to change the term “certified” to “verified” in paragraph (d). BSEE determined that certified is the proper term in this regulation as certified describes how the CVA “recognizes that (someone or something) possesses certain qualifications or meets certain standards.” See § 285.700 above for a more detailed discussion of the use of the words “certification” and “verification.”

BSEE responded to comments concerning FDR(s) and FIR(s) in Section III, D. above. Additional comments and responses regarding this provision are provided below.

The provisions in this final rule do not change or purport to change any other Federal agencies’ regulatory requirements, including the USCG’s regulations governing integrity and stability of floating facilities.

**§ 285.702 What must I include in my Fabrication and Installation Report? Summary of proposed rule provisions:**

The Department proposed adding a requirement in proposed paragraph (a)(6) that lessees and grant holders submit any certificates documenting that they are adhering to a recognized quality assurance standard. The Department also proposed to clarify that any environmental information contained in a previously submitted corresponding plan may be incorporated by reference in an FIR to the extent that information satisfies the requirements of proposed paragraphs (a)(7)(i) through (iv). The Department also proposed to add a requirement in paragraph (a)(8) for the submittal of commissioning procedures for critical safety systems. The Department also proposed to eliminate the third column of the table in paragraph (a) as superfluous given the Department’s proposed elimination of the paper copy requirement and to replace that column’s content with a new paragraph (b) consistent with the proposed § 285.110. The proposed paragraph (c) would provide clarity and add flexibility regarding project easement information submittals and requests. Finally, as with its proposed changes to the FDR requirements in § 285.701, the Department proposed a catch-all category for necessary project-specific information that may not be covered by the listed categories.

*Summary of comments:*

*Comment:* A commenter suggested that the Department revise § 285.702(a)(3) from “The industry standards you will use to [ . . . ]” to “A listing of the most relevant industry standards you will use to [ . . . ].”

*Response:* BSEE is not revising § 285.702 to require only the most relevant industry standards because “most relevant” is ambiguous and does not provide the regulated community with sufficient certainty and clarity.

*Comment:* A commenter requested that language be amended in § 285.702(a)(8) to remove “other BOEM approved procedures” to improve clarity.

*Response:* BSEE agreed with the commenter that improved clarity was necessary but implemented the edits differently than the commenter proposed. BSEE revised § 285.702(a)(8) from “other BOEM approved procedures” to “other BSEE accepted engineering practices.” BSEE made this revision to allow not only the use of OEM procedures, but also other procedures that have been developed by a qualified individual for the specific equipment in the specific location where it will be used or installed.

**Comment:** A commenter suggested removing requests for project easements submitted as part of the FIR as they are pursuant to the COP approval and not relevant to request at the FIR stage.

**Response:** BSEE has removed requests for project easements submitted as part of the FDR from its regulations. BOEM has jurisdiction over the issuance of project easements.

**Comment:** A commenter suggested allowing flexibility in the final rule for commissioning procedures and documentation to be reviewed in the execution phase and submitted as part of the FIR rather than requiring commissioning documentation with the FIR.

**Response:** BSEE is not making a revision to the final rule based on this comment because there is currently no report during the execution phase where BSEE could move this requirement. The commissioning procedures remain part of the FIR review, but BSEE will consider this in future rulemakings. Information on the commissioning of the Critical Safety Systems and Equipment must be submitted after commissioning takes place.

*Summary of final rule revisions:*

The Department is finalizing this regulation, consistent with proposed § 585.702. BSEE is revising paragraphs (a)(1) through (7); removing the existing paragraph (d); redesignating existing paragraphs (b) and (c) as paragraphs (c) and (d), respectively; adding paragraphs (a)(8) through (10) and (b); and revising the newly redesignated paragraph (d). The revisions add new required documents in the fabrication and installation report, including quality assurance information in paragraph (a)(6), commissioning procedures for Critical Safety Systems and Equipment in paragraph (a)(8), and other information in paragraph (a)(10). BSEE also made administrative edits to new paragraph (b) about requiring lessees to submit their FIR to BSEE pursuant to § 285.110; redesignated paragraph (c) about providing the location of records, as required in § 285.714(c); and to redesignated paragraph (d) about including a certification statement with accompanying justification in the FIR if the lessee is required to use a CVA.

Paragraph (c), as proposed in the NPRM, was removed because requests for project easements must be submitted to BOEM and not as a part of the FIR.

The NPRM proposed to replace the term “certified” with “verified” in redesignated paragraph (d). After review of comments and careful consideration, BSEE determined that the term “certified” is the proper term in this regulation because certified describes

how the CVA “recognizes that (someone or something) possesses certain qualifications or meets certain standards.”

BSEE removed the trade secrets provision in existing paragraph (d) as redundant of § 285.113.

BSEE responded to comments concerning FDR(s) and FIR(s) in Section III, D. above. Additional comments and responses regarding this provision are provided below.

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

*Summary of proposed rule provisions:*

The Department proposed to eliminate language in paragraph (a) indicating that major repairs or modifications must be “certified,” consistent with the proposed changes to §§ 585.701 and 585.702. The Department proposed that any major modification or repair report contain a CVA verification statement analogous to the one required for FDRs in § 585.701 and for FIRs in § 585.702. The Department also proposed to clarify the definition of a “major repair” in paragraph (a)(1) to include substantial repairs to critical safety systems and the definition of a “major modification” in paragraph (a)(2) to include a substantial alteration of a critical safety system.

The Department proposed to determine the completeness of the application before its review period begins. The proposed rule provided that the Department will have 20-calendar days to make this determination. The Department proposed to add this regulation to clarify that the reports (e.g., FDR, FIR, and project verification reports) must be deemed submitted before the 60-calendar day or 30-calendar day review period begins.

*Summary of comments:*

**Comment:** A commenter suggested that § 585.703(a) should clarify that “major repairs and major modifications” refer to project modifications post-installation.

**Response:** BSEE agrees that project repair and project modification reports are intended to apply to major post-installation repairs and modifications. BSEE has internal procedures to review modifications during FDR or FIR review and prior to facility installation outside of § 285.703(a), which are communicated to the lessee as applicable. BSEE is not making any revisions to the final rule based on this comment but may consider updates in future rulemakings.

**Comment:** A commenter requested that the Department further define the extent of what is considered “substantial” in § 585.703(a)(1) and (2).

**Response:** BSEE is declining to make a specific definition of “substantial” in this regulation but may consider this in future rulemaking.

*Summary of final rule revisions:*

The Department is finalizing paragraphs (a) and (c), consistent with proposed § 585.703. The revisions in paragraph (a) require a lessee to submit to BSEE a Project Modification or Repair Report, in which it certifies that major repairs and major modifications to a completed project conform to accepted engineering practices. The definitions of the terms “major repair” and “major modification” are also revised to include “substantial repair” and “substantial alteration”, respectively.

The NPRM proposed to replace the term “certified” with “verified” in paragraph (c). After review of comments and careful consideration, BSEE determined that the term “certified” is the proper term in this regulation because certified describes how the CVA “recognizes that (someone or something) possesses certain qualifications or meets certain standards.”

*§ 285.704 After receiving the FDR, FIR, or project verification reports, what will BSEE do?*

*Summary of proposed rule provisions:* Over the past few years, BOEM received numerous incomplete COPs and other documents that it could not properly evaluate. This created many issues between the lessees and BOEM with respect to the status of the applications. To address this, the Department proposed making a determination as to the completeness of the application before its review period begins. The proposed rule provided that the Department will have 20-calendar days to make this determination. The Department proposed making a determination that if any given report is sufficiently accurate and complete, it would deem it submitted, which would begin the applicable period of time for the Department to review and object, as necessary. The Department proposed to add this regulation to clarify that the reports (e.g., FDR, FIR, and project verification reports) must be deemed submitted before the 60-calendar day or 30-calendar day review period begins.

*Summary of comments:*

**Comment:** A commenter suggested that the Department remove the 20-day limit for a completeness review of the FDR, FIR, and PVR as the Department already reserves the right to pause the review period if the report is incomplete.

**Response:** FDR and FIR packages can include hundreds of documents. Adequate time is needed to ensure the

packages are complete to decrease the likelihood of an objection at the end of the review period due to missing or incomplete information.

*Comment:* A commenter requested clarification on how the completeness review differs from the formal review, particularly related to the non-objection periods and if they can overlap.

*Response:* BSEE conducts a completeness review to ensure that the bureau has all the information needed prior to beginning its official review. The purpose of the completeness review is to prevent objections based on missing or incomplete information. The completeness review and formal review periods cannot overlap.

*Comment:* A commenter suggested revising the final rule to state that “FDRs and FIRs could be deemed submitted by BOEM before SAP COP or GAP approval if submitted more than 20 calendar days prior to SAP COP or GAP approval.”

*Response:* FDRs and FIRs cannot be deemed submitted prior to approval of the COP, SAP, or GAP. BSEE must ensure that the FDR and FIR remain within the PDE, which is not possible until plan approval.

*Comment:* A commenter requested clarification on the requirements for PVR submission being “deemed submitted,” which the commenter asserted conflicts with the regulation that allows developers to commence operations after the Department receives the PVR. The commenter also requested clarity on if Critical Safety Systems commissioning records only require confirmation of receipt rather than being “deemed submitted.”

*Response:* BSEE revised § 285.637 so that a final PVR is not required to be submitted before commercial operations. The PVR will be deemed submitted once BSEE determines the PVR is sufficiently complete and accurate pursuant to § 285.704. Commissioning records do not need to be “deemed submitted.”

*Summary of final rule revisions:* The Department is finalizing this regulation, consistent with proposed § 585.704, with revisions, to address what BSEE will do to (1) determine whether the FDR, FIR, or project verification report is deemed submitted (paragraph (a)); (2) identify problems and deficiencies in the reports (paragraph (b)); and (3) notify a lessee that a report is deemed submitted (paragraph (c)). BSEE revised the timeframes in the proposed rule from 20 calendar days to 20 business days for when BSEE deems a report submitted or notifies a lessee of problems or deficiencies. BSEE determined that a 20-business day

review period, rather than the proposed 20-calendar day review period, is necessary to ensure that BSEE has sufficient time to review these highly complex and lengthy technical documents. BSEE has at times received over 700 documents for a single FDR or FIR.

*§ 285.705 When must I use a Certified Verification Agent (CVA)?*

*Summary of proposed rule provisions:* The Department proposed allowing the use of multiple CVAs on a project in paragraph (a). The Department also proposed several modifications, clarifications, and technical corrections to this section. First, the Department proposed adding a requirement in paragraph (b) for the CVA to ensure critical safety systems are commissioned in accordance with the procedures identified in the FIR. Second, the Department proposed clarifying in paragraph (a) that the CVA requirement applies unless it is waived under paragraph (c) of this section. Third, the Department proposed in paragraph (c) to clarify that, just as multiple CVAs may be nominated for different project elements, the Department may grant partial waivers of the CVA requirement for discrete elements of a project. Fourth, in paragraph (c) the proposed rule substituted “fabricator” and “fabricated” for “manufacturer” and “manufactured”, respectively, to avoid confusion and maintain consistency with § 585.700. Fifth, in paragraph (c) the proposed rule added a requirement that fabrications, repairs, or modifications that are the subject of a CVA waiver nonetheless must adhere to a recognized quality assurance standard. Sixth, the proposed rule eliminated the requirement that waiver requests be submitted with plans, thus relieving the Department of the obligation to consider such waiver requests as part of its plan reviews. Finally, the proposed rule replaced the term “certify” with “verify” in paragraph (a).

*Summary of comments:*

*Comment:* Several commenters disagreed with the proposed changes to the CVA requirements because they determined the changes may lead to a reduction in safety and recommended that the Department carefully consider possible concerns about impacts to mariners. A commenter opposed the proposed waiver process for a CVA and use of a lessee’s engineer because they viewed the project engineer designation as a lessening of responsibility and was concerned about conflicts of interest in reviewing components.

*Response:* BSEE now regulates CVA roles and responsibilities and defines the role of the CVA in §§ 285.707 and

285.708. Changes to the rule on CVA roles and responsibilities will not reduce the level of safety on a project, including to mariners or other OCS users, because the CVA must meet BSEE requirements for qualifications and experience, and the CVA’s scope of work will address safety concerns through commissioning of the facility. BSEE will rigorously review any request for waiver of the CVA requirement to ensure there is no reduction in safety prior to accepting the use of a project engineer.

BSEE has also made the waiver requirements more stringent by requiring that waiver requests be submitted in writing to BSEE. If BSEE waives the requirement for a CVA, lessees must demonstrate that their project engineer can perform the same duties and responsibilities as the CVA. Also, the project engineer’s qualifications must be submitted to BSEE as a part of the waiver request to demonstrate that the project engineer is a professional engineer with relevant experience and expertise in the facilities they will be verifying or certifying.

*Comment:* A commenter requested that the Department clarify the phrase “all incidents” that affect the design, fabrication, and installation of the project and its components that the CVA is required to report. The commenter further requested that the proposed rule shift the burden of reporting incidents from the CVA to the lessee, who has site control, and allow a CVA to verify any modifications needed to address the incident.

*Response:* BSEE intends the phrase “Incidents that affect the design, fabrication, and installation of the project and its components” to be broadly applicable so that it includes, but is not limited to, design changes or events that occur before the final PVR that affect the design, fabrication, or installation of the project or its components such that the original design envelop, standards, or functionality has been changed from what was originally reviewed.

The regulations at § 285.705(a)(3) require the lessee to use CVA(s) to immediately notify BSEE of incidents that affect the design, fabrication, and installation of the project and its components. The lessee is also responsible for reporting certain incidents as required in §§ 285.815 and 285.831, and the lessee is responsible for accepting any fabrication or installation modifications and notifying BSEE as provided in § 285.703.

BSEE ensures that the lessee upholds its reporting requirements (including the requirement to use a CVA to report

certain incidents) and can take enforcement action if the lessee fails to meet these requirements. The use of the CVA for reporting incidents as a part of their oversight responsibilities enables their participation in evaluating such incidents and providing an independent analysis to BSEE and is thus preferable to having the lessee solely report incidents.

*Comment:* Commenters requested that the Department further clarify the role of the CVA in verifying a facility's safety by incorporating appropriate consideration for human and occupational safety through verification of adherence to industry codes and standards to ensure there is not confusion about how a CVA may review a facility.

*Response:* BSEE has declined to incorporate new standards into these regulations because BSEE has determined that the proposed processes adequately account for human health and occupational safety. Human and occupational safety must be considered during the risk assessments that identify the Critical Safety Systems and Equipment as is required by § 285.701(a)(12). The CVA will review the risk assessments for adequacy, will certify adherence to the standards identified within the FDR and FIR, and will certify that the risk assessment outcomes have been integrated into the project design. BSEE will also review the FDR and FIR submissions to ensure that appropriate standards are being utilized.

*Comment:* A commenter discussed the need for a CVA to verify any self-inspection plans submitted for facilities in development.

*Response:* BSEE has declined to make CVAs verify self-inspection plans. The role of a CVA is to oversee design, fabrication, and installation. The CVA reports often make recommendations regarding inspections, and BSEE will consider those recommendations when BSEE reviews a lessee's self-inspection plan.

#### *Summary of final rule revisions:*

The Department is finalizing paragraphs (a) through (d), consistent with proposed § 585.705, with minor revisions. Paragraph (a) allows lessees to use one or more CVAs, if approved by BSEE. Paragraph (b) adds a responsibility for the CVA to ensure that the facility design is suitable for the location where it will be installed, which was included in the preamble to the NPRM and is necessary to ensure personnel safety over the life of the project. Paragraph (b) also finalizes the other CVA responsibilities from the NPRM. In the preamble to the proposed

rule, the Department explained its expectations that the CVA would ensure that the design of the facilities is suitable for the location where they will be installed. BSEE determined it was prudent to include this expectation in the final rule in paragraph (b)(1). Paragraph (c) allows BSEE to waive all or part of the requirement for a lessee to use a CVA for the design of a structure if the lessee can demonstrate that the facility conforms to a standard design that has been successfully used in a similar environment, and the installation design conforms to accepted engineering practices. Paragraph (c) also allows BSEE to waive all or part of the requirement for a lessee to use a CVA for the fabrication or installation of a structure if the lessee can demonstrate the relevant fabricator or installation company, as applicable, has successfully fabricated or installed similar facilities in a similar offshore environment, and the facility will be fabricated or installed in conformance with accepted engineering practices and to a nationally or internationally recognized quality assurance standard. A similar waiver is available for a CVA for project modification or repairs. Paragraph (d) requires that waiver requests be submitted in writing to BSEE. If BSEE waives the requirement for a CVA, lessees must demonstrate that their project engineer can perform the same duties and responsibilities as the CVA. Also, the project engineer's qualifications must be submitted to BSEE as a part of the waiver request to demonstrate that the project engineer is a professional engineer with relevant experience and expertise in the facilities they will be verifying/certifying.

BSEE responded to comments concerning CVAs in Section III, D. above. Additional comments and responses regarding this provision are provided below.

#### *§ 285.706 How do I nominate a CVA for BSEE approval?*

##### *Summary of proposed rule provisions:*

The Department proposed eliminating the requirement that a lessee or grant holder nominate a CVA with its COP, SAP, or GAP and, instead, proposed that a CVA be nominated and approved before conducting the relevant verification activities. The Department also proposed requiring that if a lessee or grant holder seeks to use multiple CVAs, it must nominate a general project CVA no later than COP submittal to manage the project verification strategy, to ensure CVAs are conducting their reviews in a consistent manner, and to oversee the transition areas between various project components and their associated CVAs.

The Department also proposed clarifying that the nominated CVA must not have been involved in preparing the plans, reports, analyses, or other technical submittals that it will verify.

##### *Summary of comments:*

*Comment:* A commenter expressed support for the CVA role revisions and the approval of CVA nomination prior to COP submittal to create flexibility for lessees and the Department.

*Response:* The CVA nomination approval occurs within BSEE's oversight, therefore, is not tied to the COP.

*Comment:* A commenter opposed the use of multiple CVAs for various components insofar as it could lead to inconsistencies in the verification of a project.

*Response:* If multiple CVAs are used on a project, BSEE will require one CVA to oversee the entire facility design, fabrication, and installation and to ensure continuity across all project components.

*Comment:* Several commenters suggested adding language to indicate that the CVA scope of work must be in accordance with project certification schemes generally accepted and used in industry, such as International Electrical Code Renewable Energy (IECRE) OD-502.

*Response:* BSEE declines to incorporate any specific project certification standard, such as IECRE OD-502. Instead of requiring a specific project certification standard such as IECRE OD-502, BSEE allows the lessee and CVA to specify the project certification standard they would like to use as part of the CVA nomination. BSEE can accept or deny the proposed certification standard. This allows BSEE to remain flexible and adaptable as these standards continue to evolve. BSEE will evaluate the CVA scope of work and ensure that the scope of work fully describes the CVA's verification and certification strategy.

*Comment:* A commenter also requested that the Department clarify the responsibility of a General Project CVA to avoid conflicts and misunderstandings that may result in the incorrect completion or non-performance of verification tasks.

*Response:* BSEE has determined that the finalized language in § 285.706(a) clearly establishes the responsibilities of the general project CVA. When multiple CVA's are nominated for a project, a general project CVA must be nominated to manage the overall project verification and certification approach and ensure consistency between and oversight of the other CVAs, especially

in transition areas between different CVAs.

*Comment:* A commenter suggested that the Department adopt an independent process to review and approve a company's credentials for CVA nomination rather than the project-specific approach proposed by the Department, to decouple CVA nomination from the project approval processes and encourage new participants in the CVA market.

*Response:* BSEE declined to adopt an independent process to review and approve a company's credentials for CVA nomination because BSEE reviews each CVA nomination to make sure that the nominated CVA has the technical expertise, experience, and capacity for the specific project. A specific company may be an acceptable CVA for one project and not another depending on the technologies involved in the project, technical expertise of the company, number of projects the company is overseeing, and several other factors. BSEE will continue to review the CVA nomination for each specific project.

*Comment:* A commenter provided specific regulatory text revisions regarding when a CVA is needed on a project and how to nominate a CVA for the Department's approval, including a suggestion that CVAs may periodically monitor fabrication and installation of a facility and utilize type-approved procedures rather than "proper" procedures to verify a design.

*Response:* BSEE agrees that the procedures used and validated during the type-approval process should be used for type-approved components. For other components, OEM procedures should be used when applicable. The frequency of the CVAs oversight will be agreed to in the CVA scope of work. BSEE declined to state that the CVA would only periodically monitor fabrication and installation because the word "periodically" can be interpreted differently. Instead, BSEE expects the CVA to clearly state their plans for witnessing of fabrication and installation activities in the CVA scope of work.

#### *Summary of final rule revisions:*

The Department is finalizing paragraphs (b)(2) and (7), (c), and (d), consistent with proposed § 585.706. BSEE is removing § 285.706(e) because the Reorganization Rule transferred authority for approving a CVA from BOEM to BSEE. The changes in paragraph (a) require that a CVA be nominated by the lessee and approved by BSEE prior to conducting any verification or certification activities. If a lessee intends to use more than one CVA, then a general project CVA must

be nominated to manage the overall project verification and certification approach to ensure consistency and oversight among the other CVAs, especially in transition areas between different CVAs. Paragraphs (b)(2) and (7) address the technical capabilities of individuals involved in a project and the scope and level of work to be performed by the CVA, respectively. Paragraph (c) addresses CVAs' potential conflicts of interest by prohibiting CVAs from preparing or being directly involved in any work related to the preparation of design, fabrication, installation, modification, or repair plans for which they will provide verification or certification services. Lastly, paragraph (d) requires that verification and certification be conducted by or under the direct supervision of a registered professional engineer.

BSEE responded to comments concerning CVAs in Section III, D. above. Additional comments and responses regarding this provision are provided below.

#### *§ 285.707 What are the CVA's primary duties for facility design review?*

*Summary of proposed rule provisions:* The Department proposed changing "certify" to "verify" in this section. The Department also proposed replacing the requirements for floating turbines in the existing paragraph (c) with a reworded requirement in proposed paragraph (b)(10). The Department also proposed requiring the CVA to verify that the facility has been designed to provide for safety and to conduct an independent assessment of the design for human safety and accident prevention.

#### *Summary of comments:*

*Comment:* Several commenters expressed support for the proposed revisions to the role of a Certified Verification Agent (CVA), stating that the revisions align with best engineering practices and the Department's policy goals of encouraging safety.

*Response:* BSEE agrees with the commenters and is defining the role of the CVA in §§ 285.707 and 285.708 that the CVA's oversight of both design and fabrication and installation through verifications and certifications in order to enhance safety.

*Comment:* A few other commenters stated that the change to "verification" rather than "certification" promotes safety throughout the development process.

*Response:* The CVA plays a role in both design and fabrication and installation through verifications and certifications. After reviewing commenters' feedback and considering

various relevant standards and references, BSEE understands that the terms "verification" and "certification" are not consistently defined across published standards. Accordingly, BSEE is defining each term based on the Oxford Dictionary and contextual usage in relevant standards. The terms "certify" or "certification" describes how the CVA "recognizes that (someone or something) possesses certain qualifications or meets certain standards." BSEE may require a CVA to "certify" that a design or safety component conforms to a defined certification protocol based on criteria from specific quality assurance standards or recognized accepted engineering practices. The terms "verify" or "verification" describes how the CVA demonstrates that something is true, accurate, or justified.

BSEE has evaluated each of the CVAs actions, as required by the regulations, and updated the regulations to use the appropriate term.

*Comment:* A commenter stated that the removal of mooring and anchoring systems from CVA verification is an increase to risk and safety of a project and requests that the Department reinstate the requirement.

*Response:* BSEE agrees with the commenter. Any mooring or anchor system that supports a floating wind turbine will require CVA verification as according to §§ 285.707 through 285.709. The proposed § 285.707(b)(10) was removed and § 285.707(c) will remain in the regulations. Section 285.707(c) explicitly requires CVA oversight of the design of systems related to structural integrity, stability, ballast, foundations, foundation pilings, templates, anchoring systems, mooring, tendon, and tethering systems.

*Comment:* A commenter suggested that the Department remove the requirement that CVAs must conduct independent assessments of other pertinent parameters of proposed designs.

*Response:* BSEE declines to make a revision to the regulation based on this comment. BSEE does expect the CVA to conduct an independent assessment for other pertinent parameters of the design. Designs are changing frequently and the CVA must be able to adapt to these changes.

#### *Summary of final rule revisions:*

The Department is finalizing this regulation consistent with proposed § 585.707, with a few minor revisions. BSEE is revising this regulation to make minor changes to the description of the CVA's duties in § 285.707(a), to ensure that the facility is designed to withstand the environmental and functional load

conditions and to minimize risk to personnel as required by § 285.105(a). BSEE also determined that the term “verify” is more appropriate than “certify,” as proposed in the NPRM, in this context and has made the appropriate regulatory text change. BSEE added a requirement to the CVA’s duties for design review in 285.707(b). The CVA must now assess the lessee’s risk assessments supporting the design for human safety and how the results are used in the design. Section 285.707(c) will remain in the regulation to ensure that the CVA verifies the design of floating facilities for structural integrity and stability. The design must also consider 1) foundations, foundation pilings, templates, anchoring systems, and 2) mooring, tendon, and tethering systems. BSEE is revising paragraph (c)(3) to include “tendon”.

BSEE responded to comments concerning CVAs in Section III, D. above. Additional comments and responses regarding this provision are provided below.

The provisions in this final rule do not change or purport to change any other Federal agencies’ regulatory requirements, including the USCG’s regulations governing integrity and stability of floating facilities.

**§ 285.708 What are the CVA’s or project engineer’s primary duties for fabrication and installation review?**

**Summary of proposed rule provisions:** The Department proposed updating paragraphs (a)(5) and (b) by replacing the terms “certify” and “ensure” with “verify” for consistency with the proposed changes to the CVA standard of review. The Department proposed adding a requirement in paragraph (a)(1) that the commissioning of critical safety systems should be consistent with § 585.705 and to require that the CVA monitor the commissioning of critical safety systems in paragraph (a)(2). The Department proposed adding paragraph (a)(6) to require that the CVA provide records documenting that critical safety systems are commissioned in accordance with the procedures identified in § 585.702(a)(8) and to identify the location of all records pertaining to commissioning of critical safety systems, as described in § 585.714(c).

Additionally, the proposed rule would add language regarding quality assurance standards to ensure consistency with § 585.702(a)(6). The Department also proposed moving the requirement in paragraph (a)(5)(ii) to § 585.637. The Department proposed requiring that if multiple CVAs are used—thus necessitating multiple verification reports for different project

components—the general project CVA must submit the final verification report for the entire project prior to the commencement of commercial operations under § 585.637.

*Summary of comments:*

*Comment:* A commenter suggested that the Department formalize the Project Verification Report using a consistent term, “PVR.”

*Response:* BSEE includes the minimum requirements of a project verification report in § 285.708. BSEE also revised §§ 285.637, 285.702, 285.704, and 285.708 to consistently use the term “project verification report.”

*Comment:* Commenters suggested that the Department add the word “material” to certain CVA requirements in § 585.708(b) to ensure focus on relevant changes rather than all potential changes.

*Response:* BSEE has decided not to add the term “material” in § 285.708 because “material” is not a sufficiently definite term. BSEE will engage with the CVAs to ensure our expectations for reporting changes during fabrication and installation are met and BSEE may issue guidance if additional clarifications are necessary.

*Comment:* A commenter supports the change from “certification” to “verification” but stated concern with the overall approach of the proposed part 285 when compared to similar processes in 30 CFR part 250 regarding technical requirements. The commenter stated that there is an inconsistency between the CVA verification and the language describing a statement within the FDR/FIR that a CVA has verified various components. The commenter requested that clear guidance be provided from BSEE on the expectations of CVA reviews of reports.

*Response:* BSEE has evaluated each use of the terms “certification” and “verification,” and has revised the regulations to ensure each term is used appropriately and consistently. Within this context, the terms “certify” or “certification” describe how the CVA “recognizes that (someone or something) possesses certain qualifications or meets certain standards.” BSEE may require a CVA to “certify” that a design or safety component conforms to a defined certification protocol based on criteria from specific quality assurance standards or recognized accepted engineering practices. The terms “verify” or “verification” describe how the CVA demonstrates that something is true, accurate, or justified. BSEE has evaluated each of the CVAs actions required by the regulations and revised

the regulations to use the appropriate term.

BSEE has reviewed the regulations and has determined that the finalized version here provides clear expectations regarding CVA reviews of reports. BSEE will engage with the CVAs to ensure our expectations for reporting changes during fabrication and installation are met and BSEE may issue guidance if additional clarifications are necessary.

*Summary of final rule revisions:*

The Department is finalizing this regulation, consistent with proposed § 585.708, with minor revisions. BSEE is revising paragraphs (a)(1), (2), and (5); adding paragraphs (a)(6) and (7); and revising paragraph (b).

BSEE is not finalizing the proposed paragraph (a)(5)(ii) because requirements for the commencement of commercial operations have been moved to § 285.637. BSEE also determined that the term “certify” is more appropriate than “verify” in this context and has made the appropriate regulatory text change as explained in comments above.

The revisions to paragraphs (a)(1), (2), and (5) update expectations for the CVA’s oversight of fabrication and installation. Specifically, the CVA must use good engineering judgment and practice in conducting an independent assessment of the commissioning of Critical Safety Systems and Equipment and monitor the commissioning of Critical Safety Systems and Equipment. Paragraph (a)(5) requires the CVA to certify in Project Verification Reports that project components are fabricated and installed in accordance with accepted engineering practices and to a nationally or internationally recognized quality assurance standard or to an equivalent alternate means of quality assurance considered on a case-by-case basis, your BOEM-approved SAP, COP, or GAP (as applicable), and your FIR. The Project Verification Reports must also identify the location of all facility fabrication and installation records. Paragraph (a)(6) requires CVAs to provide records documenting Critical Safety Systems and Equipment are commissioned in accordance with the procedures identified in § 285.702(a)(8). Paragraph (a)(7) require CVAs to identify the location of records pertaining to the commissioning of Critical Safety Systems and Equipment as required in § 285.714(c).

Paragraph (b) now requires the CVA or project engineer to monitor the fabrication and installation of the facility and the commissioning of Critical Safety Systems and Equipment to certify that it has been built and installed according to the lessee’s

FDR(s) and FIR(s). Additionally, under paragraph (b)(1), the CVA or project engineer must inform the lessee and BSEE if either fabrication and installation procedures or Critical Safety Systems and Equipment commissioning procedures, or both, have been changed or design specifications have been modified. Under paragraph (b)(2), The CVA or project engineer must inform BSEE of any modifications they accept.

BSEE responded to comments concerning CVAs in Section III, D. above. Additional comments and responses regarding this provision are provided below.

*§ 285.709 When conducting onsite fabrication inspections, what must the CVA or project engineer verify?*

*Summary of proposed rule provisions:* The Department proposed revising this section to mirror the proposed changes to § 585.701 by modifying paragraph (b) to remove the references to the U.S. Coast Guard and by specifying the CVA must verify the structural integrity, stability, and ballast of a floating facility. The Department also proposed modifying paragraph (b) to remove the requirement for consideration of foundations, foundation pilings and templates, and anchoring systems, as well as mooring or tethering systems, because those requirements are addressed in § 585.710.

*Summary of comments:* BSEE did not receive any comments regarding this section.

*Summary of final rule revisions:* The Department is finalizing paragraph (a), consistent with proposed § 585.709. BSEE made minor edits to the proposed changes to § 285.709(a) by revising paragraph (a)(13) to include “tendon” to be inclusive of all mooring system types. BSEE is not finalizing proposed changes to paragraph (b) of this section and is keeping the provision in the existing regulation.

BSEE responded to comments concerning CVAs in Section III, D. above.

The provisions in this final rule do not change or purport to change any other Federal agencies’ regulatory requirements, including the USCG’s regulations governing integrity and stability of floating facilities.

*§ 285.710 When conducting onsite installation inspections, what must the CVA or project engineer do?*

*Summary of proposed rule provisions:* The Department proposed requiring that the CVA “verify” the enumerated items to ensure consistency with the “verification” standard for CVA activities. The Department also proposed adding language in several locations requiring the CVA to verify the

commissioning of critical safety systems to be consistent with § 585.705. The Department proposed adding paragraph (f) to clarify that the CVA must make periodic onsite inspections to verify: (1) the systems and equipment function as designed; and (2) the final commissioning records are complete during periodic onsite inspections.

*Summary of comments:*

*Comment:* A commenter stated that the “Background” section of the proposed rule should be revised to reflect the current expectations for third-party witnessing of certain commissioning activities, as recently issued in a COP Approval Letter Terms and Conditions.

*Response:* BSEE has included requirements in § 285.710 for commissioning activities that are similar to those found in the COP terms and conditions. BSEE will also engage with the CVAs to ensure expectations for commissioning are clear.

*Comment:* A commenter stated that attending and witnessing of commissioning activities of safety and protection functions by the CVA is not necessary as these functions are already type-certified as part of the ICRE-OD501 process. The commenter instead provided several regulatory text revisions to recommend that verification by a CVA be limited to a review of completeness of commissioning records and systems and remove the requirement of a review for type-certified components.

*Response:* BSEE disagrees that witnessing the commissioning of Critical Safety Systems and Equipment is not necessary. One of the roles of the CVA is to certify that engineering procedures are executed as designed. BSEE has determined that periodic witnessing of commissioning operations, including Critical Safety Systems and Equipment commissioning, in addition to reviewing completeness records is necessary to ensure conformance with submitted plans, proper functioning of all Critical Safety Systems and Equipment, and completion of installation as designed.

*Comment:* A commenter requested that the Department clarify whether some or all Critical Safety Systems and Equipment being referenced in 30 CFR 585.710 and the periodic inspection referenced in proposed 30 CFR 585.710(a) is applicable to all of the scope described by paragraph (b).

*Response:* Critical Safety Systems and Equipment are identified on a project basis through the risk assessment process. The inspection program is designed to ensure that it is focused on critical areas and needs of each project.

All Critical Safety Systems and Equipment would be included in the regulatory requirements.

*Comment:* A commenter requested clarification of the requirements for the submission of as-builts. The commenter suggested that as-builts should include as-fabricated drawings and documents of any facilities outlined in a BOEM-approved SAP, COP, or GAP; a complete set of cable drawing(s) and as-fabricated cable drawing(s) in the FIR; electrical one-line drawing(s); cause-and-effect chart; and schematics of fire and gas-detection system(s). The commenter provided additional suggestions for the timeline of submission for these items and additional details about what they should include.

*Response:* BSEE is declining to update the regulations regarding as-builts in this final rule. BSEE may issue an NTL to clarify the as-built requirements or update the regulations in the future should additional requirements be necessary.

*Summary of final rule revisions:*

The Department is finalizing this regulation, consistent with proposed § 585.710. Through this regulation, BSEE has clarified and added requirements to ensure that the CVA or project engineer scope includes verification and witnessing of the commissioning of the Critical Safety Systems and Equipment. To achieve this, BSEE is revising portions of paragraphs (a) through (g). Paragraph (a) requires the CVA or project engineer to make periodic onsite inspections while installation is in progress. Paragraph (b) enumerates a list of items that the CVA or project engineer must verify. Specifically, paragraph (b)(9) is added to address the commissioning of Critical Safety Systems and Equipment. Paragraph (c) requires the CVA or project engineer to verify that certain proper procedures were used for fixed or floating facilities. Paragraph (d) requires that the CVA or project engineer verify structural integrity, stability, and ballast, and that proper procedures were used during certain stages of work for floating facilities. The requirement that for “a floating facility, the CVA or project engineer must verify the structural integrity, stability, and ballast” was proposed in § 285.709 but was also added to § 285.710(d) because this verification work can only happen at the time of installation.

BSEE made minor edits to proposed paragraphs (b)(6) and (d)(3) to include “tendon” to be inclusive of all mooring system types.

Paragraph (e) requires the CVA or project engineer to conduct an onsite inspection of the installed facility as

approved in the CVA scope of work. Paragraph (f) requires the CVA or project engineer to make periodic onsite inspections to witness the commissioning of Critical Safety Systems and Equipment in order to verify that they function as designed and that the final commissioning records are complete. Paragraph (g) requires the CVA or project engineer to 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.

BSEE responded to comments concerning CVAs in Section III, D. above. Additional comments and responses regarding this provision are provided below.

**§ 285.712 What are the CVA's or project engineer's reporting requirements?**

**Summary of proposed rule provisions:** The Department proposed adding a requirement that the CVA report summarize any issues with facility design, fabrication, or installation, or the commissioning of critical safety systems to allow the Department to catalog a history of successfully resolved issues and lessons learned, enabling the Department to assess and facilitate the improvement and evolution of the OCS renewable energy industry and the CVA program.

**Summary of comments:**

**Comment:** A commenter suggests formalizing the name of the Critical Safety Systems Commissioning Records (CSSCR) throughout the Rule.

**Response:** BSEE did not create a new record called the CSSCR as this reference is only used in §§ 285.637, 285.710, and 285.714. However, the Department does require the lessee to submit a risk assessment that identifies the Critical Safety Systems and Equipment (CSSE) and a description of the identified CSSE pursuant to § 285.701(a)(12), commissioning procedures for CSSE pursuant to § 285.702(a)(8), and a major modification or repair report if major repairs or modifications to CSSE pursuant to § 285.703. The CVA must also verify the design, fabrication, installation, and commissioning of CSSE pursuant to §§ 285.705 and 285.707–285.710 and must summarize any issues with the design and any incidents during facility fabrication and installation, or CSSE commissioning, and how those issues were resolved pursuant to § 285.712. BSEE did not revise the final rule based on this comment. There is additional

discussion regarding the subject of the comment in the NPRM.

**Summary of final rule revisions:**

The Department is finalizing this regulation, consistent with proposed § 585.712, with one edit. BSEE is revising this regulation to require that the CVA or project engineer prepare all reports and records pursuant to this subpart. The CVA or project manager must submit the interim version of the required reports or records to the lessee and BSEE, as requested by BSEE. BSEE will have 30 days to review the reports. The CVA or project engineer must submit the final version of the required reports or records to BSEE. The CVA's or project engineer's report or record must summarize any issues with the design and any incidents during facility fabrication and installation, or Critical Safety Systems and Equipment commissioning, and how those issues were resolved.

BSEE moved the 30-day CVA report review from existing §§ 285.637 and 285.708 to this section to decouple the concept of reviewing CVA reports and the start of commercial operations.

BSEE responded to comments concerning CVAs in Section III, D. above. Additional comments and responses regarding this provision are provided below.

**§ 285.713 [Reserved]**

**Summary of proposed rule provisions:** The Department proposed moving the requirement that a lessee must notify the Department within 10 business days of commencing commercial operations from § 585.713 to the proposed § 585.637 to consolidate this provision with the other requirements in § 585.637 related to the commencement of commercial operations. The Department proposed deleting the existing section title, “What must I do after the CVA or project engineer confirms conformance with the Fabrication and Installation Report on my commercial lease?,” and reserving the section for future use.

**Summary of comments:** BSEE did not receive any comments regarding this section.

**Summary of final rule revisions:** BSEE is removing and reserving this section, consistent with the NPRM.

**§ 285.714 What records relating to FDRs, FIRs, and Project Modification and Repair Reports must I keep?**

**Summary of proposed rule provisions:**

The Department proposed requiring that the records of the commissioning of critical safety systems must be kept and made available to the Department until BOEM releases the lessee from its financial assurance. The proposed rule also suggested requiring the lessee to provide the Department with the

location of the records of the commissioning of its critical safety systems.

The Department proposed a technical correction to this section to clarify that the recordkeeping requirements apply to the design, engineering, and modification and repair reports regulated in this subpart. The Department proposed removing reference to recordkeeping requirements for SAPs, COPs, and GAPs because they are addressed in the existing and proposed § 585.602.

The Department also proposed adding records of commissioning of critical safety systems to the list of records to reflect changes proposed elsewhere.

**Summary of comments:**

**Comment:** A commenter suggested adding a new section: “What must I include in my as-built submissions?”

- “(a) Your as-fabricated drawings and documents of any facilities that are outlined in your FDR and FIR, must be made available to DOI prior to PVR non-objection and must include the following items.”

- “Required documents: (1) Complete set of cable drawing(s) Description of required content: Complete set of as-fabricated cable drawing(s).”

- “Required documents: (2) Electrical one-line drawing(s) Description of required content: As-fabricated electrical one-line drawing(s) for the facilities.”

**Response:** BSEE did not revise the final rule to address this comment, but BSEE may publish an NTL to address expectations for as-built submissions, as necessary, and BSEE may consider a regulatory update in future rulemakings.

**Summary of final rule revisions:** The Department is finalizing this regulation, consistent with proposed § 585.714. BSEE is revising this regulation to require additional recordkeeping measures for the commissioning of Critical Safety Systems and Equipment and the location of records, as required in §§ 285.701(c) and (d), 285.702(c) and (d), 285.703(b), and 285.708(a)(5) and (7).

**§ 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?**

**Summary of proposed rule provisions:** The Department proposed amending the first sentence of paragraph (b) by replacing the word “affects” with the word “effects.”

**Summary of comments:** BSEE did not receive any comments regarding this section.

**Summary of final rule revisions:** The proposed change is not applicable to

§ 285.803, so no changes have been made to this section in the final rule. After certain renewable energy regulations were transferred from BOEM to BSEE in the Reorganization Rule, BOEM retained the language that was in § 585.803 but moved it to § 585.703. BSEE's existing § 285.803 states, "You must comply with all measures required under 30 CFR 585.703."

*§ 285.810 When must I submit a Safety Management System (SMS) and what must I include in my SMS?*

*Summary of proposed rule provisions:* The Department proposed requiring a lessee to use an SMS for activities conducted on the OCS to develop or operate a lease, from met buoy placement and site assessment work through decommissioning, and to provide its SMS to the Department upon request. The lessee would also be required to submit a detailed description of the SMS with its COP (as provided under § 585.627(d)), SAP (as provided in § 585.614(b)), or GAP (as provided in § 585.651).

*Summary of comments:*

*Comment:* A commenter expressed concerns that the proposal could reduce the frequency and intensity of regulatory oversight on safety issues and requested that the Department share any information related to requirements for Contingency Plans for potential catastrophic events at OSW development sites.

*Response:* Regulatory oversight ensuring the safety of offshore workers and responsible environmental stewardship of offshore wind activities is a primary focus of BSEE and these SMS regulations reflect this focus. Section § 285.812(b) provides for "regular demonstration" that the SMS is used and implemented effectively via annual activity reports to BSEE and triannual reports summarizing the lessees or grantees most recent SMS audit results, including corrective actions, and an updated description of the lessees or grantees SMS highlighting changes made since the last submission. With regard to potential catastrophic events, BSEE requires the development and functionality of Emergency Response Procedures in §§ 285.810(c) and 285.812.

*Comment:* Multiple commenters suggested that the Department clarify that the SMS also apply to the safety of mariners, including fishermen, within and near an OSW facility. Several commenters requested clarifications on SMS scope, review, approval, certification standards, definitions, submissions, and oversight roles.

*Response:* BSEE recognizes the importance of consistent safety

programs and risk mitigations and their potential impacts to the fishing and recreation industries, and how they influence performance-based regulatory programs. BSEE considers environmental safety to be within the scope of an SMS. While the SMS regulations themselves do not apply to mariners, including fishermen, the intent of the SMS regulations are to ensure the safety of personnel or anyone near or on the facilities.

Regarding comments seeking clarification on SMS generally, BSEE has provided guidance to the industry related to these comments in Safety Management System Expectations for Renewable Energy Companies Operating on the OCS, which is posted on the BSEE website at <https://www.bsee.gov/technical-presentations/ooc-presentation-sms-in-ocs-renewable-projects-may-13>. This guidance includes information about submissions, frameworks, and reviews.

*Comment:* Several commenters stated that the Department should protect workers and worker's rights by requiring LPAs for operations and maintenance workers as a condition of all renewable OSW leases and ensure developer commitments to not discriminate or retaliate against workers or contractors who raise health and safety concerns. One commenter provided background information to show the importance of improving workers' rights, stating that in the construction industry alone, union worksites have 31% fewer health and safety violations. In all industries, states with right-to-work laws (and consequently lower union density) have a 14.2% higher rate of workplace deaths than states without such laws. Without the Department's action, operations and maintenance workers would have few protections at either the State or Federal levels.

*Response:* While BOEM has jurisdiction over lease terms, BSEE agrees that a positive safety culture includes the right to stop unsafe work and that retaliation leads to a negative safety culture. To ensure the safety of lessees and grantee personnel or anyone else on their facilities, § 285.810(a)(5) requires them to submit procedures as part of the SMS for personnel or visitors to report unsafe work areas or conditions to both the lessee, grantee or designated operator and BSEE. BSEE will verify workers have a means of reporting unsafe working conditions. BSEE also offers a means of reporting unsafe working condition via the Safety and Incident Investigations Division (SIID) Hotline: (877) 440-0173 or (202) 208-5646. Section 285.813(b)(1) requires lessees to provide a written

report to BSEE of any injury in which a person is unable to return to work or perform their normal duties the following day.

*Comment:* Several commenters provided editorial revisions to the language in the proposed rule related to shut-downs, new language to define the contents of as-built submissions, and details included in SMS descriptions in plans. One such example revises certain language in § 585.810(b)(5) from "shutdown of one or more facilities" to "manual shut-down of one or more facilities for the preservation of safety."

*Response:* BSEE agrees that all conditions might not be available while the COP is still in the approval process and that it will change over time as the program evolves. The objective of this requirement is for lessees to demonstrate an awareness of conditions that could lead to a shutdown of one of more facilities and what they have in place to control or mitigate the risks.

BSEE supports the continued focus on performance-based approaches to Safety Management Systems. BSEE is declining to update the regulations regarding as-builts in this final rule. BSEE may issue an NTL to clarify the as-built requirements or update the regulations in the future should additional requirements be necessary. BSEE is declining to change the language proposed limiting shutdown of facilities to only manual shutdowns. Other types of shutdowns are critical for safety and should be included in the SMS.

*Comment:* A commenter recommended replacing "allision" with "collision" at 585.810(c)(1). The commenter also recommended replacing "(e.g., ANSI Z10, ISO/IEC 45001)" with "(e.g., ANSI/ASSP Z10, ISO 45001)." The commenter stated that "IEC 45001" does not exist and "ANSI Z10" is a shorthand expression that should be written out.

*Response:* BSEE recognizes the difference between an "allision" and "collision." BSEE revised the regulations to require reporting for both collisions and allisions. BSEE also corrected the standard's name with the official standard title.

*Summary of final rule revisions:*

The Department is finalizing this section, consistent with proposed § 585.810, with minor revisions. For added clarity, BSEE is including items required in the SMS under paragraphs (a) through (f). Additionally, BSEE is revising the language in paragraph (a)(1) to clarify that the health and safety risk provisions in this paragraph also apply to anyone "engaged in lease activities." In paragraph (a)(3), BSEE is clarifying that nationally or internationally

recognized standards are applicable to ensure the safety of the activities covered by the SMS. BSEE is also making minor edits to this section to apply the transfer of authority from BOEM to BSEE and make corresponding corrections to regulation references.

BSEE responded to comments concerning SMS in Section III, H. above. Additional comments and responses regarding this provision are provided below.

**§ 285.811 Am I required to obtain a certification of my SMS?**

**Summary of proposed rule provisions:** The Department proposed adding § 585.811 stating that third-party SMS certification may be obtained from accredited safety and environmental CABs. Such certification would possibly benefit a lessee or a grant holder through reduced frequency or scope of safety inspections and oversight of corrective actions arising from lessee or grant holder self-inspections. The Department could rely on such third-party certifications for assurance of SMS compliance in lieu of direct inspection. Additionally, the Department determined that a CAB's use of a consensus safety standard—such as ANSI Z10 or ISO/IEC 45001—would allow the incorporation of the most current safety approaches in a rapidly evolving industry without the need for additional rulemaking.

**Summary of comments:**

**Comment:** Multiple commenters expressed support for the proposed shift to a performance-based approach for SMS, particularly related to incentives for obtaining certification or accreditation for SMS, streamlined oversight, clearer safety expectations, coordination enforcement through the Department, requirements for more detail to be included in the SMS, and reporting requirements to allow comparisons of safety industry-wide.

**Response:** BSEE supports the continued focus on a performance-based approach to Safety Management Systems. BSEE is continually evaluating improvements to the performance-based approach that have been integrated into this rulemaking and they may also be considered in future rules.

**Comment:** A commenter discussed a third-party SMS, including accreditation and upcoming revisions to a standards document, Safety and Environmental Management Systems (SEMS) API (American Petroleum Institute) Recommended Practice (RP) 75 (4th ed.), and suggested that the Department acknowledge this document and recognize the commenter's program for accreditation as suitable for SMS certification. Some changes the

commenter recommended to the proposed rule include:

- In § 585.811, include API RP 75 in the parenthetical examples of acceptable health and safety standards and modify the first sentence such that it reads: "You are not required to obtain a certificate that your SMS meets acceptable health and safety standards (e.g., API RP 75, ANSI Z10, ISO 45001) from a recognized accreditation organization (e.g., COS, ANAB)." In the corresponding preamble, provide supporting information in the preamble for proposed §§ 585.810 through 585.812 supporting API RP 75 as an acceptable health and safety standard, and recognize COS's accreditation program for ASP and COS's SEMS certificate program as suitable for lessees or grant holders to receive incentives for their SMS.

**Response:** BSEE agrees that API RP 75 (4th ed.) is one acceptable SMS framework standard and has included it as an example of an acceptable standard in § 285.811. This rulemaking does not specify any recognized accreditation organization. BSEE has taken a performance-based approach and declined to specify standard and accreditation organizations at this point in time. The process implemented here provides flexibility to both the lessee and BSEE.

**Summary of final rule revisions:**

The Department is finalizing this regulation, consistent with proposed § 585.811. BSEE is revising this regulation to update the transfer of authority from BOEM to BSEE in considering certifications in determining the frequency and scope of SMS-related inspections under this subpart, as well as the scope and nature of its oversight over any audit-induced corrective actions. The final rule revises the list of examples of acceptable health and safety standards to also include API RP 75.

BSEE responded to comments concerning SMS in Section III, H. above. Additional comments and responses regarding this provision are provided below.

**§ 285.812 How must I implement my SMS?**

**Summary of proposed rule provisions:** The Department proposed redesignating the existing regulatory text as paragraph (a) and revising it to be consistent with the clarifications in proposed § 585.810. The Department also proposed adding paragraph (b) to include two reporting requirements. The first proposed report is an annual summary of safety performance data that is due March 31 covering the previous calendar year during which site assessment,

construction, operations, or decommissioning activities occurred. The second proposed report is a summary of the most recent SMS audit, corrective actions implemented or pending as a result of that audit, and an updated SMS description highlighting changes made since the last report. This report would be due every 3 years or upon request.

**Summary of comments:**

**Comment:** Some commenters asserted that the Department should require an annual summary of safety performance data covering all site assessment, construction, operations, or decommissioning activities; and a report summarizing the results of the most recent SMS audit that describes corrective actions and any SMS changes made.

**Response:** BSEE will require safety performance data be submitted to BSEE according to § 285.812(b)(1). BSEE intends to publish combined data on its website on a regular basis.

**Comment:** Some commenters stated that while they welcome SMS certification from accredited safety and environmental CABs, the Department should not rely on such third-party certifications for assurance of SMS compliance in lieu of direct inspection by the Department. However, if the Department does permit self-inspection, third-party SMS certification from safety and environmental CABs should be required, and the third-party reports should be attested to, filed with the agency, and accessible to the public on the agency's website.

**Response:** BSEE does not rely solely on third-party certifications for assurance of SMS compliance, nor does it rely solely on self-inspections for assurance of operational regulatory compliance. A lessee SMS certification will be considered by BSEE during its inspection data analysis, but it does not eliminate BSEE's ability to conduct direct inspections. BSEE intends to publish combined data on its website on a regular basis. BSEE is not requiring third-party SMS certification, but third-party certification is encouraged. BSEE has multiple ways to conduct safety oversight of projects, including self-inspections, BSEE direct inspections, SMS third-party audits, BSEE led SMS reviews, and remote inspections. BSEE has determined that utilizing a performance-based approach to inspection frequency will be more effective and allow for more comprehensive oversight. BSEE has determined that the performance-based approach will allow for proactive identification of hazardous conditions.

**Summary of final rule revisions:**

The Department is finalizing this regulation, consistent with proposed § 585.812. BSEE has moved this requirement from § 585.811 to this section and has added paragraph (b), which includes the reporting requirements that demonstrate your SMS is being implemented effectively. BSEE is making minor edits to apply the transfer of authority from BOEM to BSEE.

BSEE responded to comments concerning SMS in Section III, H. above. Additional comments and responses regarding this provision are provided below.

**§ 285.815 What must I do if I have facility damage or an equipment failure?**

**Summary of proposed rule provisions:** The Department proposed correcting an erroneous cross-reference in paragraph (a).

**Summary of comments:** BSEE did not receive any comments regarding this section.

**Summary of final rule revisions:** The Department is finalizing this regulation, consistent with proposed § 585.815. BSEE is revising paragraph (a) of this regulation to require major repairs to be reported to BSEE under § 285.703. BSEE is making minor edits to apply the transfer of authority from BOEM to BSEE.

**§ 285.820 Will BSEE conduct inspections?**

**Summary of proposed rule provisions:** The Department proposed updating the regulations to clarify that the Department may inspect OCS facilities and any vessels engaged in activities authorized under this part. The Department proposed clarifying that during the inspections, the Department would verify that activities are conducted in compliance with OCSLA, conditions and stipulations of the lease or grant, approved plans, and other applicable laws and regulations. The Department would also determine whether proper safety equipment has been installed and is operating properly according to the SMS.

**Summary of comments:**

**Comment:** Several commenters stated that more clarity is needed regarding which vessels would be subject to Department inspections; the roles of BOEM, BSEE, USCG, and independent inspection companies contracted by lessees to conduct inspections; the intensity and focus of inspections; and how inspections would address operational safety, environmental risk, and engineering.

**Response:** BSEE-led inspections are limited to vessels conducting lease activities in Federal waters that occur either on the lease or an associated

easement. Both BSEE-led inspections and self-inspections will focus on ensuring that lease activities are being conducted in compliance with the regulations, which are written to provide protections to human safety and the environment. As described above, BSEE's analysis of compliance, risk, and performance data will enable it to tailor its scheduled and unscheduled inspections, including utilization of remote inspections, remote testing, witnessing, and review of self-inspection, allowing for comprehensive oversight.

**Comment:** Multiple commenters suggested that the Department should consider remote condition monitoring using technology in conjunction with targeted inspections to reduce the burden of yearly physical inspections or should allow lessees to conduct less frequent inspections coordinated with routine maintenance activities. Multiple commenters provided revised text to include in the final rule reflecting these changes. A commenter also suggested that the Department should allow lessees to provide justification for a self-inspection period greater than one year.

**Response:** OCSLA requires an annual onsite inspection of all safety equipment designed to prevent or ameliorate fires, spillages, or other major accidents. Accordingly, BSEE lacks authority to increase the time between inspections beyond one year. BSEE supports the use of remote condition monitoring by lessees to inform their productivity and compliance efforts. BSEE's inspection program considers compliance, risk, and performance-based data, which may be collected, and informed, by remote monitoring technology, as well as the prescriptive annual onsite inspection as required by the OCSLA.

**Comment:** A commenter stated that while the preamble language discussing the proposed rules appears to indicate that the Department would continue to conduct regular inspections, as written the proposed rules do not require the Department to do so. The commenter recommended that the Department's regulations provide some minimum frequency for conducting onsite inspections to ensure adequate oversight of OCS facilities.

**Response:** OCSLA requires an annual onsite inspection of all safety equipment designed to prevent or ameliorate fires, spillages, or other major accidents. Accordingly, BSEE lacks authority to increase the time between inspections beyond one year. BSEE supports the use of remote condition monitoring by lessees to inform their productivity and compliance efforts. BSEE's inspection program considers compliance, risk, and

performance-based data, which may be collected, and informed, by remote monitoring technology, as well as the prescriptive annual onsite inspection as required by the OCSLA. The results of those and other additional mandated inspections will be evaluated along with lessee's performance record to determine the frequency of onsite inspections by BSEE personnel. BSEE has determined that prescribing a minimum frequency for BSEE inspections is not necessary at this time. BSEE will use compliance, risk, and performance-based data to remain adaptive as the renewable energy industry matures. . . .

**Comment:** A commenter expressed support for changing the phrase "will inspect" to "may inspect" in proposed § 585.820. The commenter remarked that this change would provide more flexibility to the agency in allocating inspection resources while still retaining full authority to inspect facilities and vessels engaged in OCS renewable energy development.

**Response:** BSEE agrees with the commenter that changing "will inspect" to "may inspect" provides more flexibility to the agency in allocating inspection resources and revised § 285.820 accordingly.

**Comment:** Commenters opposed the proposed language, which stated that the Department "may conduct" an inspection. A commenter asserted that if the Department is not largely responsible for inspections, the agency would not be in a proactive position to address operational safety issues. The commenter suggested that the Department improve transparency in the inspection process by requiring more detailed public reports and protection of worker's rights.

**Response:** BSEE will be involved in the inspection process, including onsite inspections. BSEE determined that utilizing a compliance, risk, and performance-based approach to onsite BSEE personnel inspection frequency, remote inspections, remote testing, witnessing, and review of self-inspection will be more effective, allow for more comprehensive oversight, and will allow for proactive identification of hazardous conditions. Also, allowing self-inspection to occur during maintenance visits reduces personnel exposure and facility downtime.

BSEE currently releases performance statistics on the BSEE website that track trends and provide incidents analysis and safety and health performance-for oil and gas operations from performance data gathered by BSEE, as required under 30 CFR 250.1929. BSEE plans to release similar information for OSW

based on the performance data collected under § 285.812. Section 285.812 requires that key safety and operational statistics are captured by the lessees and reported to BSEE. BSEE uses this information to calculate a variety of annual, OCS-wide, performance indices and to track industry performance. These indices calculated by BSEE allow lessees to benchmark their performance against aggregate industry data, and for BSEE to provide the public with OCS performance trends information.

*Summary of final rule revisions:*

The Department is finalizing this regulation, consistent with proposed § 585.820, with minor revisions. BSEE is revising this regulation to change the word “will” to “may” in the first sentence to read “BSEE may inspect OCS facilities and any vessels engaged in activities authorized under this part.” BSEE is also making minor edits to this section to apply the transfer of authority from BOEM to BSEE.

BSEE responded to comments concerning inspections in Section III, I. above. Additional comments and responses regarding this provision are provided below.

*§ 285.821 Will BSEE conduct scheduled and unscheduled inspections?*

*Summary of proposed rule provisions:* The Department proposed clarifying that it may conduct both scheduled and unscheduled inspections.

*Summary of comments:* BSEE addressed comments relevant to this provision in the “Summary of comments” for § 285.820 immediately above.

*Summary of final rule revisions:*

The Department is finalizing this regulation, consistent with proposed § 585.821. BSEE is revising this regulation to change the word “will” to “may” to read “BSEE may conduct both scheduled and unscheduled inspections.” BSEE is also making minor edits to this section to apply the transfer of authority from BOEM to BSEE.

BSEE responded to comments concerning inspections in Section III, I. above.

*§ 285.822 What must I do when BSEE conducts an inspection?*

*Summary of proposed rule provisions:* The Department proposed a technical correction to clarify that access for Departmental inspectors must be provided to all facilities and vessels used for activities authorized under this subpart. The Department also proposed requiring that certain records be retained until BOEM releases the associated financial assurance and that the lessee make these records available upon request.

*Summary of comments:* BSEE did not receive any comments regarding this section.

*Summary of final rule revisions:* The Department is finalizing this regulation, consistent with proposed § 585.822. BSEE is revising paragraph (a)(1) to include the phrase “and any vessels engaged in activities authorized under this part” after the word “grant” to clarify the applicability of the regulations in this part to vessels. BSEE is also making minor edits to this section to apply the transfer of authority from BOEM to BSEE.

*§ 285.824 How must I conduct self-inspections?*

*Summary of proposed rule provisions:* The Department proposed requiring that an onsite inspection of each facility be conducted at least once a year. The proposed revision allows the Department to have flexibility in conducting the annual onsite inspection required under the OCSLA. The Department suggested requiring that the inspection include all safety equipment designed to prevent or ameliorate fires, spillages, or other major accidents. The Department also proposed that the lessee maintain records of the facility inspections, summarize the results of those inspections, and provide the records and result summaries upon request.

*Summary of comments:*

*Comment:* A commenter suggested that the Department provide more information on the efficacy of self-inspections in relation to operational safety. A commenter stated that the Department should provide clarity on what should be included in a comprehensive self-inspection plan. The commenter remarked that the scope of self-inspections is expanded in the proposed rule to include “all safety equipment designed to prevent or ameliorate fires, spillages, or other major accidents.” However, this phrase is not illustrated or explained in the preamble to the rule.

*Response:* BSEE has explained what must be included in self-inspection plans in § 285.824. BSEE is requiring that the self-inspection plan development include performance-based evaluation and identification of equipment designed to prevent or ameliorate fires, spillages, or other major accidents. Requiring lessees to identify this equipment, which is now defined as “Critical Safety Systems and Equipment” in § 285.112, allows for the regulatory requirements to remain adaptive to new and emerging technologies. BSEE is committed to a compliance, risk, and performance-based inspection framework that is

tailored to the operation, developer, location, and associated risk.

*Comment:* Several commenters suggested that the Department provide more clarity on the level and type of inspections needed (consider allowing an independent inspection company to perform work on behalf of a lessee), and the possibility of remote inspections to reduce emissions and the overall exposure of industry and agency personnel offshore.

*Response:* BSEE’s inspection model is compliance, risk, and performance-based, and includes the option of remote monitoring technology, as well as the prescriptive annual onsite inspection required by the OCSLA. As performance-based inspection by lessees and operators using remote inspection technology is found to be successful in reducing risks to industry personnel, BSEE may consider future changes to inspection activities.

*Summary of final rule revisions:*

The Department is finalizing this regulation, consistent with proposed § 585.824, with minor revisions. BSEE is revising paragraph (a)(1) to include “tendon” and “tethering” as components of systems for floating facilities to be inclusive of all mooring system types. BSEE is adding paragraph (a)(3) to clarify that your self-inspection plan must specify how you will fulfill the requirement for annual onsite inspection of all Critical Safety Systems and Equipment. BSEE is revising paragraphs (b)(1) and (2) to clarify inspection reporting and retention requirements. BSEE is also making minor edits to this section to apply the transfer of authority from BOEM to BSEE.

BSEE responded to comments concerning inspections in Section III, I. above. Additional comments and responses regarding this provision are provided below.

*§ 285.830 What are my incident reporting requirements?*

*Summary of proposed rule provisions:* The Department proposed correcting an erroneous cross-reference in paragraph (d) to provide the appropriate BSEE regulatory citation for reporting oil spills.

*Summary of comments:* BSEE did not receive any comments regarding this section.

*Summary of final rule revisions:* The Department is finalizing this regulation, consistent with proposed § 585.830. BSEE is revising paragraph (d) to include a citation to 30 CFR 250.187(d).

*§ 285.900 Who must meet the decommissioning obligations in this subpart?*

**Summary of proposed rule provisions:** The Department proposed subpart J requirements for decommissioning all facilities and obstructions on a lease, RUE, or ROW issued under the Department's renewable energy regulations. The Department proposed adding paragraph (c) establishing a limited exception to its proposed subpart J requirements for facilities that are approved by, and subject to the decommissioning requirements of, another Federal authority. This proposed amendment was intended to cover met buoys that would no longer require an SAP under proposed § 585.600. Such buoys would be subject to the site clearance required by USACE and may be subject to financial assurance requirements on a case-by-case basis, prior to deployment, at the discretion of USACE. The Department proposed exercising its authority to enforce the decommissioning requirements in proposed subpart J and its enforcement options for noncompliance by lessees in proposed subpart E.

*Summary of comments:*

*Comment:* A commenter suggested that BOEM work with BSEE to develop enforcement procedures related to financial assurance in the event of a default. The commenter said that BOEM and BSEE should ensure performance of decommissioning obligations, maintain clear records of ownership, and develop regulations that would require BSEE to enforce decommissioning in reverse chronological order.

*Response:* The NPRM did not propose changes to enforcement actions in the event of a default; therefore, changes to the final rule would be outside of the scope of the rulemaking. BSEE may consider this comment for future rulemakings.

**Summary of final rule revisions:** The Department is finalizing this regulation, consistent with proposed § 585.900. BSEE is revising this regulation to add paragraph (c) providing that if a lessee or grantee has installed a facility on a lease or grant that was authorized by an authority other than BOEM and that approving authority has imposed a decommissioning obligation, such obligation will substitute for the requirements of the subpart. The decommissioning requirements in this subpart will apply to such a facility if the authorizing agency has not imposed or enforced a decommissioning obligation.

**§ 285.902 What are the general requirements for decommissioning for facilities authorized under my SAP, COP, or GAP?**

**Summary of proposed rule provisions:** The Department proposed to order decommissioning of facilities earlier than two years following lease termination if the facilities are no longer useful for operations. The Department solicited comments on the meaning of the term "no longer useful for operations" and whether this was the best or most appropriate standard for the Department to use to describe facilities that should be required to be decommissioned.

*Summary of comments:*

*Comment:* Three commenters stated that the decommissioning process is unclear.

*Response:* BSEE disagrees that these requirements are unclear. BSEE's regulations at 30 CFR part 285, subpart I, require that, within two years following termination of a lease or grant, the owner must decommission all facilities, projects, cables, pipelines, and obstructions on their lease. Section 285.906 specifies what the decommissioning application must include.

*Comment:* A commenter requested additional information on the potential impacts of the change to tailored financial assurance amounts and instruments, specifically, regarding requirements to fund decommissioning and who is legally responsible for decommissioning.

*Response:* The requirements on providing financial assurance are defined in 30 CFR part 585. The lessee(s) are legally responsible for decommissioning as defined in 30 CFR part 285, subpart I.

*Comment:* A commenter recommended the addition of language regarding the mechanism for financial assurance for decommissioning if USACE does not require site clearance ahead of site assessment activities.

*Response:* BSEE's regulations require that the buoy be decommissioned if the USACE does not require a decommissioning obligation. BSEE strengthened § 285.900(c) to say, "The decommissioning requirements in this subpart will apply to such a facility if the authorizing agency has not imposed or enforced a decommissioning obligation." BSEE expects to utilize its regulatory authority for decommissioning of buoys in limited circumstances.

**Summary of final rule revisions:** The Department is finalizing this regulation, consistent with proposed § 585.902. BSEE is revising paragraph (a) to include the phrase "or earlier if BSEE determines a facility is no longer useful for operations" after "grant," and before ", you must." In addition, BSEE is

making minor edits to this section to apply the transfer of authority from BOEM to BSEE.

**§ 285.905 When must I submit my decommissioning application?**

**Summary of proposed rule provisions:** The Department proposed adding paragraph (e) to address the timing of applications pursuant to the proposed "idle iron" authority under § 585.902.

**Summary of comments:** BSEE did not receive any comments regarding this section.

**Summary of final rule revisions:** BSEE is revising this section by adding paragraph (e), which specifies that a lessee must submit a decommissioning application 90 calendar days after BSEE determines a facility is no longer useful for operations. BSEE is also making minor edits to this section to apply the transfer of authority from BOEM to BSEE.

**B. 30 CFR Part 585**

**Subpart A—General Provisions**

**§ 585.100 Authority.**

The text of this section is unchanged from the version that was adopted in the Reorganization Rule, which states, "The authority for this part derives from section 8 of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1337). The Secretary of the Interior delegated to the Bureau of Ocean Energy Management (BOEM) the authority to manage the development of energy on the Outer Continental Shelf (OCS) from sources other than oil and gas, including renewable energy, through the issuance of leases, easements, and right-of-way for activities that produce or support the production, transportation, or transmission of energy."

Please refer to the *Other Proposed Changes in Part 585 and Potential Revisions to Regulations Governing Transmission* sections of Section III above for a discussion of the public comments related to this section and BOEM's responses to those comments.

**§ 585.101 What is the purpose of this part?**

The language of this section is the same as what has been previously finalized as part of the Reorganization Rule, with the exception of minor grammatical edits. The Reorganization Rule removed references to Alternate Use RUEs. The Alternate Use RUEs are now addressed in 30 CFR part 586 of the regulations because they are not intended to be used solely for renewable energy and related projects. Consistent with the Reorganization Rule, the language of the final rule states that the purpose of part 585 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 OCS; (b) Inform relevant parties of their obligations when they undertake activities authorized in this part; and (c) Ensure that renewable energy activities on the OCS are conducted in a safe and environmentally sound manner, in conformance with the requirements of subsection 8(p) of OCSLA, other applicable laws and regulations, and the terms of the lease, ROW grant, or RUE grant.

Paragraph (d) of this section, which provides that this part will not convey access rights for oil, gas, or other minerals, is unchanged.

No substantive comments were received on this section of the rule.

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

Section 585.102(a) specifies that BOEM will authorize renewable energy activities in accordance with OCSLA subsection 8(p)(4), as implemented in § 585.102(a)(1) through (12). In the final rule, BOEM is amending this regulation to clarify that none of the enumerated requirements is intended to outweigh or supplant any other and that BOEM needs to reach a rational balance among the factors, as determined by the Secretary. The final rule clarifies that no one factor or consideration, by itself, should outweigh the other relevant considerations to the extent they conflict or are otherwise in tension. The final rule also provides that BOEM's responsibility to prevent waste on the OCS also includes the obligation to prevent economic waste and physical waste of energy resources from sources other than oil and gas. Some of the aforementioned changes were made in response to comments, as discussed further in section K.3 above. The Reorganization Rule added “and approved plans” to paragraph (b) to clarify that BOEM will require compliance with approved plans as well as all applicable laws, regulations, other requirements, and the terms of the lease.

Please refer to the *Other Proposed Changes in Part 585* section of Section III above for a discussion of the public comments related to this section and BOEM's responses to those comments, as well as the revisions made to the proposed rule language in this final rule.

#### *§ 585.103 When may BOEM prescribe or approve departures from these regulations?*

Section 585.103 was first promulgated to allow BOEM to maintain programmatic flexibility while adapting to a new and changing industry by

approving departures from regulatory requirements under certain limited circumstances.<sup>18</sup>

This final rule adopts the proposed revisions to § 585.103(a) introductory text and (a)(1) to specify that BOEM may prescribe or approve a departure from the regulations when BOEM deems the departure necessary because the applicable provisions as applied to a specific circumstance are impractical or unduly burdensome and the departure is necessary to achieve the intended objectives of the renewable energy program. In this way, BOEM will maintain flexibility to adapt the regulations to the unique circumstances of this new and evolving industry while retaining the consistency and integrity of the regulations as a whole.

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

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

Please refer to the *Other Proposed Changes in Part 585* section of Section III above for a discussion of the public comments related to this section and BOEM's responses to those comments, as well as the revisions made to the proposed rule language in this final rule.

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

Section 585.104 traces the statutory language of OCSLA in establishing that a lease, ROW, or RUE issued under this part is required in order to construct, operate, or maintain facilities that “produce or support production, transportation, or transmission of energy from sources other than oil and gas.”<sup>19</sup> This final rule does not adopt the

language from the proposed rule stating that, “for purposes of this section, site assessment activities are not considered to produce, transport, or support the generation of any energy products; and, therefore, such activities do not, by themselves, require a lease, easement or ROW.” (88 FR 5992) That language implied that such activities would not be covered under BOEM’s authority under OCSLA. While it is true that in this rule, BOEM has excluded buoys from the description of activities for which an approved SAP would be required, it would be an overstatement to say that such activities do not support the generation of energy. This revision is intended to clarify that an entity does not require a lease from BOEM to deploy a met buoy or tower for site assessment activities that are not located on an existing commercial lease. Under this final rule, BOEM will not require a separate lease for the deployment of simple buoys.<sup>20</sup> The USACE may be the lead Federal permitting agency for such facilities under its existing legal authority, though other agencies may also have permitting or consultation requirements, such as NOAA (National Oceanic and Atmospheric Administration) under the National Marine Sanctuaries Act (NMSA). For instance, a permit may be required for proposed off-lease site assessment activities that would occur within a national marine sanctuary. Additionally, under section 304(d) of the NMSA, Federal agencies must consult with NOAA before approving off-lease site assessment activities that are likely to destroy, cause the loss of, or injure any sanctuary resource.

Please refer to the *Site Assessment Facilities* section of Section III above for a discussion of the public comments related to this section and BOEM's responses to those comments, as well as the revisions made to the proposed rule language in this final rule.

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

In the final rule, BOEM adopted a minor modification proposed in the NPRM to strengthen the requirement for lessees to comply with all applicable laws, regulations, other requirements, the terms of the lease or grant under this part, reports, notices, approved plans, and any conditions imposed by BOEM. This would expand, strengthen, and clarify the language found in existing § 585.105(d), requiring compliance only with the “terms, conditions, and

<sup>18</sup> See *supra* note 51, at 19653.

<sup>19</sup> 43 U.S.C. 1337(p)(1)(C).

<sup>20</sup> BOEM would nonetheless require a commercial lessee seeking to install an on-lease met tower to submit an SAP in addition to the USACE permit, given the potential impacts that might be caused by such towers.

provisions of all reports and notices submitted to BOEM, and of all plans, revisions, and other BOEM approvals, as provided in this part.” The revised language requires that lessees and operators comply with all applicable laws and regulations, the terms of the lease or grant under this part; reports, notices, and approved plans prepared under this part; and any conditions imposed by BOEM through its review of any of these reports, notices, and approved plans, as provided in this part.

Please refer to the § 285.701 of this section for a discussion of the public comments related to this section and BSEE’s responses to those comments. No changes were made in response to the comments.

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

The previous § 585.400 was moved to § 585.106 by the Reorganization Rule. This section provides that BOEM may take appropriate corrective action under this part if a lessee or operator fails 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.

It further specifies that BOEM may issue a notice of noncompliance if it determines that there has been a violation of the regulations in this part, any order of the Director, or any provision of a lease, grant, or other approval issued under this part. When issuing a notice of noncompliance, BOEM will serve the offending party at its last known address.

When issuing a notice of noncompliance, BOEM will inform the offending party how it failed to comply with this part, any order of the Director and/or the provisions of the lease, grant, or other approval, and will specify what must be done to correct the noncompliance and the time limits within which action must be taken. The failure of a lessee, operator, or grantee to take the actions specified in a notice of noncompliance issued under this part within the time limit specified provides the basis for issuance of a cessation order by BSEE, as provided in 30 CFR 285.401 and/or cancellation of the lease or grant by the Secretary as provided in § 585.422.

The final rule updates this section, as proposed, to clarify that BOEM may assess civil penalties, as authorized by section 24 of the OCSLA and as determined under the procedures set forth in 30 CFR part 550, subpart N, if a company fails 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.

Consistent with the Modernization Rule NPRM, the final rule now provides that civil penalties will be determined and assessed in accordance with the procedures set forth in 30 CFR part 550, subpart N, after notice of such failure and expiration of any reasonable period allowed for corrective action or if BOEM determines the failure constitutes, or constituted, a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, or the marine, coastal, or human environment. BOEM made minor revisions to this provision to ensure consistency with OCSLA.

Please refer to the *Lease Issuance Procedure and Other Proposed Changes in Part 585* sections of Section III above for a discussion of the public comments related to this section and BOEM’s responses to those comments, as well as the revisions made to the proposed rule language in this final rule.

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

BOEM is implementing several changes to its qualification requirements, as proposed and as a result of the Reorganization rule (88 FR 6376).

First, this final rule replaces the word “hold” with “acquire or hold” throughout this section to clarify that the qualification requirements of § 585.107 are intended to apply both to the acquisition and retention of both OCS lease and grant interests. BOEM does not require automatic forfeiture of a party’s existing lease and grant interests if the lessee or grantee no longer meets the criteria in this section; rather, the provisions at § 585.422 would be the appropriate vehicle for canceling a lease in these circumstances.

Second, this final rule makes a grammatical correction to paragraph (a)(6) to list the citizenship qualifications in the disjunctive and not the conjunctive by removing “and” and replacing it with “or”.

Third, this final rule adds criteria that may disqualify a party from acquiring a lease or grant interest under this part and, consequently, from participation in the lease and grant issuance processes. This final rule will prevent a party that has been disqualified from acquiring a lease or grant interest (because it either lacks the basic regulatory qualifications or has engaged in certain enumerated misconduct) from participating in any lease or grant issuance processes under this part. This provision closes a

loophole in paragraph (c) by prohibiting a party disqualified from acquiring a lease or grant interest from entering into commercial agreements to participate in the lease or grant issuance processes on behalf of a third party. BOEM also revised paragraph (c) to clarify BOEM’s authority to disqualify a party from participating in an auction, which is not explicitly set forth in the existing regulations. These provisions are intended primarily to deter current and potential lessees and grantees from engaging in conduct that is illegal or detrimental to BOEM’s renewable energy program and to the fair conduct of its auctions.

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

BOEM also added paragraph (d) to this section to provide that a lease may be held by one or more persons provided that all interest holders are eligible to hold a lease pursuant to this section and § 585.108. BOEM made this addition to support the revisions to the lease structure, assignment and segregation provisions included in the NPRM and final rule. These final rule provisions were proposed and finalized in support of BOEM’s goal of providing lessees with more flexibility throughout the lease development process.

Please refer to the *Lease Issuance Procedure* section of Section III above for a discussion of the public comments related to this section and BOEM’s responses to those comments.

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

BOEM is implementing a technical correction to paragraph (b), as specified in the Reorganization rule (88 FR 6376), to reflect that the Immigration and Naturalization Service no longer exists and to avoid the need for future technical corrections in the event of another change in the name of the relevant Federal immigration authority.

No comments were received on this section of the rule.

**§ 585.109 When must I notify BOEM if an action has been filed alleging that I am insolvent or bankrupt?**

This section is unchanged from the existing regulation, except for being renumbered.

No comments were received on this section of the rule.

**§ 585.110 When must I notify BOEM of mergers, name changes, or changes of business form?**

This section is unchanged from the existing regulations, except for being renumbered. No comments were received on this section of the rule.

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

In the final rule, BOEM adopted the proposed changes to this section to eliminate its paper copy requirement and henceforth to rely primarily on electronic submissions. The paper requirement has proven unwieldy for voluminous plan submittals that contain multiple appendices and may be subject to multiple revisions before they are finalized.

BOEM reserves the authority to require paper copies of certain documents (such as maps and charts), if necessary.<sup>21</sup> This final rule also eliminates specific BOEM mailing addresses to avoid the need for future technical corrections if BOEM's mailing address were to change again. Instead, the mailing addresses for submissions will be listed on BOEM's website. No comments were received on this section of the rule.

**§ 585.112 When and how does BOEM charge me processing fees on a case-by-case basis?**

Under this final rule, BOEM 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 it decides 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 EIS. The rule specifies that 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 BOEM, applying a standard overhead rate to direct processing costs.

BOEM may assess the ongoing processing fee for each individual application or request under the following circumstances: before processing any application or request,

<sup>21</sup> BOEM proposes to retain the paper copy requirement for assignment applications given the importance of having an original signed version. See discussion *infra* VI.E § 585.408.

BOEM will provide a written estimate of the proposed fee based on reasonable processing costs. BOEM will allow comment on the proposed fee; lessee and operators may then ask for BOEM's approval to create, or to directly pay a contractor to create, all or part of any document, study, or other activity according to standards we specify, thereby reducing our costs for processing an application or request; or ask to pay us to perform, or contract for, all or part of any document, study, or other activity.

BOEM will provide the final estimate of the processing fee amount with payment terms and instructions after considering the lessee's comments and any BOEM-approved work that will be done. If BOEM encounters higher or lower processing costs than anticipated, we will re-estimate our reasonable processing costs. Once processing is complete, BOEM will refund the amount of money that was not spent on processing costs.

Lessees and operators must pay the entire fee before BOEM will issue the final document or take final action on an application or request, subject to the appeal rights specified in accordance with the regulations in 43 CFR part 4. BOEM will not process the document further until the appeal is resolved unless the fee is paid 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) of this section, which BOEM has consolidated into one paragraph in the final rule instead of it being divided by paragraphs (b)(5)(i) and (ii). If BOEM adjusts the fee downward, it will not pay interest. Otherwise, this section is as proposed and is unchanged from the existing regulations. No comments were received on this section of the rule.

**§ 585.113 Definitions.**

This final rule modifies the definitions for the following terms, in accordance with the proposals outlined in the NPRM, or to match the definition changes that have already been adopted in connection with the final Reorganization Rule: "affected local government," "affected State," "best management practices," "multiple factor auction," and "we."

This final rule, as proposed, adds a definition for "bidding credits." Bidding credits are defined as the value assigned by BOEM, expressed in monetary terms, to the factors or actions demonstrated, or committed to, by a bidder at a BOEM lease auction during the competitive lease award process. The regulations further specify that the types and values of any bidding credits awarded to any

given bidder will be set forth in the FSN.

This final rule adds a new definition for "coastal environment" to mean "the physical atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone." The term "coastal environment" is used in the existing regulations and its use is continued in these revised regulations in provisions that refer to the marine, coastal, and human environments. However, the term is not defined in the existing regulations even though the "marine environment" and the "human environment" are defined in them. All three terms are defined in the OCS Lands Act itself, and so we have included the statutory definition for "coastal environment" in these regulations. This should not add any burden to lessees since the statutory definition has been the reference point for its meaning in the absence of a definition in the regulations. Adding the definition simply clarifies that point.

This final rule modifies the definition of "commercial activities" to state that such activities are conducted "under" leases and grants rather than "for" them. This clarifies that commercial activities as defined in the rule apply only to on-lease or on-grant activities, and not off-lease or off-grant activities by commercial lessees and grantees.

This final rule revises the definition for "Critical Safety Systems and Equipment" to mean safety systems and equipment designed to prevent or ameliorate fire, spillages, or other major accidents that could result in harm to health, safety, or the environment in the area of your facilities. This modification was made to be consistent with BSEEs' definition of the same term in § 285.112.

The final rule does not include the proposed addition of the term "engineered foundation" and its definition "any structure installed on the seabed using a fixed-bottom foundation constructed according to a professional engineering design (based on an assessment of sedimentary, meteorological, or oceanographic conditions)." The proposed definition in the NPRM was only meant to apply to the SAP provisions of the regulations and the addition of a general definition of "engineered foundations" had the potential to cause confusion throughout the other provisions. Furthermore, the in-text revisions to the SAP regulations include the substance of this definition, which makes its inclusion under § 585.113 duplicative and unnecessary.

This final rule also revises the definition for the term “fabrication” proposed in the NPRM, which is defined in this final rule to mean “the cutting, fitting, welding, or other assembly of project elements.” The modification was made to be consistent with the definition provided in BSEE’s regulations in § 285.112.

This final rule revises the definition of “geographic center of a project” to address the ambiguity by removing references to “mapping system” and “system”.

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

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

This final rule amends the definition of “Outer Continental Shelf (OCS)” to incorporate the amendment to that term by the IRA, which expanded the OCS to include lands within the exclusive economic zone of the U.S. and adjacent to any territory of the U.S., except any area conveyed by Congress to a territorial government for administration. (IRA Sec. 50251(b)(1)).

The final rule includes several revisions to the definition of “project easement.” The revised definition states “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, maintaining, repairing and replacing; gathering, transmission, and distribution, and inter-array cables; power and pumping stations; facility anchors; pipelines; and associated facilities and other appurtenances on the OCS as necessary for the full enjoyment of the lease. The addition of “maintaining, repairing and replacing”; and “inter-array”, “power and pumping stations”, and “facility

anchors” all support the implementation of BOEM’s proposed changes to § 585.628(g)(1), which allow BOEM to approve project easements of “sufficient off-lease area to accommodate potential changes at the design and installation phases of the project for locating cables, pipelines, and other appurtenances necessary for your project.” BOEM received comments in support of these changes.

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

BOEM is revising the definition of “site assessment activities” to distinguish site assessment activities from site characterization activities.

The final rule adds a definition “you and your” to explain the terms as specified in the Reorganization rule (88 FR 6376).

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

BOEM is implementing a technical change in this section, substituting the word “commencement” for “initiation” in paragraph (b)(1) for consistency with the remainder of BOEM’s offshore renewable regulations.

No comments were received on this section of the rule.

*§ 585.115 Paperwork Reduction Act statements—information collection.*

The final rule updates the table in this section to align with proposed paragraph (e) of § 585.115 in the NPRM. This final rule reorders the subparts in the table to reflect the updated listing of subparts in the NPRM as a result of the

addition of a new subpart B, and to remove from the list subparts H through J, authority for which has been transferred to BSEE, and subpart K, the contents of which have been included in new part 586.

No substantive comments were received on this section of the rule.

*§ 585.116 Requests for information.*

The existing regulations reference two public information requests that share the same acronym: requests for interest (RFI) under §§ 585.210 and 585.231, and requests for information (RFI) under § 585.116. This final rule combines all such notices in revised § 585.116 and refers to them as requests for information. The request for interest is an optional step in the leasing process that assists BOEM in collecting information in advance of initiating a new leasing process. BOEM used the request for interest in this way several times, especially early in the program. However, more recently, the practice has been to initiate the leasing process with the first mandatory step in the leasing process, publishing a Call. This final rule has eliminated the request for interest as a step in the leasing process. In the event that BOEM would like to start the leasing process with a solicitation of information from the public, the more general request for information under § 585.116 will be available to serve that need. No substantive comments were received on this section of the rule.

*§ 585.117 Severability.*

BOEM’s existing regulations do not contain a severability provision nor did BOEM propose one in the NPRM. However, in this final rule BOEM has included a severability provision in new § 585.117 as follows: “If a court holds any provisions of this part or their applicability to any persons or circumstances invalid, the remainder of the provisions and their applicability to any persons or circumstances will not be affected.” While BOEM has determined that all of these sections can and do function separately, BOEM understands that a court will ultimately determine whether portions of the rule can be severed from others. In the event a court determines a provision was improperly promulgated, this section is designed to aid that review by demonstrating that BOEM intends the various components of this final rule, with various provenances and independent functions, to continue to operate even if one or more of the provisions is declared unlawful.

*§ 585.118 What are my appeal rights?*

The final rule adopts the proposed revisions to this section in the NPRM.

BOEM's existing renewable energy regulations discussed appeal rights in two sections—§§ 585.118 and 585.225. Section 585.118 described the right to appeal BOEM final decisions made under part 585 to the IBLA, whereas § 585.225 provided that a bidder may request the Director to reconsider its bid rejection but cannot appeal that decision to the IBLA. To simplify and clarify the administrative review provisions, this final rule has combined these two sections by locating all procedures for review of BOEM renewable energy final decisions or orders in revised § 585.118. This revised section maintains the distinction between requesting reconsideration of rejected bids and appeals of other final decisions made under part 585, but now characterizes challenges to decisions selecting provisional winners as appeals to the Director, rather than requests for reconsideration.

This section provides appeal rights to any adversely affected bidder of a provisional winner selection decision. Previously, § 585.225(b) limited requests for reconsideration to those with rejected bids. The revised § 585.118 will also provide provisional winners an opportunity to appeal if they believe there have been any errors or omissions in the selection decision, such as miscalculated or unapplied bidding credits.

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

Finally, this revised section clarifies two points regarding an appeal of a decision selecting the provisional winner. First, the provisional winner will have an opportunity to be heard before the BOEM Director reverses a selection decision. Second, the Director's decision will no longer be appealable administratively to the IBLA. No comments were received on this section of the rule.

*§§ 585.119–585.149 [Reserved]*

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

*§ 585.150 What is the Renewable Energy Leasing Schedule?*

BOEM has added a new subpart and section to the regulations, as proposed, that define a proposed leasing schedule

for the renewable energy program. BOEM has determined that a new subpart is appropriate given the nature of this change and the potentially significant benefit to stakeholders. This schedule would include a list of locations under consideration for leasing and a schedule that BOEM would follow in holding its future renewable energy lease sales. According to this subpart, at least once every two years, the Secretary will publish this schedule of proposed lease sales. The first published schedule would be issued for the five-year period following the effective date of this rulemaking and subsequent schedules will cover the five-year period after the update. This schedule will include a general description of the area of each proposed lease sale, the calendar year in which each lease sale will occur, and the reasons for any changes made to the previous schedule. Any proposed leasing schedule or event would continue to be subject to all applicable regulations, including area identification, coordination with relevant parties, and applicable environmental reviews.

BOEM seeks to improve transparency regarding the government's intentions for future offshore wind leasing without proliferating requirements for BOEM, industry or the public. It is a commitment for the agency to openly communicate in good faith approximately where and when it plans to shift its gaze for area identification and leasing. It does not bind the agency to engage in specific additional public engagement or process to inform the schedule and allows flexibility to modify a schedule after publication.

Please refer to the *Renewable Energy Leasing Schedule* section of Section III above for a discussion of the public comments related to this section and BOEM's responses to those comments.

*§§ 585.151–585.199 [Reserved]*

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

*General Lease Information*

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

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

No changes were proposed for this section. This final rule adds no

additional changes. BOEM received no comments on this section.

*§ 585.201 How will BOEM issue leases?*

No changes were proposed for this section. This final rule adds no additional changes. BOEM received no comments on this section.

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

BOEM has finalized the proposed technical revision to this section to make it consistent with subsection 8(p) of OCSLA. BOEM also added a citation, as proposed, to § 585.239 for leases issued for renewable energy research activities. BOEM received no comments on whether to include research leases as a type of lease that BOEM may issue.

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

BOEM finalized several edits to this section; some were proposed in the NPRM and others were not. BOEM made technical and editorial corrections to improve readability. BOEM added the Native Hawaiian Community and Alaskan Native Corporations to the list of entities that BOEM consults with before the issuance of leases, after a commenter pointed to the absence of the Native Hawaiian Community. Also, in the first sentence of this section, BOEM reordered the list of entities with which BOEM must consult such that Tribes are mentioned ahead of states to represent the special status of Tribal governments.

*§ 585.204 What areas are available for leasing consideration?*

No changes were proposed for this section. The final rule adds no additional changes. BOEM received no comments on this section.

*§ 585.205 How will leases be mapped?*

No changes were proposed for this section. The final rule adds no additional changes. BOEM received no comments on this section.

*§ 585.206 What is the lease size?*

No changes were proposed for this section. The final rule adds no additional changes. BOEM received no comments on this section.

*§§ 585.207–585.209 [Reserved]*

*Competitive Lease Award Process—Pre-Auction Provisions*

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

Section 585.210 provides an overview of the competitive leasing process and effectively merges existing §§ 585.210 and 585.211. This final rule replaces, as proposed, the request for interest in the existing § 585.210 with a request for information in the revised § 585.116. The revised § 585.210 now provides an

overview of the entire competitive leasing process by including two steps that are not currently mentioned in the existing section: the auction and lease award. Please refer to the *Lease Issuance Procedure* section of Section III above for a discussion of the public comment related to this section and BOEM's responses to those comments.

#### *§ 585.211 What is the Call?*

Section 585.211 consolidates, as proposed, existing §§ 585.211(a), 585.213, and 585.214, which describe the information requested by the Call, the information a respondent should include in its response if it wishes to nominate one or more areas for a commercial renewable energy lease within the preliminarily identified leasing areas, and BOEM's handling and processing of the information received. The primary purpose of this change is reorganization; no substantive changes have been made to BOEM's existing regulations and practice. BOEM has removed the reference to withholding privileged and confidential information as being redundant with the protections already described in § 585.114. Please refer to the *Lease Issuance Procedure* section of Section III above for a discussion of the public comment related to this section and BOEM's responses to those comments.

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

Section 585.212 provides more clarity regarding BOEM's area identification process, thus expanding the description of this step in § 585.210(b)(2), largely as proposed. BOEM otherwise has not made any substantive change to the existing process. Please refer to the *Lease Issuance Procedures* section of Section III above for a discussion of the public comments related to this section and BOEM's responses to those comments, as well as the revisions made to the proposed rule language in this final rule.

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

BOEM will consider any factors that it determines relevant during this process. These factors may include, but would not necessarily be limited to, other uses in and around the area, applicable environmental analysis,

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

BOEM retains the flexibility to modify the selection of parcels offered for leasing after area identification and before the auction. Also consistent with the existing regulations, BOEM will use the area identification process to inform its NEPA review and associated interagency consultations to evaluate the potential effects of activities that are expected to take place after lease issuance on the human, marine, and coastal environments and on other environmental requirements. The NMSA may apply to any actions that may injure sanctuary resources or that may require permits for placement of equipment or disturbance of covered submerged lands. In any case where a NMSA permit may be required, NOAA may require certain financial assurances for infrastructure removal activities potentially required under permit. BOEM may continue to develop lease stipulations or other measures as part of its NEPA review to mitigate potential adverse impacts and may hold public hearings regarding its environmental analyses after potential lease areas have been identified.

Commenters noted that BOEM changed the use of the word "will" to "may" in paragraph (c)(3) of this section and requested that we change it back.<sup>22</sup> As a result, BOEM is not carrying forward this change in the final rule. BOEM added a clarification that while mitigation measures and stipulations are identified during the Area Identification process, they continue to be identified

<sup>22</sup> BOEM's existing regulations as published in 2009 at § 585.211(b)(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" and § 585.211(b)(3): "we will consult to develop measures, including lease stipulations and conditions, to mitigate adverse impacts on the environment." Contrast with the NPRM at § 585.212(c)(1): "BOEM may develop measures, including lease stipulations, to mitigate potential adverse impacts."

throughout later environmental reviews and consultations and may not be published until the PSN.

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

The NPRM analyses of the proposed sections on the PSN and the FSN, §§ 585.213 and 585.214, respectively, emphasized the close interrelationship between the notices, and how the first enhanced an understanding of the second.

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

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

Please refer to the *Lease Issuance Procedures* section of Section III above for a discussion of the public comments related to this section and BOEM's responses to those comments.

#### *§ 585.214 What information is included in the FSN?*

The same changes were made to § 585.214 that were made in § 585.213, as described in the proposed rule. Please refer to the section-by-section analysis of § 585.213 above for a description of those changes and to the *Lease Issuance Procedures* section of Section III of this preamble for a discussion of the public comments and BOEM's responses to those comments for this section.

As noted in the response to comments section M.3, in response to suggestions to use particular bidding credits, such as one to promote shared transmission lines, BOEM develops and proposes any bidding credits in the PSN, and later confirms their use in the FSN, which allows for comments and potential modification. Such credits could be offered in future lease sales when deemed appropriate, however, this is beyond the scope of the current rulemaking.

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

BOEM's existing regulations at § 585.212 explain the process BOEM follows if it had a reason to believe competitive interest no longer existed before the FSN was issued. The revised § 585.215, as proposed, maintains the same process for determining whether competitive interest remains and for acting on that determination. This section clarifies, however, that BOEM may implement this process any time before the auction when it has reason to believe competitive interest is absent. BOEM may proceed with an auction regardless of the result of its competitive interest inquiry under this section. BOEM did not receive comments on this section.

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

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

A bidder will be awarded bidding credits before the auction if it timely submits a bidding credit application that includes the requisite commitments and meets eligibility requirements under the FSN and part 585. Depending on the FSN provisions, a bidder might be eligible for multiple bidding credits if the bidder meets the criteria for each credit. The FSN could provide for bidding credits that are "stackable" or "non-stackable." Stackable credits are those where the total value of one's bidding credits would be the sum of all the credits for which the bidder was

eligible. Alternatively, the FSN may limit the bidding credits to non-stackable credits, where the total value of a bidder's bidding credits would be limited to the value of the largest bidding credit for which the bidder was eligible. Stackable credits would incentivize bidders to meet the criteria for as many of the available bidding credits as they can. Alternatively, using non-stackable credits would limit the total value of the non-monetary component of the bid. Bidding credits may be denominated as either a sum certain or a percentage of the bid, as specified in the FSN.

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

In response to comments on whether the regulations should codify BOEM's past practice of imposing a cap on the value of bidding credits that any bidder can earn, measured as either an absolute dollar amount or as a percentage of the bid amount, BOEM did not include a cap or limit but expects to continue its practice of limiting bidding credits to a maximum of 25 percent of the value of the high bid unless BOEM determines that a higher bidding credit is warranted for a particular sale. In § 585.216(b), BOEM listed a half dozen examples of bidding credits that BOEM could use in future lease sales. Commenters suggested others, and in many cases asked that BOEM include them in the list of examples provided. BOEM did not include these in the list, but its authority to include such bidding credits in future sales is preserved by § 585.216(b)(7), which permits to offer bidding credits for "any other factor or criteria to further development of

offshore renewable energy, as identified by BOEM in the PSN and FSN."

Please refer to the *Lease Issuance Procedures* section of Section III above for further discussion of the public comments related to this section and BOEM's responses to those comments.

**SS 585.217–585.219 [Reserved]**

**Competitive Lease Award Process—Auction Provisions**

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

BOEM is planning to continue to implement multiple factor auctions, through the use of bidding credits, to allow the competitive lease award process to take into consideration various priority actions, such as advancing a domestic supply chain and workforce training, consistent with the goals of OCSLA. As noted previously, bidding credits represent a monetary value assigned by BOEM to the actions or factors demonstrated or committed to by a bidder at a BOEM lease auction during the competitive lease award process. The value of the bidding credits would be added to the value of the cash bid to determine who is the highest bidder.

The existing regulations at §§ 585.220 through 585.222 set forth options that BOEM could have used for auction formats, bidding systems, and bid acceptance criteria for both commercial and limited leases. As discussed in section *Lease Issuance Procedures* section of Section III, these regulations were overly prescriptive and required clarification and modification to provide BOEM with flexibility to adopt new and innovative auction processes and procedures. Revised § 585.220, as was proposed, replaces those sections with a simplified and flexible approach that would allow BOEM to use any auction process, including multiple factors, and any procedure that is objective, fair, reasonable, and competitive; awards a lease based upon the highest total bid; and provides a fair return to the United States. This section also clarifies that the specific process for each auction will be noticed in the PSN and, subject to revisions, finalized in the FSN.

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

As was proposed, this revised section sets forth the provisions and rules applicable to all auctions. This section codifies the existing practice whereby BOEM conducts an auction if it determines, after the Call, that competitive interest exists for renewable energy development on parcels of the OCS and decides to issue leases within those areas. Section 585.221 codifies the

use of the FSN to prescribe the detailed process for any auction.

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

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

Section 585.222 establishes a set of procedures and rules of conduct for bidders, as proposed. This section is consistent with BOEM's existing practices, including requirements that bidders submit bid deposits in accordance with § 585.501 and meet §§ 585.107 and 585.108 qualification requirements. If the awarded lease is executed by an agent acting on behalf of the bidder, the bidder must submit, along with the executed lease, written evidence that the agent is authorized to act on behalf of the bidder, as is already required under existing § 585.224(g).

Please refer to the *Lease Issuance Procedure* section of Section III above for a discussion of the public comments related to this section and BOEM's responses to those comments, as well as the revisions made to the proposed rule language in this final rule.

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

Consistent with the proposed rule, section 585.223 contains a non-exhaustive list of supplemental auction details likely to be contained in a PSN and FSN. Although this section lacks an analogue in the prior regulations, the supplemental details listed in this section generally are consistent with the information that BOEM has provided in recent PSNs and FSNs. This section clarifies the concept of the next highest bidder and describes the process to determine the next best bid if the provisional winner fails to meet its obligations or is otherwise unable to acquire the lease. The next best bidder criteria will be detailed in the PSN and FSN. BOEM did not receive comments on this section.

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

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

Section 585.224 finalizes the NPRM proposal and outlines the steps that BOEM will take following the end of an auction. The revisions to this section make explicit existing practices that are consistent with OCSLA and that have proven effective in BOEM's auctions thus far. Section 585.224 retains BOEM's existing authority in §§ 585.222(a)(2) and 585.224(f) to reject and accept bids and to withdraw lease areas between auction completion and lease execution. Finally, if an auction results in unsold lease areas, revised § 585.224 clarifies that BOEM has the discretion to re-auction those unsold areas after the auction by restarting the competitive leasing process at any reasonable and appropriate step in that process.

Please refer to the *Lease Issuance Procedure* section of Section III above for a discussion of the public comments related to this section and BOEM's responses to those comments.

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

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

facilitating electronic transmission of documents.

Please refer to the *Lease Issuance Procedure* section of Section III above for a discussion of the public comments related to this section and BOEM's responses to those comments, as well as the revisions made to the proposed rule language in this final rule.

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

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

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

Section 585.226 also sets forth the additional actions BOEM could take if a provisional winner fails to meet its obligations. These possible actions would include refusal to award other leases won by the provisional winner in the auction and referral to the Department's Administrative Remedies Division for suspension or debarment review pursuant to 2 CFR part 180 as implemented at 2 CFR part 1400. This section also specifies that, if the provisional winner fails to meet its obligations or is otherwise unable to execute a lease, BOEM could select a new provisional winner by either repeating the auction, selecting the next highest bid, or using other criteria specified in the FSN. No comments were received on this section.

**§ 585.227–585.229 [Reserved]**

**Noncompetitive Lease Award Process**

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

No changes were proposed for this section. This final rule adds no additional changes. BOEM received no comments on this section.

**§ 585.231 Will BOEM issue leases noncompetitively?**

In the NPRM, BOEM had proposed several modifications, both significant

and minor, to its noncompetitive leasing process. First, this final rule clarifies in paragraph (a) that BOEM will only use the noncompetitive process if it “determines after public notice of a proposed lease, easement, or right-of-way that there is no competitive interest.”<sup>23</sup>

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

Third, this final rule adds a timeline and sunset provision to BOEM’s noncompetitive leasing processes. The existing regulations established neither an expiration date for a DNICI nor deadlines for the noncompetitive leasing process. If BOEM had left the regulations in the existing form, this could have allowed a company to obtain a noncompetitive lease in situations where there may potentially be other interested lessees in the future (due to changes in circumstances). Accordingly, the newly adopted paragraphs (d) and (e) create the following milestones for the noncompetitive leasing process:

- After publication of the DNICI, BOEM would prepare and provide the beneficiary with a written estimate of the fees to pay for the processing costs under § 585.112, including conducting an environmental review prior to lease issuance.

- The beneficiary has 90 calendar days from receipt of the fee estimate to pay the fee.

- The DNICI would expire within two years of publication, unless BOEM determines, on a case-by-case basis, that this timeframe should be extended.

Fourth, this final rule clarifies in paragraph (d)(3) that BOEM will

conduct an environmental review of a noncompetitive lease request that it determined had no competitive interest but which BOEM intends to process. Fifth, this final rule specifies that BOEM will make a final decision as to whether to issue a noncompetitive lease after the completion of its environmental review and other reviews required by Federal law (e.g., CZMA). Section 585.231, paragraph (f), clarifies that for noncompetitive leases, CZMA concurrences would be processed pursuant to 15 CFR part 930, subpart D. Based on its experience, BOEM expects this to be a rare occurrence. BOEM clarified that the applicant’s submissions to the State CZM agency be done “in a timely manner” so as not to delay the progress of the BOEM application for a noncompetitive lease and added conforming edits to the analogous section for ROWs and RUEs in § 585.306(b).

Finally, this final rule makes several miscellaneous technical corrections and clarifications to this section. It revises the existing section heading to reflect the scope of this section more accurately. The “RFI” referenced in § 585.231(b) is being replaced with “an RFI under § 585.116, meaning a “request for information in lieu of a “request for interest”. This final rule would make administrative changes to § 585.231(c)(1) and (h)(1)(ii) to reflect updated cross-references in this final rule. This final rule also revises the payment due date for the first 12 months’ rent on a lease consistent with changes to §§ 585.225 and 585.503. The remainder of the noncompetitive lease issuance process remains substantially the same as in the prior regulations.

In addition to finalizing the proposed changes, the final rule also makes some technical edits to this section. Due to the widespread adoption of electronic copies, in § 585.225(b), BOEM removed references to BOEM sending three unsigned copies of the lease form to the provisional winner and removed the provisional winner’s obligation to execute three copies. BOEM no longer needs to sign three copies, and BOEM will send the new lessee an electronic version of the executed lease. Corresponding changes were made in § 585.231(h) for noncompetitive leases.

Please refer to the *Lease Issuance Procedure and Other Proposed Changes in Part 585* sections of Section III above for a discussion of the public comments related to this section and BOEM’s responses to those comments, as well as the revisions made to the proposed rule language in this final rule.

**§ 585.232 May I acquire a lease noncompetitively after responding to a**

*request for information or a Call for Information and Nominations?*

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

No Comments were received on this section.

**§§ 585.233–585.234 [Reserved]**

**Commercial and Limited Lease Periods**

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

Consistent with the proposed rule, BOEM is overhauling the organization and duration of its commercial leases as well as the triggers that move a lease from one period of a lease to another. These changes are responsive to industry comments, reflect BOEM’s experience administering its leasing and plan review programs, and arise from other aspects of this rulemaking—particularly the elimination of the SAP for met buoys.

Under the existing regulations, BOEM’s commercial leases comprised three “terms”:

- A preliminary term of 12 months, starting at lease execution and typically ending with the submission of an SAP.
- A site assessment term of 5 years, starting at SAP approval and ending with the submission of a COP.
- An operations term of 25 years, typically starting at COP approval.

Up to now, BOEM has automatically tolled the preliminary and site assessment terms during its review of submitted plans; a lessee could request additional time extensions if it did not timely file a plan.

This final rule makes numerous changes to the text and structure of § 585.235(a). First, as proposed, BOEM renames its lease “terms” as lease “periods” to describe the progression of its commercial leases more appropriately. This change in nomenclature is intended to more accurately distinguish between stages of lease development that under the existing regulations were covered by the same term. For example, construction and operations represent very different stages of development, deserving of separate treatment under the regulations.

Next, as proposed, BOEM merged the preliminary and site assessment terms into one 5-year preliminary period that commences on the lease effective date and ends either with the submittal of a COP to BOEM for its review or five years after the lease effective date,

<sup>23</sup> 43 U.S.C. 1337(p)(3).

whichever occurs first. This change flows directly from BOEM's proposal to eliminate the SAP requirement for met buoys.<sup>24</sup> Given that most lessees are not expected to submit an SAP under the final rule, BOEM believes it no longer makes sense for a lease to contain a deadline for SAP submittal—much less to use that deadline to trigger a new phase of the lease. (As discussed in the section-by-section analysis of § 585.601 in section below, BOEM also has removed all deadlines for SAP submittals.)

Consistent with the proposed rule, this final rule creates two additional lease periods between the submission of the COP and the operations period: the *COP review period* and the *design and construction period*. As proposed, the *COP review period* starts at COP submittal and ends upon BOEM's decision on whether to approve or disapprove the COP or approve the COP with conditions pursuant to § 585.628. As proposed, BOEM did not establish a fixed length for the COP review period in the final rule to preserve regulatory flexibility and to allow for harmonization with recent government-wide permit review streamlining initiatives (e.g., FAST-41).<sup>25</sup>

However, in the final rule, BOEM did not adopt the proposed one-year time limit for a lessee after its initial COP submission to resolve issues identified by BOEM and to finalize its COP. BOEM recently published guidance that addresses these issues in a more nuanced manner than the one-year proposal described in the NPRM.<sup>26</sup>

In the final rule, the *design and construction period* starts at COP approval and ends when the operations period begins. In the final rule, BOEM changed the ending of the *design and construction period* from the proposed ending of “either when commercial operations begin or at the expiration of the period set forth in the approved COP as modified” to the more precise “when the operations period begins.” Likewise, BOEM declined to implement a provision in the proposed rule that would have required COPs to include a proposed timeline for the design and construction period, subject to approval by BOEM as part of the COP review. These revisions improved the clarity

<sup>24</sup> See *supra* section V.A, entitled “Site Assessment Facilities,” for complete discussion.

<sup>25</sup> Fixing America’s Surface Transportation Act Title 41, 42 U.S.C. 4370m *et seq.*

<sup>26</sup> Information Needed for Issuance of a Notice of Intent (NOI) Under the National Environmental Policy Act (NEPA) for a Construction and Operations Plan. (Aug. 2023) available at <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/BOEM%20NOI%20Checklist.pdf>.

and consistency of the transition between the *design and construction period* to the *operations period* and supported BOEM's changes to the *operations period* at § 585.235(a)(4) which disconnected the beginning of the operations period from the commencement of commercial operations of any facility. Instead, the operations period commences when the requirements of 30 CFR 285.637 are met for an entire project area through the submission of final reports and records. Many of the aforementioned changes were made in response to comments, as discussed further in *Other Proposed Changes in Part 585*, section III above.

BOEM originally proposed that the operations period commence at the commercial operations start date and remain in effect for 30 years. In the final rule, BOEM implemented a default 35-year operations period based on the expected utility of project facilities and comments received on the NPRM. BOEM's previous regulations established a default construction and operations term of 25 years, though because this period includes the time needed to construct the project, the actual duration of operations would be as much as several years less than that. Commenters have indicated that this is less than the projected life of the facilities being installed, and technical advancements will likely push the design life of offshore wind facilities even further.

BOEM is making two other changes to the proposed *operations period*. First, BOEM added language to allow a lessee to propose an extension to the operations period for their project within their COP. This change is more efficient than the NPRM proposal because it allows BOEM to approve an alternate operations period, as an element of COP approval, that is specifically tailored to the purpose and need for the project, as well as the projected life of the project facilities. Second, BOEM replaced the trigger for the commencement of the operations period. The NPRM proposed the operations period would commence at the start of commercial operations. The final rule replaces this trigger with “when the requirements of § 285.637(a) are met through the submission of final reports and records for your project.” The final rule ties the commencement of the operations period more closely to the completion of construction and installation than the NPRM did. This change also reflects the revised definition of commercial operations included in the final rule, which would result in commercial operations beginning in many cases during testing

and first power. Larger projects may be constructed, tested and powered over several seasons and even years, therefore, BOEM finds it more appropriate to set the operations period to begin when construction and installation is substantially complete. Some of the aforementioned changes were made in response to comments, as discussed further in *Other Proposed Changes* section in part 585 of section III above.

The Department recognizes that existing lessees may seek modification of their leases to conform to the new lease periods, among other changes. BOEM intends to contact existing lessees with a proposal for amending leases to take advantage of certain revisions made in this final rule.

In addition to revamping the structure of its commercial leases, the Department proposed several provisions aimed at granting a lessee more flexibility throughout the development process. First, the Department proposed expanding the criteria in § 585.235(b) for granting extensions of lease periods. Previously, the only enumerated basis for extending the preliminary term or the site assessment term was if a lessee submitted a plan late. The Department proposed to clarify that it has discretion to extend any lease period for good cause. In the final rule, BOEM includes the “good cause” rationale as well as the additional descriptor “including if the project is designed and verified for a longer duration” as an illustration of “good cause.”

Second, the Department proposed a new § 585.235(c) clarifying that a lessee may propose an alternative lease period schedule if it chooses to develop its lease in phases. Numerous lessees have expressed interest in phased development of their leases, but the previously existing regulations did not explicitly set forth a process for modifying the default lease schedule if a lessee intends to defer development on portions of its lease area. Third and relatedly, the Department proposed a new § 585.235(d) providing that a lessee may seek modification of the default lease schedule in its application to segregate its lease or consolidate two adjacent leases. With this final rule, all of the aforementioned proposed changes have been implemented, with one additional change made in the final rule.

In the final rule BOEM changed “you may propose lease period schedules for each phase in your COP” to “you must propose lease period schedules for each phase in your COP” due to the potential need for a separate lease period schedule for latter phase(s). Notably,

BOEM anticipates that this would typically include a different operations period for latter phase(s)—one that would begin well after project construction was substantially complete for the first phase. Consequently, for a phased development COP, each phase will have its own lease period schedule upon COP approval that was informed by the lessee's request, BOEM's review of the request, and the resulting BOEM-approved schedule. This process for establishing the lease period schedule for phased development COPs avoids unintentional barriers to phased development that could result if a lessee did not provide lease period schedule information for each phase of the project. Every year of an operations period, in particular, holds significant commercial value and BOEM's intent is to ensure due diligence on leases, while balancing the need to support key development flexibilities enshrined in BOEM's regulations, most notably phased development. Such a balance is achieved here because the lessee is demonstrating due diligence on the first phase of its lease while continuing to mature latter phases. Finally, this change supports providing certainty to a lessee regarding the operations period of its renewable energy project.

As discussed in the section-by-section analyses of §§ 585.410 and 585.413 below, BOEM previously approved lease segregation and consolidation requests and anticipates more such requests in the future. However, unlike these new regulations, the previous regulations did not explicitly address the effects these actions might have on lease schedules.

Please refer to the *Other Proposed Changes in Part 585* section of section III above for additional discussion of the public comments related to this section and BOEM's responses to those comments, as well as the revisions made to the proposed rule language in this final rule.

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

With this final rule, BOEM substituted the word “period” for “term”, as proposed, to ensure consistency with its changes to § 585.235. Additionally, because limited leases may allow a wide range of activities, this final rule would replace the existing five-year operations term with an operations period of a duration to be determined by BOEM prior to auction (if the lease is issued competitively) or negotiated with the applicant (if the lease is issued noncompetitively). In either case, the length of the term will depend on the intended use of the lease. The existing regulations specified that extensions of

the preliminary term may be requested if the GAP for the limited lease was not going to be submitted in a timely manner. With this final rule, BOEM will allow extensions of a limited lease's preliminary period only if the requested extension can be justified for “good cause.” Consistent with the changes to § 585.235, BOEM will also allow extensions of a limited lease's operations period if the requested extension can be justified for “good cause.”

No comments were received on this section.

**§ 585.237 What is the effective date of a lease?**

No changes were proposed for this section. This final rule adds no additional changes. BOEM received no comments on this section.

**§ 585.238 May I develop my commercial lease in phases?**

As a result of the Reorganization Rule (88 FR 6376), this section was removed from § 585.629 as specified in 76 FR 64763, and added as § 585.238 in the final rule. In the final rule BOEM added “You must also propose a lease period schedule for each phase in your COP in accordance with § 585.235(c)” in support of the referenced text in § 585.235 and to ensure clarity. In addition, BOEM added, “BOEM may condition its approval of subsequent phases described in a phased development COP” to facilitate phased development. BOEM added this sentence in response to a recommendation of a commenter. This change, like the changes to the lease periods included in the NPRM and final rule, removes barriers to phased development of leases and supports a more fulsome implementation of those changes.

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

No changes were proposed for this section. This final rule adds no additional changes. BOEM received no comments on this section.

**§ 585.240–585.299 [Reserved]**

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

Subpart C, Right-of-Way Grants and Right-of-Use and Easement Grants for Renewable Energy Activities, has been redesignated as subpart D to accommodate the addition of a new subpart B, as noted in *Renewable Energy Leasing Schedule* section of Section III above.

**Row Grants and RUE Grants**

In response to the comment recommending defining roles among BOEM, DOE, FERC, and RTO/ISO, BOEM agrees that coordination among these entities is critical to the transmission planning process and will continue to take steps to further refine roles and responsibilities as the industry continues to develop. Additionally, BOEM and FERC signed a Memorandum of Understanding (MOU) on April 9, 2009. The purpose of this MOU was to clarify jurisdictional understanding regarding renewable energy projects in offshore waters on the OCS, in order to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic (*i.e.*, wave, tidal, and ocean current) energy projects. Additional updates to the rulemaking with respect to the ROW and RUE provisions were made in response to comments, as described further in Section III above.

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

The only change that this final rule makes to this section is replace the word “an” with “a” in three places. BOEM received no comments on these proposed changes and makes no changes to them in the final rule.

**§ 585.301 What do ROW grants and RUE grants include?**

BOEM has removed, as proposed, the previously prescribed width of ROWs, in order to implement the PDE approach discussed above in *Project Design Envelope and Geophysical and Geotechnical Surveys* sections of Section III, and to maintain consistency with BOEM's proposed revisions to § 585.628(g) for project easements. BOEM is also clarifying that a subsea cable ROW may need to accommodate multiple associated facilities. BOEM received no substantive comments on this section.

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

BOEM has implemented a technical correction to update the cross references in this section, reflecting that an applicant must meet the qualifications set forth in §§ 585.107 and 585.108 in order to acquire a ROW or RUE. BOEM received no comments on this section.

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

BOEM has substituted the word “period” for “term” to ensure consistency with the changes to § 585.235. By renaming the preliminary term of a ROW and RUE as the

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

BOEM’s existing regulations specified that the ROW grant or RUE grant would remain in effect for as long as it is being used for the purpose for which it was granted. This rule has modified that provision by introducing an operations period as set by BOEM (if the grant is issued competitively) or negotiated with the applicant (if the grant is issued noncompetitively). The duration of the operations period will depend on the intended use of the grant. BOEM will allow extensions of a ROW grant or RUE grant operations period if the requested extension can be justified for “good cause,” as determined by BOEM.

#### *§ 585.304 [Reserved]*

#### Obtaining Row Grants and RUE Grants

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

A technical edit has been made to this section as a result of the Reorganization Rule (88 FR 6376). BOEM has eliminated the paper copy requirement, consistent with the revised provisions in § 585.111. BOEM received no comments on this section.

##### *§ 585.306 What action will BOEM take on my request?*

As a result of the Reorganization Rule (88 FR 6376), § 585.306 adds two provisions to paragraph (b) from the existing § 585.309 and removes the existing § 585.309. This consolidation simplifies and clarifies this subpart. Minor additional edits were made to this section to ensure consistency with the addition of “in a timely manner” to § 585.231(f). Please refer to the *Lease Issuance Procedures* section of Section III above for additional discussion of the public comments related to this section and BOEM’s responses to those comments, as well as the revisions made

to the proposed rule language in this final rule.

##### *§ 585.307 How will BOEM determine whether competitive interest exists for ROW grants and RUE grants?*

BOEM added, as proposed, the word “generally” to § 585.307(a) to clarify that BOEM does not need to specifically describe the parameters of a future project and that a public notice need only include enough information about the future project to allow potential ROW and/or RUE grant holders to assess whether they would be interested in competitively participating in an auction for the grant.

BOEM added a new paragraph (c) to the final rule to help align Federal and State transmission processes, as in the case of transmission ROWs, the State inherently must also issue a grant to extend through State waters, and on land. This clarifies BOEM’s authority to take into consideration the competitive determination of a State, regional transmission organization, or independent system operator to satisfy the competition requirement of 43 U.S.C. 1337(p)(3) in determining whether competitive interest exists for proposed transmission. BOEM may issue a public notice to determine whether competitive interest exists prior to the conclusion of a State or ISO/RTO process that generally describes the potential ROW/RUE, BOEM’s coordination with the State or ISO/RTO process that requested use of the OCS for a project supporting transmission from renewable energy, and explaining that BOEM will make the determination of whether competitive interest exists after assessing comments on the proposal and area, but after the State or ISO/RTO has made decision on the procurement of a project(s). This will allow BOEM to continue coordination with the relevant intergovernmental partners necessary for the consideration and permitting of such a project. This coordination will help reduce the likelihood of a scenario where a State awards use of State waters to one project proponent, and BOEM awards use of the OCS to a different project proponent through a competitive process, which would frustrate the goals of OCSLA of orderly and expeditious development of renewable resources, and the goals of environmental protection and the prevention of waste.

Please refer to the *Lease Issuance Procedures* section of Section III above for additional discussion of the public comments related to this section and BOEM’s responses to those comments, as well as the revisions made to the proposed rule language in this final rule.

##### *§ 585.308 How will BOEM conduct an auction for ROW grants and RUE grants?*

No changes were proposed for this section. This final rule adds no additional changes. BOEM received no comments on this section.

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

The existing § 585.309 was removed by this final rule as redundant (see analysis of § 585.306).

##### *§ 585.309 What is the effective date of a ROW grant or a RUE grant?*

A technical edit has been made to this section as a result of the Reorganization Rule (88 FR 6376). This section was renumbered in this final rule as § 585.309 (from § 585.310). The substance of this section is unchanged.

#### *§ 585.310–585.314 [Reserved]*

#### Financial Requirements for Row Grants and Rue Grants

##### *§ 585.315 What deposits are required for a competitive ROW grant or RUE grant?*

No changes were proposed for this section. This final rule adds no additional changes. BOEM received no comments on this section.

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

A technical correction has been made to this section as a result of the Reorganization Rule (88 FR 6376). BOEM made a technical correction to reflect that Office of Natural Resources Revenue (ONRR) is the appropriate payee.

#### *§ 585.317–585.399 [Reserved]*

#### F. 30 CFR part 585, subpart E—Lease and Grant Administration

Subpart D, Lease and Grant Administration, has been redesignated as subpart E to accommodate the addition of a new subpart B, as proposed and as noted in *Renewable Energy Leasing Schedule* section of Section III.

#### Noncompliance and Cessation Orders

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

The previous § 585.400 was moved to § 585.106 by the Reorganization Rule. Please refer to the *Other Proposed Changes in Part 585* of Section III above for a discussion of the public comments related to this section and BOEM’s responses to those comments, as well as the revisions made to the proposed rule language in this final rule.

#### *§ 585.400–585.404 [Reserved]*

Sections 585.401 and 585.402 have been deleted as unnecessary.

**Designation of Operator****§ 585.405 How do I designate an operator?**

BOEM updated citations in this section, as proposed, to maintain consistency with changes in the organization of §§ 585.626 and 585.645 and made a grammatical edit.

**§ 585.406 Who is responsible for fulfilling lease and grant obligations?**

Following publication of the Reorganization Rule, BOEM added a reference in this section to the regulations at 30 CFR part 285 to clarify that the lessee or grantee is also responsible for fulfilling obligations under the BSEE-administered regulations.

**§ 585.407 [Reserved]****Lease or Grant Assignment, Segregation, and Consolidation****§ 585.408 May I assign my lease or grant interest?**

BOEM added “to one or more parties” to paragraph (a) of the final rule in response to comments requesting BOEM explicitly allow the lessee to assign all or part of the lease area to other entities. BOEM eliminated specific elements of the regulatory requirements for an assignment application in paragraph (b) that are duplicative with many of the requirements of § 585.409, and that are also already provided for in the form that is currently on the BOEM website for leases (Form BOEM-0003) and grants (Form BOEM-0002). BOEM modified the date on which an assignment becomes effective to better align this requirement with BOEM’s oil and gas regulations on the effective date of assignments, found in 30 CFR 556.712. This final rule also clarifies that paragraph (d) refers to mergers, name changes, or changes of business form and not to the lease consolidation provisions of § 585.413 and that the lessee must notify BOEM of these events under § 585.110.

Please refer to the *Other Proposed Changes in Part 585* section of Section III above for additional discussion of the public comments related to this section and BOEM’s responses to those comments, as well as the revisions made to the proposed rule language in this final rule.

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

BOEM made technical changes to this section to update cross-references in paragraphs (b) and (c) in the final rule.

This final rule added a new § 585.410, as proposed, to explain when an assignment would result in a segregated lease. BOEM added a paragraph (c) to the proposed § 585.410 in response to

comments. Existing §§ 585.410 and 585.411 have been renumbered to §§ 585.411 and 585.412, respectively.

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

BOEM’s existing regulations authorized approval of requests to segregate its leases into multiple smaller leases under § 585.408(a), allowing lessees to “assign all or part of your lease or grant interest . . . subject to BOEM approval under this subpart.” BOEM previously had approved lease segregations and continues to anticipate receiving more requests as some lessees may decide to develop their leases in a phased fashion. Accordingly, BOEM clarified the process for segregating leases by adopting language from the lease segregation provisions in its oil and gas regulations at 30 CFR 556.702. BOEM added that an “application to assign a lease or grant may include a request to modify the existing lease or grant period schedule consistent with § 585.235(d)” in response to comments and to ensure consistency with § 585.235. BOEM has added a new paragraph (c) to explain that when a lease becomes segregated, BOEM may issue separate plan approval for a segregated lease or take other actions within its discretion.

Please refer to the *Other Proposed Changes in Part 585* section of Section III above for additional discussion of the public comments related to this section and BOEM’s responses to those comments.

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

This section has been re-numbered, as proposed, to reflect addition of the § 585.410 regarding lease segregation. No other changes were made.

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

This section is re-numbered, as proposed, to reflect the addition of § 585.410 regarding lease segregation. Also, because of the Reorganization Rule, a new cross-reference to applicable BSEE regulations at 30 CFR part 285, subpart I, was added to paragraph (a) and a cross-reference to 30 CFR part 285 was added to paragraph (b). This final rule corrects the extent of an assignee’s regulatory liability by replacing “subchapter” with “part” in the first sentence of paragraph (b).

**§ 585.413 How do I consolidate leases or grants?**

BOEM added procedures in this section for consolidating two or more adjacent leases or grants, as proposed. Under the existing regulations, BOEM had the authority to approve lease consolidations by mutual agreement under the terms of its existing leases

(and has already done so once), but no regulatory provision directly addressed such requests. Section 585.413 codifies BOEM’s existing practices in the regulations by establishing a procedure for requesting and approving consolidations of leases and grants.

BOEM notes that adjacent leases or grants may have different terms and be at differing stages of development. BOEM has addressed such differences as explained below. If the time remaining in the relevant lease periods differs between the leases or grants to be consolidated, BOEM will default to the shorter remaining periods in the new lease or grant. Alternatively, the lessee or grantee may request a revised lease period schedule pursuant to § 585.235(d). If other terms and conditions differ between the leases or grants to be consolidated, BOEM will default to the most recently issued terms and conditions contained in the leases or grants to be consolidated. The lessee or grantee may request modifications to such terms and conditions. BOEM will consider and, in its discretion, approve such requests on a case-by-case basis for good cause. BOEM may assess the need to modify existing financial assurances before approving a proposed consolidation. Any consolidated leases or grants that has been consolidated into the new lease or grant in their entirety will be considered terminated at the time of consolidation approval. Please refer to the *Other Proposed Changes in Part 585* section of Section III above for additional discussion of the public comments related to this section and BOEM’s responses to those comments.

**§ 585.414 [Reserved]****Lease or Grant Suspension****§ 585.415 What is a lease or grant suspension?**

As proposed, BOEM has changed the word “term” to “period” in paragraphs (a) and (b) to correspond to the changes made to § 585.235. This change did not alter the substance of these paragraphs. A cross-reference to relevant BSEE regulations at 30 CFR 285.417 has also been added in paragraph (a)(2), due to the Reorganization Rule.

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

As proposed, BOEM made several technical corrections and clarifications to this section. First, BOEM reorganized the contents of a suspension application for clarity and added a catch-all category to provide BOEM with additional flexibility. Second, BOEM added a new paragraph (b) consistent with its revisions to § 585.235(b). A few minor other changes have been made for editorial clarity.

**§ 585.417 When may BOEM order a suspension?**

Several provisions of this section were deleted because the relevant provisions were moved to BSEE-administered regulations as part of the Reorganization Rule. Therefore, the final rule retains only two circumstances when BOEM may order a suspension, when necessary to comply with judicial decrees or when the suspension is necessary for reasons of national security or defense. Please refer to the *Section-by-Section Analysis* § 285.417 in Section V, which includes the BSEE-administered regulations that were finalized consistent with the proposed rule.

**§ 585.418 How will BOEM issue a suspension?**

No change was proposed or made to this section.

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

No change was proposed or made to this section.

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

BOEM made some technical edits to this section by combining paragraphs (b) and (c) and modifying the requirement that directed suspensions always be accompanied by a fee suspension, as proposed. As a result, all payment suspensions will be at the discretion of BOEM. BOEM also clarifies that, regardless of whether a lease or grant suspension is approved or ordered, BOEM has discretion to “waive or defer” (rather than “suspend”) payments while the lease or grant is suspended. BOEM believes that more flexibility is needed than its existing regulations provide regarding its treatment of such payments, given the wide range of potential justifications for a suspension. Corresponding changes and clarifications were made to part 285 to maintain consistency with these regulations and to provide the same flexibility when either BSEE or BOEM orders a suspension, which may occur as a result of the Reorganization Rule.

**§ 585.421 How long will a lease or grant suspension be in effect?**

No change was made to this section other than the addition of a clarifying edit that was made in the Reorganization Rule applying suspensions to either leases or grants, such as RUEs and ROWs.

**§ 585.422 When can my lease or grant be canceled?**

This section was moved from § 585.437 to § 585.422 by the Reorganization Rule. No other changes were proposed or made to this section.

**§ 585.423–585.424 [Reserved]****Lease or Grant Renewal****§ 585.425 May I obtain a renewal of my lease or grant before it terminates?**

BOEM proposed and made a technical change in this section in the final rule to conform to its proposed changes to § 585.235 by changing the word “term” to “period” wherever it appears.

**§ 585.426 When must I submit my request for renewal?**

BOEM proposed and made a technical change in this section in the final rule to conform to its proposed changes to § 585.235 by changing the word “term” to “period” wherever it appears.

**§ 585.427 How long is a renewal?**

BOEM proposed and made technical changes in this section in the final rule to conform to its proposed changes to § 585.235 by changing the word “term” to “period” wherever it appears.

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

No changes were proposed for this section. This final rule adds no additional changes. BOEM received no comments on this section.

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

BOEM proposed adding a new paragraph (g) to this section providing for consideration of “Other relevant factors, as appropriate” in determining whether to renew a lease or grant. BOEM’s discretion to consider relevant factors that may not be enumerated is particularly important, given the difficulty of foreseeing what issues may arise in the future when BOEM begins to receive lease renewal requests. BOEM finalized this section as proposed. BOEM received no comments on this section.

**§§ 585.430–585.431 [Reserved]****Lease or Grant Termination****§ 585.432 When Does My Lease or Grant Terminate?**

BOEM proposed and made technical changes in subpart (a) of this section in the final rule to conform to its proposed changes to § 585.235 by changing the word “term” to “period” wherever it appeared. BOEM also proposed and added “in which case it terminates on the date set forth in the notice of suspension or renewal” to subpart (a) of this section in the final rule. BOEM received no comments on this section.

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

The Reorganization Rule modified paragraph (a)(2) to include a reference to the BSEE-administered regulations at 30 CFR 285.902. In the final rule BOEM made an additional edit to reference

§§ 285.905 and 285.906 instead of § 285.902 which more precisely address decommissioning applications. No comments were received on this section.

**§ 585.434 When may BOEM authorize facilities to remain in place following termination of a lease or grant?**

No changes were proposed for this section. This final rule adds no additional changes. BOEM received no comments on this section.

**Lease or Grant Relinquishment, Contraction, or Cancellation**

As proposed, BOEM has consolidated the three undesignated sub headers in the existing regulations into one, for clarity and efficiency. The existing separate undesignated sub headers denoted lease or grant relinquishment, lease or grant contraction, and lease or grant cancellation.

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

As proposed, the final rule makes a lease or grant relinquishment effective on the date BOEM receives a properly completed relinquishment form, subject to the obligations listed in the existing rule. This change would conform with BOEM’s approach to oil and gas lease relinquishments in 30 CFR 556.1101, under which a relinquishment takes effect as soon as the lessee or grantee files with BOEM a properly completed official relinquishment form available on BOEM’s website. Relinquishments will no longer require BOEM approval. As in the prior regulations, relinquishment of a lease or grant would have no impact on a lessee’s or grant holder’s obligations accrued under those instruments before the relinquishment. The Reorganization Rule also changed paragraph (a)(2) to reference “to BSEE’s satisfaction” instead of BOEM due to the transfer of decommissioning regulations to BSEE effectuated by the Reorganization Rule. After BOEM receives the properly completed relinquishment form, ONRR will bill the lessee or grantee the amount due on any outstanding obligations that accrued under the relinquished lease or grant. No other changes were proposed or made in the final rule. No comments were received on this section.

**§ 585.436 Can BOEM require lease or grant contraction?**

No changes were proposed or made to this section. No comments were received on this section.

**§ 585.437 When can my lease or grant be canceled?**

This section was deleted and made reserved because the Reorganization Rule moved this section to § 585.422.

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

The existing regulations did not provide a process by which BOEM could reissue a lease or grant for an area (or portions thereof) previously covered by a lease or grant that has been relinquished under § 585.435, contracted under § 585.436, or cancelled under § 585.422. The final rule adds new § 585.438, as proposed, to allow BOEM to restart the competitive leasing process at any point it deems reasonable after a lease or grant (or portion thereof) is relinquished, contracted, or cancelled. In such situations, under this final rule, BOEM would be obligated to engage in additional environmental analysis and consultation, if necessary, due to elapsed time or changed conditions. This final rule also allows, as proposed, BOEM to reoffer the lease or grant to the next highest bidder if a competitively issued lease or grant (or portion thereof) is relinquished or cancelled within six months of the auction. BOEM believes that within six months, the next best bid may still be deemed sufficient to constitute fair return under 43 U.S.C. 1337(p)(2)(A). Minor grammatical edits were made to ordering of cross references in paragraphs (a) and (b) in the final rule. Please refer to the *Lease Issuance Procedures* section of Section III above for additional discussion of the public comments related to this section and BOEM's responses to those comments.

**§ 585.439–585.499 [Reserved]**

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

Subpart E, Payments and Financial Assurance Requirements, has been redesignated as subpart F to accommodate the addition of a new subpart B, as noted in *Renewable Energy Leasing Schedule* section of Section III above.

**Payments**

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

This final rule adopts the changes to this section proposed in the NPRM. First, it replaces the due date in paragraph (c)(1) for the bonus balance payment on a competitively issued lease from “[l]ease issuance” to “[w]ithin 10 business days of receiving the unsigned lease” and adds a section reference. This final rule also replaces the word “issuance” with “execution” in the “Due date” column of paragraphs (c)(3) and (7). Also, in paragraph (c)(3), this final rule changes the due date for

payment of initial rent for a lease from “45 days after lease issuance” to “within 45 calendar days after receiving your copy of the executed lease from BOEM.” These changes are intended to provide clarity and to give a lessee or a grantee more time to make the required payments.

This final rule also substitutes the word “period” for “term” in paragraphs (a) and (c) to ensure consistency with the changes to § 585.235. This final rule replaces the annual ROW rent of \$70 per mile with an annual rent of \$5 per acre as determined by § 585.301(a). This change provides BOEM with consistency in pricing OCS usage for RUEs and ROWs. See further discussion on rent payment below in the section-by-section analysis of § 585.508.

BOEM did not receive any substantive comments on this section.

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

Existing § 585.501 describes the deposit a bidder had to submit to participate in specific types of auctions for a lease, RUE, or ROW. As proposed, the final rule revises § 585.501 to eliminate provisions specifying deposits by auction type and instead provides BOEM with the discretion to establish bid deposit requirements in the FSN. This change is consistent with the provisions of § 585.222(a).

No comments were received on this section.

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

No changes were proposed for this section. This final rule adds no additional changes. BOEM received no comments on this section.

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

As proposed, § 585.503(a) revises the payment due date for the first 12 months' rent on a commercial lease. The winning bidder is required to pay the rent no later than 45 calendar days after receiving a copy of the executed lease from BOEM in accordance with the requirements provided in § 585.500(c)(3). The existing regulations provided that the rent payment is due no later than 45 calendar days after BOEM sends the unsigned copies of the lease to the provisional winner. This new section effectively would give lessees slightly more time to pay the first 12 months' rent.

BOEM also made several technical corrections to this section to conform to the definition of “commercial operations” in § 585.113 and the

establishment of the “operations period” under § 585.235(4), as well as to provide more specificity regarding the regulations that govern payments to ONRR.

No comments were received on this section.

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

BOEM made a technical change, as proposed, to provide a more specific citation to the regulations that govern payments to ONRR. In addition, a technical change was made to citation § 585.238 as a result of the Reorganization Rule (88 FR 6376).

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

BOEM finalized the technical changes proposed in the NPRM to provide a more specific citation to the regulations that govern payments to ONRR.

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

BOEM finalized the changes proposed in the NPRM for this section. BOEM amended the introductory paragraph to clarify that operating fees are triggered at the start of commercial operations as defined in § 585.113. Consistent with the existing regulations, generation of electricity for commercial use, sale, transmission, or distribution during testing is subject to operating fees.

BOEM also amended paragraph (c)(1) to remove “generation of electricity” and replace it with “operations” consistent with the use of “commercial operations” throughout the regulations. BOEM also amended paragraph (c)(3)(i) to reflect the clear distinction between “commercial operations” and the “operations period” under the final rule. After the first year of the “operations period” is the appropriate point to assess the capacity factor as opposed to the commencement of “commercial operations” which may occur during testing when limited numbers of WTGs are producing power.

In addition to finalizing the proposed changes, BOEM also made technical changes in the final rule to provide a more specific citation to the regulations that govern payments to ONRR; to identify ONRR as the correct payee for operating fees; and to define “DOE.” Finally, BOEM eliminated paragraph (c)(4) to reduce the administrative obligation of submitting duplicative gross annual generation figures. As a result, paragraph (c)(5) has been redesignated as paragraph (c)(4).

Please refer to the *Lease Issuance Procedure and General Comments and Response* sections of Section III above for additional discussion of the public

comments related to this section and BOEM's responses to those comments.

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

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

In addition to finalizing the proposed changes, the final rule also removed the word "aerial" before "extent" and replaced it with "areal". "Areal extent" is the term used in geography to describe the size of a project easement area for an accessory platform. In paragraph (b)(1), BOEM removed "when the operations term begins" such that it refers only to § 585.500, which provides that rent on a project easement is due upon COP or GAP approval.

No comments were received on this section.

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

BOEM finalized technical changes proposed in the NPRM to provide a more specific citation to the regulations that govern payments to ONRR; to remove the word "nautical" as redundant given the definition of "miles" in § 585.113; and to make minor editorial adjustments that enhance readability. BOEM simplified ROW rental payments to reflect that, under this final rule, ROW corridors would have sufficient width to accommodate all planned grant activities. BOEM believes that most grantees would prefer an initially wider corridor that would encompass all areas of actual seabed disturbance, rather than the existing regulations, which limit corridors to a 200-foot width with a subsequent determination of the "affected area" outside that corridor. Grantees will be able to relinquish unused portions of the right-of-way corridor after construction, as set forth in § 585.301, and subsequently would be relieved of their obligation to pay rent for the acreage within relinquished areas.

To promote consistency in BOEM's valuation of OCS rental pricing across RUEs and ROWs, this final rule also replaces the annual ROW rent of \$70 per statute mile with a rent of the greater of \$5 per acre per year or \$450 per year, as determined by § 585.301(a), unless otherwise specified in the grant. This change streamlines BOEM's existing rental fee calculations and ensures a consistent valuation of all OCS acreage for grants. Under the previous regulations, a ROW grantee was required to pay an annual rent of about \$2.89 per acre and a RUE grant holder,

\$5 per acre.<sup>27</sup> BOEM has since determined that no compelling reason supports this differential between the RUE and ROW annual rental rates. No substantive comments were received on this section.

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

As proposed, this final rule makes a technical correction to the section heading by replacing "BOEM" with "ONRR" as the correct payee.

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

BOEM finalized the proposed regulations in the NPRM to allow BOEM to grant requests for deferral of rental and operating fee payments, in addition to reductions or waivers. BOEM seeks to avoid confusion by explicitly including this authority in this final rule. BOEM also made a technical change to conform the language to BOEM's changes to § 585.235 (changed reference from "term" to "period").

**§ 585.511–585.514 [Reserved]**

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

This section has been removed and reserved in this final rule, as explained in the analysis of § 585.516.

**Financial Assurance Requirements for Commercial Leases**

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

The following text, along with the comment descriptions in *Risk Management and Financial Assurance* section of Section III, summarize the changes that were proposed in the NPRM and that are implemented with this final rule. This final rule amended several key aspects of this section.

As discussed in *Risk Management and Financial Assurance* section of Section III, BOEM has replaced the previous \$100,000 lease-specific bond required before BOEM will execute a commercial lease or approve an assignment of an existing commercial lease with a bond or other authorized financial assurance in the amount of 12 months' rent. This will ensure that the lessee is not under-bonded during the preliminary term of a lease if annual rent exceeds \$100,000, which it often does. BOEM removed the existing § 585.515 as surplus in light of this other change, as that section relates to

<sup>27</sup> An annual ROW rent of \$2.89 per acre for a one-mile, 200-foot-wide corridor is derived as follows: A 1-mile, 200-foot-wide corridor has an area equivalent to 1,056,000 square feet or 24.24 acres (43,560 square feet per acre); \$70 divided by 24.24 acres is \$2.89 per acre.

a "flat-fee" bond that would no longer be required. Section 585.515 previously subjected the minimum base bond to adjustment every five years based on changes to the Consumer Price Index—All Urban Consumers, but such adjustment is no longer necessary if the initial bond amount is tied to the annual rent for the lease. Under this final rule, § 585.515 is reserved.

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

Third, BOEM eliminated the bond or other financial assurance that was previously due before COP approval, for the reasons set forth in section *Risk Management and Financial Assurance* section of Section III above.

Fourth, BOEM made several revisions to the decommissioning financial assurance requirement. Most importantly, this final rule establishes that a lessee may propose—and BOEM may approve or disapprove—incremental funding of a financial assurance instrument that satisfies this requirement. This would allow BOEM to approve the incremental provision of financial assurance during the operation of the facility for the reasons set forth in section *Risk Management and Financial Assurance* section of Section III. This final rule provides more flexibility than BOEM's existing regulatory authority, which allows decommissioning financial assurance to be provided "in accordance with the number of facilities installed or being installed."<sup>28</sup>

The remaining changes to this section are intended for clarification and organizational purposes. For instance, BOEM has adopted the term "supplemental" to describe all financial assurance for obligations other than the first 12 months' rent. BOEM also has removed language in paragraph (b) regarding a lessee's ability to increase its financial assurance. The text was redundant of § 585.517 requirements that a lessee provide financial assurance to cover all lease obligations and that BOEM might require additional financial assurance at any time during the lease after providing a lessee notice and an opportunity to be heard. BOEM changed the timing for providing supplemental financial assurance for marine hydrokinetic projects in paragraph (c) in recognition that obtaining a FERC license, like the approval of a COP, may not itself result

<sup>28</sup> 30 CFR 585.516(a)(3).

in the accrual of obligations. The additional flexibility regarding the timing of financial assurance will assist BOEM in coordinating with FERC.

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

This final rule adopts the proposed changes in the NPRM and, in addition, updates this section to reference the BSEE-administered regulations at 30 CFR part 285, subpart I. The changes, as described in the NPRM, are for clarity and do not have a substantive impact, and BOEM did not receive any comments on this section.

**§ 585.518–585.519 [Reserved]**

**Financial Assurance for Limited Leases, Row Grants and Rue Grants**

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

The final rule adopts the provisions of the proposed rule to make technical changes and to provide that the lessee or assignee of a limited lease, or a grantee or an assignee of a ROW or RUE grant, must guarantee compliance with all terms and conditions of the lease or grant by providing a bond or other authorized financial assurance in the amount of 12 months' rent.

Please refer to section *Risk Management and Financial Assurance* section of Section III for additional discussion of the public comments related to this section and BOEM's responses to those comments.

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

The final rule implements the proposed changes to this section as described in the NPRM and makes one technical correction. The estimated cost of facility decommissioning is now specified to be "as required by 30 CFR part 285, subpart I," in reference to the BSEE-administered regulations.

Please refer to section *Risk Management and Financial Assurance* section of Section III for additional discussion of the public comments related to this section and BOEM's responses to those comments.

**§ 585.522–585.524 [Reserved]**

**Requirements for Financial Assurance Instruments**

**§ 585.525 What general requirements must a financial assurance instrument meet?**

No changes were proposed for this section. This final rule adds no additional changes. BOEM received no comments on this section.

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

BOEM is finalizing this section as proposed. This final rule makes minor grammatical changes to paragraphs (a)(7)(i) and (a)(9). The initial required expiration date was also changed from one year to not less than 90 days in paragraph (a)(7)(iv). Letters of credit are often valid for one year when they are granted from the bank, but if it takes more than one day for submission, processing, and approval to "become effective" then it is no longer valid for a full year. Changing the one-year requirement to not less than 90 days will resolve this issue and maintain consistency with paragraph (a)(7)(v), which provides that BOEM needs to be notified if the letter of credit won't be valid for more than 90 days.

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

BOEM requested comments on this section in the NPRM section V.G.3.e "Other Financial Assurance Provisions." Please refer *Risk Management and Financial Assurance* section of Section III for discussion of the public comments related to this section and BOEM's responses to those comments.

The existing regulations list the following criteria in making the determination of financial strength and reliability: audited financial statements, business stability, reliability, and compliance with regulations. This rulemaking replaces those four criteria with two new criteria: credit rating and the ratio of projected revenue to decommissioning liability. This rulemaking also sets the acceptable threshold(s) for credit ratings, as described in more detail above in *Risk Management and Financial Assurance* section of Section III.

Paragraph (a) allows a credit rating from an NRSRO and paragraph (b) allows a proxy credit rating determined by BOEM. Co-lessee or co-grant-holder financial strength is used to determine financial strength and reliability in paragraph (c). The minimum threshold for adequate financial strength in paragraphs (a), (b), and (c) is an investment grade credit rating, either BBB- from Standard and Poor's (S&P), Baa3 from Moody's, or an equivalent rating from another NRSRO.

Paragraph (d) describes how, for a lessee without an investment grade credit rating, BOEM may consider the contracted revenue from electricity generation relative to its operating expenses (net income) and the

decommissioning obligations associated with that generation. Contracted revenue could include revenue from a power purchase agreement, renewable energy production credit, or other arrangement with a counterparty. For a lessee, if its net income is at least three times its estimated decommissioning expenses associated with the facilities that will generate that income, BOEM could use the contract(s) to determine the lessee's financial strength and reliability.

Existing paragraphs (b) and (c) were redesignated as paragraphs (e) and (f) and were modified to reflect the new financial strength and reliability assessments. The submission deadline of March 31 was removed in paragraph (e) to accommodate lessees that do not report annual financial information as of December 31st. Lessees will still be required to submit annual financial statements, but the submission timeline will depend on the fiscal year of each lessee. Revised paragraph (f) removes the reference to information required by the existing paragraph (a) because those criteria, audited financial statements, business stability, reliability, and compliance, will no longer be used in BOEM's evaluations.

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

BOEM requested comments on this section in the NPRM section V.G.3.e "Other Financial Assurance Provisions." Please refer to the *Risk Management and Financial Assurance* section of Section III for discussion of the public comments related to this section and BOEM's responses to those comments.

The final rule in paragraph (a)(1) of this section requires that a guarantor meet the credit rating criteria in § 585.527(a) for financial strength and reliability, as described in more detail in *Risk Management and Financial Assurance* section of Section III. Other financial assurance provisions—credit ratings and modifies paragraph (a)(2) for clarity. BOEM revised paragraph (b) to allow a third-party guaranty to be limited to a fixed dollar amount.

Paragraph (c) was added to specify what occurs if a guarantor no longer meets the criteria in paragraph (a)(1). Paragraph (d)(5) was removed as it was identical in purpose to (d)(3) and the subsequent paragraphs in (d) were renumbered to reflect this change. The remaining paragraphs in this section were modified to update references that changed due to the Reorganization Rule. The reference to "operating rights owner" in paragraph (d)(4) was also

removed since that is a legal status that exists in the offshore oil and gas regulatory framework but not in the legal framework for OCS renewable energy leases.

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

In this final rule, BOEM updated paragraphs (a)(2) through (4) by: (1) Clarifying that the lessee must fund the account in the amount determined by and according to the payment schedule approved by BOEM; (2) Adding a note to the effect that BOEM will estimate the cost of decommissioning, including site clearance; (3) Adding a provision that, subject to BOEM's approval, a decommissioning account may be funded in whole or in part during the operations period of a lease or grant; and (4) Noting that BOEM may modify an approved payment schedule if it determines such a modification to be justified by a material change in circumstances. These changes are also discussed in more detail in *Risk Management and Financial Assurance* section of Section III. The final rule also inserts a semi-colon at the end of paragraph (a)(1) that was inadvertently removed in the NPRM.

**Changes in Financial Assurance**

**§ 585.530 What must I do if my financial assurance lapses?**

The final rule makes minor corrections, as proposed, to the existing regulations by adding "your" before third-party guarantor and removing the subsequent comma.

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

No changes were proposed for this section. This final rule adds no additional changes. BOEM received no comments on this section.

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

BOEM did not receive any comments on this section and is finalizing the section as proposed. The word "bond" was replaced by the term "financial assurance," consistent with the same change made throughout the BOEM-administered regulations. Also, a surety must now submit a request to terminate the period of liability 90 days before the proposed termination date.

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

BOEM did not receive any comments on this section. Paragraphs (c) and (d) will be combined to better state that financial assurance may not be

cancelled after 7 years if there are any associated appeals or litigation; the remainder of the section is finalized as proposed. The term "cancel" is now used throughout this section for consistency instead of "release." The "only if" conditional was replaced with a timing clause stating when cancellation would occur.

**§ 585.534 When may BOEM cancel my financial assurance?**

BOEM did not receive any comments on this section and is finalizing the section as proposed. The first column of the chart now lists the different types of financial assurance, and the second column lists the cancellation requirements. The cancellation requirements have been expanded to include several new situations. Also, a clause was added to allow reinstatement of financial assurance in certain situations.

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

BOEM did not receive any comments on this section and is finalizing the section as proposed. The term "bond" is replaced with "financial assurance."

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

No changes were proposed for this section and no changes were made to this section in this final rule.

**§ 585.537 How will BOEM proceed once my bond or other security is forfeited?**

No changes were proposed for this section and no changes were made to this section in this final rule.

**§ 585.538–585.539 [Reserved]**

**Revenue Sharing With States**

**§ 585.540 How will BOEM equitably distribute revenues to States?**

As proposed, this final rule changes this section to update the cross-reference to the "Definitions" section of the rule from § 585.112 to § 585.113, corresponding to the renumbering of the sections that is being implemented with this final rule.

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

As proposed, the final rule makes a technical correction to this section to remove the word "nautical" as redundant given the definition of "miles" in § 585.113, which defines "miles" to mean nautical miles.

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

As proposed, the final rule makes a technical correction to this section to remove the word "nautical" as redundant given the definition of "miles" in § 585.113, which defines "miles" to mean nautical miles.

**§ 585.543 Example of how the inverse distance formula works.**

No changes were proposed for this section and no changes were made to this section in this final rule.

**§ 585.544–585.599 [Reserved]**

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

Subpart F, Plans and Information Requirements, has been redesignated as subpart G to accommodate the addition of a new subpart B, as noted in *Renewable Energy Leasing Schedule* section of Section III above.

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

The existing regulations required lessees to submit a SAP for BOEM approval before conducting any site assessment activities on their commercial leases. Consistent with the proposed rule, under this final rule, in § 585.600(a)(1), SAPs are required only for site assessment activities involving met towers or other facilities that are installed on the seabed using a fixed-bottom foundation requiring professional engineering design and assessment of sediment, meteorological, and oceanographic conditions as part of the design. This change is intended to exempt floating site assessment facilities, such as met buoys, from the SAP requirement, and is being implemented for the reasons set forth in *Site Assessment Facilities* section of Section III. The changes to these regulatory provisions will not affect the applicability of other agencies' statutory and regulatory requirements.

Under the final rule a lessee planning to install an industry-standard met buoy using a gravity anchor for site assessment will no longer be required to submit a SAP. If a lessee is uncertain whether its proposed site assessment facility would have the type of foundation that could trigger the SAP requirements, the lessee should consult with BOEM.

A commenter recommended deleting "engineered foundation" from the definitions in proposed § 585.113 as well as eliminating a reference to it which was included in proposed § 585.600(a)(1) to "avoid confusion, given that it only applies to met towers and no other structures." BOEM agrees with this approach given that the term "engineered foundation" was only intended to be used in the SAP provisions of the rule and elected not to include this term in either the definitions nor in § 585.600(a)(1) in the final rule. BOEM determined the reference to an "engineered foundation" in proposed § 585.600(a)(1) was redundant with the proposed inclusion of "fixed-bottom foundation requiring

professional engineering design and assessment of sediment, meteorological, and oceanographic conditions as part of the design.” Therefore, BOEM determined the use of “engineered foundation” was unnecessary while leaving the latter language intact in the final rule. These comments and revisions are also discussed in the preamble in *Site Assessment Facilities* section of Section III.

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

*§ 585.601 When must I submit my plans to BOEM?*

The existing regulations required the submittal of a SAP no later than 12 months after the date of lease or grant issuance. BOEM saw no persuasive reason for this requirement in § 585.601(a) and removed it in this final rule as proposed. In doing so, BOEM will provide useful flexibility to lessees and grantees without any notable downside. Some lessees have chosen to file a COP prior to a SAP, and there may be other instances where additional data collection methods that would require a SAP are undertaken after the filing of the COP. BOEM expects that the requirement will have little application given that SAPs are no longer required for met buoys, because nearly all SAPs submitted to date have been for met buoys. Moreover, removing this deadline is consistent with the overhaul of lease periods that BOEM is finalizing in this rule at § 585.235, which includes elimination of the “site assessment term” by consolidating it into the “preliminary period.” With this final rule, BOEM will allow a lessee or grantee to submit a SAP anytime during the term of its lease or grant but will continue to require a lessee or grantee to submit a SAP before conducting any activities that require a SAP.

In the final rule § 585.601(b) and (c), BOEM revised the timing for COP submittal to be more consistent with the changes to the lease periods in § 585.235. Under this final rule, a COP

is due by the end of the preliminary period. In this final rule, BOEM clarifies that a GAP is due by the end of the preliminary period for a limited lease, or a preliminary period for a grant consistent with §§ 585.236 and 585.303, respectively. Because lessees and grantees may request lease and grant period extensions, BOEM eliminated the specific timing from each of these provisions. The remaining changes to this section in the final rule are edits for clarity.

No comments were received on this section.

*§ 585.602 What records must I maintain?*

This section was moved to part 285 under BSEE by the Reorganization Rule and retained as reserved in the BOEM-administered regulations in part 585.

*§ 585.603–585.604 [Reserved]*

**Site Assessment Plan and Information Requirements for Commercial Leases**

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

As proposed, BOEM is revising § 585.605(a) in this final rule to be consistent with its changes to § 585.600(a)(1) and is deleting text that it views as duplicative of the requirements set forth in §§ 585.606 through 585.613 (describing the SAP submittal and review process). The remaining changes to the redesignated paragraphs (b) and (c) in this final rule are editorial in nature and intended only to clarify the existing text. In addition, the citation to § 585.810 is replaced with § 285.810 as a result of the Reorganization Rule (88 FR 6376). No comments were received on this section.

*§ 585.606 What must I demonstrate in my SAP?*

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

Please refer to Section III for a discussion of comments received on this section.

*§ 585.607 How do I submit my SAP?*

This final rule eliminates the paper copy requirement SAP submission, as proposed, consistent with revised provisions in § 585.111. BOEM received no comments on this provision.

*§ 585.608–585.609 [Reserved]*

**Contents of the Site Assessment Plan**

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

BOEM is clarifying and streamlining the data requirements for SAP submission. Most of these changes are driven by changes to the COP requirements (as discussed in *Geophysical and Geotechnical Surveys* section of Section III above). BOEM is making similar changes across the corresponding SAP and GAP regulations for purposes of consistency. A more detailed description of the rationale for these proposed revisions can be found in *Geophysical and Geotechnical Surveys* section of Section III, and the analysis of proposed § 585.626 found in the NPRM. Some changes made to this section are also discussed in the *Project Design Envelope* section of Section III above. The following summarizes the key changes to this section being finalized, as proposed:

First, this final rule adds language in paragraph (a) intended to clarify that a lessee may use a PDE in its SAP as discussed in the *Project Design Envelope* section of Section III above. The introductory language in paragraph (a)<sup>29</sup> clarifies that project specific information may be provided as a range of parameters. While BOEM is not specifying in this rule what that range should be, BOEM’s requirement cannot be met without providing both a minimum and a maximum value. For example, a lessee could propose two types of met tower foundations in its SAP but would need to describe which foundation type is expected to have the greatest impact on each affected resource. Paragraph (a)(5) includes language clarifying that a lessee can propose a range of potential locations for its site assessment facility as well as an indicative layout (*i.e.*, a less detailed design) as an alternative to a location plat. BOEM made additional edits to paragraph (a)(6) to clarify that only preliminary design information is required for facilities that are deemed complex and significant, while final design information is needed for

<sup>29</sup> For clarity, BOEM proposes standardizing the presentation of the required content for an SAP, COP, and GAP so that paragraph (a) outlines the general informational requirements and paragraph (b) outlines the survey and investigations data requirements. The equivalent COP and GAP sections would be re-arranged under this final rule consistent with this approach.

facilities that are not deemed complex and significant. Final designs would be submitted with the FDR under 30 CFR 285.701 if the project is deemed complex and significant under § 585.613(a).

Second, BOEM is eliminating the existing requirement in paragraph (a)(9) that a CVA nomination (if necessary, under § 585.613(a)) must be included with the SAP; instead, a lessee will nominate a CVA before or after SAP submittal under 30 CFR 285.706. As described further in *Certified Verification Agent and Engineering Report* section of Section III above, the intent of decoupling the CVA nomination from the SAP, COP, or GAP is to allow a lessee or grantee to obtain the benefits of CVA review at the earliest feasible opportunity. In lieu of a CVA nomination, a lessee will only need to describe its project verification strategy for those proposed activities that would require an SAP. For an SAP, this would include an analysis of whether the project should be considered complex or significant, thereby triggering the design, fabrication, and installation requirements in 30 CFR part 285, subpart G. Under this final rule, if BOEM determines that the project is complex or significant, the lessee or grantee would be required to include a general description of its strategy for complying with the requirements of 30 CFR part 285, subpart G.

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

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

Finally, as proposed, BOEM is deleting the existing paragraph (c), which concerned the simultaneous submittal of an SAP and either a COP or (for a marine hydrokinetic project) a FERC license application. BOEM

believes that paragraph (c) is unnecessary because such simultaneous submittals still would be permitted under other provisions of this subpart in this final rule and because much of this paragraph is repetitive of § 585.601(b).

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

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

- Information about resources, conditions, and activities that your proposed activities may significantly affect or that may have a significant effect on your proposed activities (including where the potential significance of the effect is unknown) and must contain any other information required by law. This edit is consistent with comments made and incorporated into the COP regulations at § 585.627(a) and is, consistent with NEPA, as amended by the Fiscal Responsibility Act in 2023.
- Water quality information would explicitly include impacts from vessel discharges, as is already required under the CWA.
- Archaeological resources information would explicitly include information on all types of historic properties, as is already required under the NHPA.
- Coastal and marine uses information would explicitly include assessments of fisheries and navigational safety risk. Lessees would be required to submit the latter assessment to the USCG.

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

See Section III for a discussion of a comment received on this section.

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

BOEM is modifying paragraph (a) to add that the submittal to BOEM must conform with the requirements of § 585.111. BOEM is clarifying in paragraph (b) that lessees need to submit a consistency certification for their SAPs under 15 CFR part 930,

subpart E, only if BOEM has not previously submitted a consistency determination to that State under 15 CFR part 930, subpart C, that covered the proposed site assessment activities, as opposed to always providing the submittal as described in the previous version of the regulations. The existing regulations require lessees to submit a consistency certification in all cases.

BOEM, in consultation with NOAA, finds that implementation of the OCS renewable energy program thus far shows that there are three potential CZMA Federal consistency reviews<sup>30</sup> related to BOEM's actions: (1) when BOEM conducts a lease sale and awards a lease, ROW, or RUE and provides a state or states with a CZMA consistency determination under 15 CFR part 930, subpart C; (2) when an applicant submits a CZMA consistency certification to BOEM for a SAP, COP, or GAP, if required by 15 CFR part 930, subpart E; and (3) when the activity is located outside a geographic location described in the state's coastal management program pursuant to 15 CFR 930.52, and an applicant, on its own accord, submits a consistency certification to a state or states through BOEM under 15 CFR part 930, subpart E. For the lease sales held so far, states have reviewed associated SAP activities through the review of BOEM's consistency determination under 15 CFR part 930, subpart C. BOEM and NOAA expect that this will continue and that it should be the rare case where a separate CZMA consistency review is required for an SAP or GAP. BOEM is making clarifying edits to this section in the final rule by noting that necessary data and information "required to conduct an adequate consistency review" will be provided along with BOEM's consistency certification.

See Section III for a discussion of the comments received on this section. The changes described here are as proposed.

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

In this final rule, BOEM is removing "modification" and replacing it with "conditions" to be consistent with other changes to plan approvals, as was proposed. BOEM also is harmonizing the existing language in paragraph (e)(2) of this section with an equivalent provision in § 585.628(f)(2) regarding actions lessees may take in the event of SAP disapproval. BOEM is also clarifying that SAP resubmission must occur within a reasonable time and

<sup>30</sup>This section does not include a hypothetical fourth situation where a non-lessee submits a lease application and COP to BOEM simultaneously. While permitted by BOEM's regulations, this situation is not expected to arise in practice.

proposes to make analogous changes to the equivalent COP and GAP requirements in §§ 585.628 and 585.648. Other edits to this section are editorial in nature and intended only to clarify the existing text. See Section III for a discussion of the comments received on this section. The changes described here are as proposed.

#### Activities Under an Approved Sap

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

BOEM has made a minor edit to paragraph (b), as proposed, by adding the word “description” after Safety Management System (SMS) to clarify that it is a description of the Safety Management System that must be submitted, in conformance with the requirements in 30 CFR 285.810. In addition, the citation to § 585.810 is replaced with 30 CFR 285.810 as a result of the Reorganization Rule (88 FR 6376).

##### *§ 585.615 What other reports or notices must I submit to BOEM under my approved SAP?*

To be consistent with the Reorganization Rule (88 FR 6376), in the final rule, BOEM deleted the existing dual requirements of informing BOEM within 30 days of completing the installation of facilities in an approved SAP and the certification of annual compliance with the terms of the SAP. The only remaining requirement is that the lessee must prepare and submit to BOEM a report annually on November 1 of each year that summarizes the site assessment activities and the results of those activities. BOEM will continue to withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the Freedom of Information (FOIA) and as provided in § 585.114 (formerly § 585.113). No comments were received on this section.

##### *§ 585.616 [Reserved]*

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

As proposed, this final rule makes revisions to this section. BOEM is revising paragraph (a) consistent with changes BOEM made to § 585.600(a)(1), which limits the applicability of SAPs to facilities that are installed on the seabed using a fixed-bottom foundation requiring professional engineering design and assessment of sediment, meteorological, and oceanographic conditions as part of the design. The changes to this section include the addition of a new paragraph (b) to clarify that revisions to a lessee's SAP

may trigger a reassessment of the significance and complexity of the facility or facilities described in the revised SAP. This final rule also revises paragraph (d) to eliminate unnecessary verbiage in the list of changes or modifications that could trigger the revision of an approved SAP by merging the substance of existing paragraphs (c)(4), (5), and (6) into revised paragraphs (d)(2) and (3). In the final rule, BOEM made additional edits in response to comments to further clarify the scope of paragraph (d), by specifying that OCS activities that could have significant environmental impacts, or that may affect threatened or endangered species, or that may affect designated critical habitat of such species, or that may result in incidental take of marine mammals, may trigger revisions. BOEM is also aligning this section with the PDE concept as described *Project Design Envelope* section of Section III above, to ensure consistency with the § 585.610(a)(5). This final rule makes minor additional editorial changes to improve clarity and readability. See Section III for a discussion of the comments received on this section.

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

This final rule adopts the technical edits proposed in paragraph (a) to ensure consistency with changes to § 585.235, which eliminated the site assessment term of a commercial lease. Paragraph (a) applies only if site assessment facilities are installed before COP submittal.

Paragraph (e) of the existing regulation states that “you must initiate the decommissioning process [for your site assessment activities] . . . upon termination of your lease.” However, BSEE’s regulations in 30 CFR part 285, subpart I, require lessees to initiate the decommissioning process by submitting a decommissioning application as much as two years before the lease expires. BOEM is adopting the changes proposed to this section in the NPRM for clarity and consistency with §§ 285.905 and 285.906. BOEM received no comments on these revisions.

##### *§ 585.619 [Reserved]*

#### Construction and Operations Plan for Commercial Leases

##### *§ 585.620 What is a Construction and Operations Plan (COP)?*

As a result of the Reorganization Rule (88 FR 6376), BOEM is replacing the cross reference to § 585.113 with § 585.114 in this final rule. No other changes were made to this section.

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

As proposed, this final rule makes technical edits to this section to ensure consistency with changes to § 585.606 for SAPs discussed above.

##### *§ 585.622 How do I submit my COP?*

This final rule eliminates the paper copy requirement for COP submission, as proposed, consistent with the revised provisions in § 585.111.

##### *§ 585.623–585.625 [Reserved]*

#### Contents of the Construction and Operations Plan

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

BOEM is clarifying and streamlining the data requirements for COP submission in several key respects.

First, this final rule adds language in paragraph (a) clarifying that a lessee may use a PDE in its COP, as further discussed above in sections *Project Design Envelope, Geophysical and Geotechnical Surveys* of Section III, and the analysis of § 585.610.

Second, BOEM is replacing the existing obligation in paragraph (a)(18) to submit a CVA nomination with the COP with a requirement to submit a “project verification strategy” describing the lessee’s plan for complying with BSEE’s regulations at 30 CFR 285.705 through 285.714. As discussed further in *Certified Verification Agent and Engineering Report* section of Section III, this amendment provides lessees with the flexibility to nominate (and for BSEE to approve) a CVA either before or after COP submittal.

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

The geological and geophysical survey provisions in § 585.626(b)(1) are replacing the prescriptive requirements with performance-based standards focused on the sufficiency of information regarding geological site conditions that BOEM needs in order to adequately review a COP. In particular, BOEM is eliminating the requirements in existing § 585.626(a)(1) regarding shallow hazard surveys as well as the requirements in existing § 585.626(a)(4) that lessees submit “[t]he results of adequate *in situ* testing, boring, and sampling at each foundation location” and “[t]he results of a minimum of one deep boring (with soil sampling and testing) at each edge of the project area.” Instead, BOEM will require geological and geotechnical data sufficient to “define the baseline geological conditions of the seabed and provide sufficient data to develop a geologic model, assess geologic hazards, and determine the feasibility of the proposed site for your proposed facility.”

BOEM believes that these new standards will provide it with flexibility to tailor its data requirements to site- and project-specific conditions without needing to issue regulatory departures under § 585.103. To ensure BOEM will continue to have sufficient information to conduct an environmental analysis and the necessary interagency consultations, BOEM will continue performing a sufficiency review after receipt of a COP and notifying the lessee of any additional outstanding information requirements prior to completing the COP review. More importantly, the deferral of the *in situ* boring requirement will address the concerns raised by lessees and described in detail in *Geophysical and Geotechnical Surveys* section of Section III. This final rule will not reduce the quality of geotechnical data that BOEM will review before the start of construction. Geophysical surveys will still need to identify all relevant shallow hazards, and the results of certain detailed geotechnical surveys to inform engineering decisions, which will include data from *in situ* explorations, would now need to be submitted with the FDR as set forth in BSEE’s regulations in 30 CFR 285.701.

With this final rule, BOEM decided not to allow a lessee to submit the results of certain detailed subsea archaeological surveys with the FDR. BOEM reasoned that sufficient geophysical data is necessary to assess potential impacts from offshore wind activities on cultural resources and the introduction of a case-by-case deferral of certain marine archaeological surveys creates uncertainty for all parties

participating in consultations conducted according to Section 106 of the NHPA. As in its changes to § 585.610, BOEM is also clarifying that required reports under paragraph (b)(3) of this section include information on all historic properties listed or eligible for listing on the National Register of Historic Places in accordance with the NHPA and its implementing regulations.

This final rule also adds paragraph (b)(4) to this section to clarify BOEM’s need for desktop data on oceanographic and meteorological conditions sufficient to “support preliminary design of the facility and support the analysis of wake effects, sediment mobility and scour, and navigational risks.” Existing § 585.627(a)(1) requires the submittal of similar data on conditions that could create hazards for a project. BOEM believes obtaining more comprehensive meteorological and oceanographic information to better inform modeling, design, and environmental reviews is necessary and appropriate. BOEM has made only clarifying edits to the biological survey requirements in this section. BOEM also is making analogous changes, where appropriate, in the equivalent regulations for SAPs and GAPs in § 585.610 and § 585.645, respectively.

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

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

In this final rule, BOEM clarified the informational requirements in paragraph (a) as proposed in the NPRM. Additional edits were made consistent with the changes made to § 585.611(a) for SAPs and to be consistent with NEPA as amended in 2023. BOEM also clarified the consistency certification requirements in paragraph (b)(1) by revising the language to provide that the applicant must certify that the proposed activities described in detail in the applicant’s plan comply with “the enforceable policies of the applicable States’ approved coastal management programs (as opposed to “the State(s) approved coastal management program(s)”) and will be conducted in a manner that is consistent with such programs.” This change limits BOEM’s interest to the enforceable policies of the applicable States’ programs, not all States’ approved coastal management programs.

BOEM also made a technical correction to paragraph (c). That provision required a lessee to submit an OSRP with its COP “as required by 30 CFR part 254.” Because the cross-

referenced regulations apply only to OCS oil and gas activities, BOEM is instead requiring that a lessee submit an OSRP “in compliance with 33 U.S.C. 1321, including information identified in 30 CFR part 254 that is applicable to your activities.” This statutory provision is not limited to oil and gas activities, and grants BOEM and its lessees more flexibility to craft OSRPs that are commensurate with the estimated worst-case discharge from a renewable energy facility. The regulation clarifies that the OSRP must include information identified in 30 CFR part 254 that is applicable to the lessee’s activities.

BOEM did not add language that a Tribal commenter requested to be added to BOEM’s required information in SAPs, COPs, and GAPs. The revised language would have required lessees to submit information about “culturally significant sites, including viewsheds and traditional cultural landscapes and properties, and subsistence rights of a federally recognized Tribe.” Such information is already required to be included in plans through requirements to submit “detailed information and analysis to assist BOEM in complying with NEPA and other applicable laws,” including information about “archaeological resources use, or historic property use, Indigenous traditional cultural use, or use pertaining to treaty and reserved rights with Native Americans or other Indigenous peoples, including required information to conduct review of the [plan] under the NHPA or other applicable laws or policies, including treaty and reserved rights with Native Americans or other Indigenous peoples.” Although the specific language requested was not added to the regulations, BOEM will ensure that the priorities identified in the comment are conveyed to the reviewers of plans to ensure these requirements are met.

Additionally, in the section heading and regulatory text, the more appropriate phrase “applicable laws” replaces “relevant laws.” This final rule is eliminating the paper copy requirement, consistent with revised § 585.111 and makes minor additional editorial changes to improve clarity and readability.

See Section III for a discussion of the comments on this section and BOEM’s response to those comments.

*§ 585.628 How will BOEM process my COP?*

In this final rule, BOEM is adopting the new proposed provisions of paragraph (c) stating that, after all information requirements for the COP are met and after the appropriate

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

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

BOEM has made several changes to the project easement requirements in paragraph (g). In the final rule, BOEM revised the definition of "project easement" in § 585.113 to mean "an easement to which, upon approval of your Construction and Operations Plan (COP) or (GAP), you are entitled as part of the lease for the purpose of installing, maintaining, repairing and replacing: gathering, transmission, and distribution, and inter-array cables; power and pumping stations; facility anchors; pipelines; and associated facilities and other appurtenances on the OCS as necessary for the full enjoyment of the lease."

In order to provide flexibility to the lessee and minimize the need for subsequent project easement amendments, BOEM amended paragraph (g) to allow BOEM to issue project easements that "provide sufficient off-lease area to accommodate potential changes at the design and installation phases with respect to any facilities or activities necessary for your project." Although a larger easement would result in greater rental fees under § 585.507, under the final rule a lessee may relinquish any unused portions of the easement after construction is

completed. BOEM believes that this approach will allow a lessee to right-size the width of its project easements on a case-by-case basis, depending on site conditions and a lessee's particular needs. This revision is consistent with the PDE strategy described in *Project Design Envelope* section of Section III above because it maximizes a lessee's ability to make design choices later in the development process without revising its COP or reopening the permit review process. BOEM will still require that a COP include sufficient survey data for whatever project easement areas are requested. This final rule also will not affect the quantity and quality of data that BOEM requires before the lessee may commence installation of the export cable.

BOEM has also implemented a technical correction to paragraph (g)(3) that would make project easements subject to the same conditions as ROWs and RUEs under § 585.302(b); that the United States can grant rights in the area to other lessees or grantees that do not unreasonably interfere with operations on the easement. Among other reasons, these provisions are critical to ensure that nearby existing or future offshore wind lessees are not definitively foreclosed from using the same general cable routes established by an earlier lessee. In the long run, cable routes shared by multiple projects could result in lower environmental impacts, streamlined permitting, and economic efficiencies.

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

See Section III for further discussion of the comments BOEM received on this section and BOEM's response to those comments.

**§ 585.629 May I develop my lease in phases?**

The content of this section was moved to § 585.238 and this section is now reserved.

**§ 585.630 [Reserved]**

**Activities Under an Approved COP**

**§ 585.631 When must I initiate activities under an approved COP?**

In the NPRM, BOEM proposed to overhaul the organization and duration of its commercial leases under § 585.235, including the addition of a new design and construction period. The final rule includes the design and construction period at § 585.235(a)(3) during which design and construction period begins at COP approval and ends when the operations period begins. BOEM determined that it was confusing

and undermined the intent of the creation of a "design and construction period" to require a lessee to seek advanced approval of a deviation in their "construction schedule" as stated in the existing § 585.631. Therefore, BOEM modified § 585.631 in the final rule to specify that a lessee is expected to start construction on the OCS in accordance with the construction schedule specified in the COP, unless the lessee notifies BOEM in advance.

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

In this final rule, following publication of the Reorganization Rule, BOEM is updating the cross references in this section to replace BOEM-administered regulations with BSEE-administered regulations with respect to the Facility Design Report (from 30 CFR 585.701 to 30 CFR 285.701), the Fabrication and Installation Report (from 30 CFR 585.702 to 30 CFR 285.702), and the Safety Management system (from 30 CFR 585.810 to 30 CFR 285.810).

**§ 585.633 [Reserved]**

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

The final rule revises paragraph (c) of this section to maintain consistency with the corresponding changes to § 585.617 for revisions to SAPs by eliminating unnecessary verbiage in the list of changes or modifications that could trigger the revision of an approved COP and by merging the substance of existing paragraphs (c)(4), (5), and (6) into revised paragraphs (c)(2) and (3). BOEM has also incorporated in paragraph (c)(3) the PDE concept for a "range" of facility locations for the reasons set forth above in sections *Project Design Envelope* and *Geophysical and Geotechnical Surveys* of Section III, and to ensure consistency with updated § 585.626(a). By incorporating the PDE, BOEM believes it can be less prescriptive regarding the threshold that would trigger a COP revision and can allow that threshold to be proportionate to the magnitude of the proposed project changes. In response to comments, BOEM further built upon the changes in the NPRM by adding references to activities "on the OCS" and "that could have significant environmental impacts, or that may affect threatened or endangered species, or that may affect designated critical habitat of such species, or that may result in incidental take of marine mammals for clarity, and for consistency with OCSLA, NEPA, and other Federal statutes.

See Section III for a discussion of the comment received on this section and BOEM's response to the comment.

**§ 585.635 What must I do if I cease activities approved in my COP before the end of my commercial lease?**

A few technical edits have been added to this section as a result of the Reorganization Rule (88 FR 6376). The word "BOEM" has been replaced with "BSEE" in the first sentence. The reference to § 585.437 is revised as § 585.422. The reference to the subpart I has been revised as 30 CFR part 285, subpart I.

**§§ 585.636–585.639 [Reserved]**

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

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

As proposed, this final rule eliminates the second sentence in paragraph (b) because it is redundant of the requirements found in the existing and proposed § 585.303(a) regarding the due date for GAP submissions. And, in the first sentence of paragraph (b), BOEM has removed "approved" and replaced it with "proposed" because activities are proposed until the GAP is approved.

**§ 585.641 What must I demonstrate in my GAP?**

As proposed, the final rule makes technical edits to ensure consistency with revised §§ 585.606 (SAPs) and 585.621 (COPs), as appropriate.

**§ 585.642 How do I submit my GAP?**

In this final rule, BOEM has eliminated the paper copy requirement for GAP submission, consistent with the revised provisions in § 585.111, as proposed.

**§§ 585.643–585.644 [Reserved]**

Contents of the General Activities Plan

**§ 585.645 What must I include in my GAP?**

BOEM has finalized the changes to this section as proposed in the NPRM consistent with its revisions to §§ 585.610 (SAPs) and 585.626 (COPs), as appropriate. This is also discussed in *Project Design Envelope and Geophysical and Geotechnical Surveys* sections of Section III.

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

BOEM has adopted the clarifications to the informational requirements in paragraph (b) of this section that were proposed in the NPRM and that are similar to those in revised § 585.611(SAPs) and in revised § 585.627 (COPs) regarding information about resources, conditions, and

activities that your proposed activities may significantly affect or that may have a significant effect on your proposed activities (including where the potential significance of the effect is unknown) and must contain any other information required by law.

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

BOEM did not receive any substantive comments on this provision.

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

In this final, as proposed, BOEM has made minor changes to provide clarity and consistency with other changes, as described in the NPRM. BOEM also made analogous revisions to the CZMA provisions for SAPs (§ 585.612) and COPs (§ 585.628).

**§ 585.648 How will BOEM process my GAP?**

As proposed, BOEM made minor editorial changes to this section to improve clarity, eliminate redundancy, enhance readability, and provide consistency with the revisions to §§ 585.613 (SAPs), 585.628 (COPs), and 585.102. In addition, a citation to 30 CFR 285.653(b) is added in paragraph (e)(1) as a result of the Reorganization Rule (88 FR 6376).

**§ 585.649 [Reserved]**

Activities Under an Approved GAP

**§ 585.650 When may I begin conducting activities under my GAP?**

No changes were proposed for this section and no changes were made to this section in this final rule.

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

To be consistent with the Reorganization Rule (88 FR 6376), this final rule modifies this section to cross-reference the SMS requirements of BSEE's regulations. The new regulations specify that, if a lessee is applying for a project easement, or installing a facility or a combination of facilities on a limited lease deemed by BOEM to be complex or significant, as provided in § 585.648(a)(1), the lessee must now also comply with the requirements of 30 CFR part 285, subpart G, and submit its safety management system description required by 30 CFR 285.810 before construction may begin. The existing regulations only referenced complying with SMS requirements, without mentioning where these regulations were located, or the specific requirements to be met.

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

As proposed, BOEM made a technical revision to paragraph (a) to maintain consistency with its modifications to the limited lease periods in § 585.236. In the final rule, paragraph (a) is further revised by replacing "terms" with "operations period" to be consistent with § 585.236(a)(2), which establishes the operations period for a limited lease.

**§ 585.653 What other reports or notices must I submit to BOEM under my approved GAP?**

To be consistent with the Reorganization Rule (88 FR 6376), BOEM removed paragraphs (a) and (c) from this section and revised the citation in paragraph (b) (now undesignated) from § 585.113 to § 585.114.

**§ 585.654 [Reserved]**

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

As proposed, BOEM made clarifications and technical edits to the provisions regarding GAP revisions in paragraphs (a) and (c) that are analogous to the revisions to §§ 585.617 (SAP revisions) and 585.634 (COP revisions). In response to comments, BOEM further built upon the changes by adding references to activities "that could have significant environmental impacts, or that may affect threatened or endangered species, or that may affect designated critical habitat of such species, or that may result in incidental take of marine mammals for clarity, and for consistency with OCSLA, NEPA, and other Federal statutes."

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

No changes were proposed for this section and no changes were made to this section in this final rule.

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

BOEM clarified in the final rule that a lessee or grantee must decommission its project as set forth in 30 CFR part 285, subpart I, and submit a decommissioning application to BSEE as set forth in 30 CFR 285.905 and 285.906, which is analogous to the changes to the corresponding SAP and COP requirements in §§ 585.618(e) and 285.638, respectively. These changes are consistent with the Reorganization Rule (88 FR 6376).

Cable and Pipeline Deviations

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

No changes were proposed for this section and no changes were made to this section in this final rule.

**§ 585.659–585.699 [Reserved]**

**Environmental Protection Requirements Under Approved Plans**

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

In the NPRM, the citation for this section was § 585.659. The Reorganization Rule (88 FR 6376) changed the citation for this section to § 585.700. As proposed, BOEM made a technical correction to reflect Congress' 2011 CAA amendment expanding BOEM's air quality jurisdiction to offshore of the North Slope Borough of Alaska.<sup>31</sup> As mentioned earlier, § 585.659 is reserved in the final rule.

**§ 585.701 How must I conduct my approved activities to protect marine mammals, threatened and endangered species, and designated critical habitat?**

In the NPRM, the citation for this section was § 585.801. The Reorganization Rule (88 FR 6376) changed the citation for this section to § 585.701. Technical edits for consistency with the Marine Mammal Protection Act were made to § 585.701(b) and (e). No other changes were made to this section.

**§ 585.702 What must I do if I discover a potential archaeological resource while conducting my approved activities?**

In the NPRM, the citation for this section was § 585.802. The Reorganization Rule (88 FR 6376) changed the citation for this section to § 585.702. No other changes were made to this section.

**§ 585.703 How must I conduct my approved activities to protect essential fish habitats identified and described under the Magnuson-Stevens Fishery Conservation and Management Act?**

In the NPRM, the citation for this section was § 585.803. The Reorganization Rule (88 FR 6376) changed the citation for this section to § 585.703. No other changes were made to this section.

**VI. Procedural Matters—Statutory and Executive Order Reviews**

**A. Executive Order 12866: Regulatory Planning and Review, as amended by Executive Order 14094: Modernizing Regulatory Review, and Executive Order 13563: Improving Regulation and Regulatory Review**

E.O. 12866, as amended by E.O. 14094, provides that the Office of

Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is a significant action under section 3(f)(1) of E.O. 12866, as amended by E.O. 14094. This rulemaking will result in an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities.

E.O. 13563 reaffirms the principles of E.O. 12866, as amended by E.O. 14094, while calling for improvements in the Nation's regulatory system to promote predictability and reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. BOEM and BSEE have developed this rule in a manner consistent with these requirements.

Because this action is a significant regulatory action, it was submitted to OMB for review. BOEM, on behalf of the Department, prepared an analysis of the potential costs and benefits associated with this action. This analysis, "Renewable Energy Modernization Rule Final Regulatory Impact Analysis" is available in the docket. A brief description of cost and benefit analysis is also provided in the *Summary of Cost, Economic Impacts, and Additional Analyses Conducted* section of Section IV in the preamble.

**B. Regulatory Flexibility Act (RFA)**

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to analyze the economic impact of regulations when a significant economic impact on a substantial number of small entities is likely and to consider regulatory alternatives that will achieve the agency's goals while minimizing the burden on small entities. Pursuant to section 603 of the RFA, BOEM, on behalf of the Department, prepared a regulatory flexibility impact analysis that examined the impacts of the proposed rule on small entities along with regulatory alternatives that could minimize that impact. The results of recent BOEM renewable energy auctions have demonstrated that companies interested in developing OCS wind

energy resources (*i.e.*, companies that have submitted bids in BOEM auctions) are all either large firms or partners with large firms in joint ventures.

Commercial-scale projects cost hundreds of millions to billions of dollars to install and operate. As a result, it is unlikely that small entities will be independently constructing or operating OCS wind facilities in the foreseeable future. The cost savings associated with this rule are available to all companies developing and operating OCS renewable energy facilities. If small companies do participate in the OCS renewable energy industry moving forward, the cost savings from this rule would benefit them accordingly. Therefore, BOEM has determined that the rule would not likely cause a significant economic impact on a substantial number of small entities. The regulatory flexibility impact analysis was provided in the docket for public comment (*Renewable Energy Modernization Rule: Initial Regulatory Impact Analysis*, Docket No. BOEM–2023–0005).

This final action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any unique requirements on small entities. This final rule would directly affect all current and future OCS renewable energy developers, as discussed in the NPRM. BOEM has prepared a final regulatory flexibility impact analysis, which is available in the docket for this rulemaking (Docket No. BOEM–2023–0005).

BOEM received two comments specific to the RIA. One commenter asserted that BOEM's definition of the baseline scenario in the existing regulatory framework does not consider the impacts to small fishing businesses and small coastal communities and suggested that BOEM conduct a regulatory impact analysis due to these potential impacts. Another commenter discussed the cost-benefits analysis of the proposed rule, including discussion of the RIA. The commenter suggested that, in accordance with Circular A–4, BOEM should continue its cost-benefits analysis of the proposed rule after it has been enacted to measure the cost-savings associated with climate impacts of OSW development, to assess costs to coastal communities, and to consider impacts to marine ecology, health and safety, social cost of carbon, and other unforeseen costs.

**C. Small Business Regulatory Enforcement Fairness Act (SBREFA)**

The Small Business Regulatory Enforcement Fairness Act (SBREFA), 5

<sup>31</sup> 42 U.S.C. 7627.

U.S.C. 804(2), requires the Department to perform a regulatory flexibility analysis, provide guidance, and help small businesses comply with statutes and regulations for major rulemakings. This action is subject to the SBREFA because it has an annual effect on the economy of \$100 million or more. The Department anticipates this final rule would have neither significant employment nor small business impacts; nor cause major price increases for consumers, businesses, or governments; nor significantly degrade competition, employment, investment, productivity, innovation, or the ability of U.S. businesses to compete against foreign businesses. This rule seeks to ensure safe and responsible domestic energy production as the nation transitions to a clean energy future. No specific comments on the SBREFA were received during the public comment period.

#### D. Unfunded Mandates Reform Act (UMRA)

The Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531–1538, requires the Department, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments, and the private sector. Section 202 of UMRA generally requires the Department to prepare a written statement, including a cost-benefit analysis, for each proposed and final rule with “Federal mandates” that may result in expenditures by State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year, adjusted for inflation. This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action implements mandate(s) specifically and explicitly set forth in OCSLA without the exercise of any policy discretion by BOEM and BSEE. No comments on the UMRA were received during the public comment period.

#### E. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, ensures that government actions affecting the use of private property are undertaken on a well-reasoned basis with due regard for the potential financial impacts imposed on the government. This action does not affect a taking of private property or otherwise

have taking implications under E.O. 12630. To the extent OCS renewable energy lessees and grantees possess private property rights under the terms of BOEM leases, this final rule is not expected to reduce the value of those rights. A takings implication assessment is not required. No comments were received on E.O. 12630 during the public comment period.

#### F. Executive Order 13132: Federalism

Regulatory actions that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government are subject to E.O. 13132. Under the criteria in section 1 of E.O. 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. No comments were received on E.O. 13132 during the public comment period.

#### G. Executive Order 12988: Civil Justice Reform

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(1) Meets the criteria of section 3(a) requiring that all regulations must be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(2) Meets the criteria of section 3(b)(2) requiring that all regulations must be written in clear language and contain clear legal standards.

No comments were received on E.O. 12988 during the public comment period.

#### H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 defines “polices that have Tribal implications” as “regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.” The Department strives to strengthen its government-to-government relationships with Tribal Nations through a commitment to consultation

with those Tribes, recognition of their right to self-governance and Tribal sovereignty, and honoring BOEM’s trust responsibilities for Tribal Nations. The Department’s consultation policy for Tribal Nations, is described in Departmental Manual part 512 chapter 4.<sup>32</sup>

DOI’s procedures for consultation with Tribal Nations also provide that: “Bureaus/Offices must invite Indian Tribes early in the planning process to consult whenever a Departmental plan or action with Tribal Implications arises. Bureaus/Offices should operate under the assumption that all actions with land or resource use or resource impacts may have Tribal implications and should extend consultation invitations accordingly.” 512 DM 5.4.A. (November 30, 2022).

Additionally, the Department is also respectful of its responsibilities for consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations. The Department’s consultation policy<sup>33</sup> defines a Departmental Action with ANCSA Corporation Implications and the Department’s consultation procedures for ANCSA Corporations also provide: “Bureaus and Offices should operate under the assumption that all actions with land or resource use or resource impacts may have ANCSA Corporation implications and should extend consultation invitations accordingly. When ANCSA Corporations indicate that there is substantial and direct effect of the Departmental Action with ANCSA Corporation Implications, the Department must engage in consultation.” 512 DM 7.4.A. (November 30, 2022).

The Department has evaluated this final rule under its consultation policy and under the criteria in E.O. 13175. The final rule may have Tribal implications. Accordingly, we have consulted with affected Tribes on a government-to-government basis as discussed in section *What Tribal engagement activities were conducted of* Section IV of this preamble, and we have fully considered Tribal views in the final rule. During the consultation process, the Tribes reiterated their comments submitted on the proposed rule through <https://www.regulations.gov>. Section III of this preamble describes how the final rule addresses comments and concerns submitted by the Tribes. No ANCSA Corporations requested consultation. A

<sup>32</sup> Available at [https://www.doi.gov/sites/doi.gov/files/elips/documents/512-dm-4\\_2.pdf](https://www.doi.gov/sites/doi.gov/files/elips/documents/512-dm-4_2.pdf).

<sup>33</sup> Available at <https://www.doi.gov/sites/doi.gov/files/elips/documents/512-dm-6.pdf>.

summary of the consultations and staff-level meetings held on this rulemaking, as well as notes from those meetings are available in the docket (Docket No. BOEM–2023–0005). BOEM and BSEE can consult at any time with federally recognized Tribes as sovereign nations and with ANCSA Corporations, including after the rule is promulgated.

#### I. Paperwork Reduction Act (PRA)

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521, provides that an agency may not conduct or sponsor, and a person is not required to respond to, a “collection of information” unless it displays a currently valid OMB control number. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information and report it to a Federal agency (44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k)).

A proposed rule, soliciting comments on this collection of information for 30 days, was published on January 30, 2023 (88 FR 5968). Subsequent to the publication of the proposed rule, the Department published a final rule titled “Reorganization of Title 30–Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf” in the **Federal Register** on January 31, 2023 (88 FR 6376), which relocated or reproduced certain of the regulatory provisions addressed in the proposed rule under 30 CFR part 585 to the newly created 30 CFR part 285. The DOI published a correction notification in the **Federal Register** on January 3, 2024 (89 FR 309), to provide the public an opportunity to comment on collections of information that were transferred from BOEM to BSEE on January 31, 2023, under the rule titled “Reorganization of Title 30–Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf.” Therefore, this final rule contains existing and new ICs for BSEE’s regulations at 30 CFR part 285 and BOEM’s regulations at 30 CFR part 585 that have been submitted to the OMB for review and approval under the Paperwork Reduction Act. OMB has reviewed and approved BSEE’s ICs requirements in this rule and assigned OMB Control Number 1014–0034, which expires April 30, 2026. OMB has reviewed BOEM’s ICs requirements in this rule and assigned OMB Control Number 1010–0195. With this final rule, BOEM will transfer the hour burden from this collection to OMB Control Number 1010–0176, which expires January 31, 2026, then discontinue OMB Control Number 1010–0195. The IC

aspects affecting each Bureau are discussed separately below.

#### BSEE Information Collection—30 CFR Part 285

BSEE published a correcting amendment January 3, 2024 (89 FR 309), pertaining to the Department’s proposed rule, *Renewable Energy Modernization Rule*, which was published in the **Federal Register** on January 30, 2023 (88 FR 5968). Subsequent to publication of the proposed rule, the Department published the rule titled *Reorganization of Title 30—Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf* in the **Federal Register** on January 31, 2023 (88 FR 6376), which relocated or reproduced certain of the regulatory provisions addressed in the proposed rule under 30 CFR part 585 in the newly created 30 CFR part 285. The correcting amendment solicited comments on BSEE’s collection of information pertaining to this rulemaking. The public comment period ended on March 4, 2024. No comments were received. See <https://www.govinfo.gov/content/pkg/FR-2023-08-14/pdf/2023-17421.pdf>.

As discussed in the section-by-section analysis above, comments received on the proposed rule will make changes in this final rule by adding § 285.116, Request for Information; furthermore, there are no changes in burden due to 5 CFR 1320.3(h)(4).

Final § 285.637(c) requires operators to notify BSEE within 10 business days after commencing commercial operations. BSEE will add +1-hour burden to § 285.637(c).

Final § 285.700(b) will require operators to explain to BSEE how all integrated asset packages will function together effectively. BSEE will add +10-hour burdens to § 285.700(b).

Final § 285.810 will clarify that a SMS is required to be submitted to BSEE to conduct activities pursuant to a lease, from met buoy placement and site assessment work through decommissioning. While a description of the SMS is required to be submitted for review by BSEE with a COP, and for review of an SAP or GAP if the facilities being installed are deemed by the Department to be complex or significant, this addition will make it clear that a structured approach to safety is both expected and required for all operations. BSEE will add +60 annual hour burdens to § 285.810.

Final § 285.812(b)(1) and (2) will add new reporting requirements. Proposed § 285.812(b)(1) will require an annual summary of safety performance data covering the previous calendar year during which site assessment,

construction, operations, or decommissioning activities occurred by submitting Form BSEE–0187, *Performance Measures Data—Renewable Energy*. This form will include company identification and number of injuries, illnesses, and hours worked by company employees and contractors. This information will be used to develop incident rates that will help assess workplace safety and environmental compliance across the OCS renewable energy industry. BSEE will add +820 annual burden hours to § 285.812(b)(1).

Final § 285.812(b)(2) will require a summary of the most recent SMS audit, corrective actions implemented or pending because of that audit, and an updated SMS description highlighting changes made since the last report. This report will be due every 3 years or upon BSEE’s request. BSEE will add +5 annual burden hours to § 285.812(b)(2).

For final § 285.830(d), BSEE will remove –2 burden hours since the burdens for reporting oil spills falls under OMB Control Number 1014–0007.

**Abstract:** BSEE will use the information to oversee facility design, fabrication, installation, and safety management systems; ensure the safety of operations, including inspection programs and incident reporting and investigations; enforce compliance with all applicable safety, environmental, and other laws and regulations through enforcement actions (such as noncompliance notices, cessation orders, and certain lease suspensions); and oversee decommissioning activities. These responsibilities include enforcement provisions under the existing part 285, subpart D, various information submittal requirements under subpart F, as well as provisions governing activities conducted under an approved plan, including the design, construction, operation, and decommissioning of facilities under subparts G, H, and I.

**Title of Collection:** 30 CFR part 285, *Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf*.

**OMB Control Number:** 1014–0034.  
**Forms:** Forms BSEE–1835, *Notice(s) of Noncompliance* (NONCs) and BSEE–0187, *Performance Measures Data—Renewable Energy*.

**Type of Review:** Revision of a currently approved collection.

**Respondents/Affected Public:** Primary respondents comprise Federal OCS companies that submit unsolicited proposals or responses to **Federal Register** notices; or are lessees, designated operators, and Right-of-Way or Right-of-Use and Easement grantees.

Other potential respondents are companies or state and local governments that submit information or comments relative to alternative energy-related uses of the OCS; certified verification agents; and surety or third-party guarantors.

*Total Estimated Number of Annual Respondents:* Currently there are approximately 47 lessees in the OCS. Not all the potential respondents will

submit information in any given year, and some may submit multiple times.

*Total Estimated Number of Annual Responses:* 16.

*Estimated Completion Time per Response:* Varies from 30 minutes to 6,000 hours, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 894.

*Respondent's Obligation:* Responses are mandatory and are required to obtain or retain a benefit.

*Frequency of Collection:* Generally, submissions are on occasion or annual.

*Total Estimated Annual Nonhour Burden Cost:* N/A.

Below is a burden table of the final rule changes BSEE will require. New burden changes are shown in **BOLD** and revised burdens are shown in *italic*:

**BILLING CODE 4340-98-P**

Section(s) in 30 CFR part 285	Reporting and Recordkeeping Requirement	Burden Changes and/or Additions
Subpart A – General Provisions		
116	<i>Respond to request for information in FR.</i>	<i>Requirement not considered IC under 5 CFR 1320.3(h)(4)</i>
Subpart F – Plans and Information Requirements		
637(c)	<b>Notify BSEE 10-business days after commencing commercial operations.</b>	+ 1-hour burden
Subpart G – Facility Design, Fabrication, and Installation		
700(b)	<b>Explain to BSEE how all integrated asset packages will function together effectively and demonstrate such integration has been verified by CVA.</b>	+ 10-hour burdens
Subpart H – Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs, and GAPs		
285.810; 285.614(b); 285.632(b); 285.651	<b>Use a Safety Management System for all activities conducted pursuant to a lease and make available to BSEE upon request.</b> Submit safety management system description with a COP, or with a SAP or GAP, if facilities being installed are deemed by BOEM to be complex or significant.	+ 60-hour burdens  Current burden is 60 hours +60 hours from this rule = 120 burden hours
<b>285.812(b)(1) Form BSEE-0187</b>	Submit safety and environmental performance data ( <b>Form BSEE-0187, Performance Measures Data – Renewable Energy</b> ).	+ 820-hour burdens
<b>285.812(b)(2)</b>	Provide report summary on SMS audit, corrective actions, and changes to SMS every 3 years.	+ 5-hour burdens
285.830(d)	Report oil spills as required by <i>BSEE 30 CFR 250.187</i> .	Burden covered under BSEE 1014-0007 (- 2-hour burdens)
Total will add to 1014-0034 BSEE inventory:		+ 894-hour burdens

**BILLING CODE 4340-98-C**

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any

aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper

performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to Nikki Mason, 45600 Woodland Road,

Sterling, VA 20166; or by email to [kye.mason@bsee.gov](mailto:kye.mason@bsee.gov). Please reference OMB Control Number 1014–0034 in the subject line of your comments.

**BOEM Information Collection—30 CFR Parts 585 and 586**

With this final rulemaking, BOEM revises the collections of information in the proposed rule. The regulations in this final rule revise existing requirements and establish new requirements in 30 CFR part 585. OMB reviewed BOEM’s information collections in this rule and assigned the temporary OMB Control Number 1010–0195. When the final rule is effective, BOEM will transfer the hour burden from this collection to revise OMB Control Number 1010–0176, and discontinue OMB Control Number 1010–0195. OMB Control Number 1010–0176 is the control number that OMB has assigned to the collections of information under 30 CFR parts 585 and 586, Renewable Energy on the Outer Continental Shelf.

With the publication of the final rule titled *Reorganization of Title 30—Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf in the Federal Register* on January 31, 2023 (88 FR 6376), certain regulatory provisions were transferred from BOEM’s 30 CFR part 585 regulations to BSEE’s newly created 30 CFR part 285 regulations. Certain collections of information pertaining to BSEE were also transferred. The collections of information that moved to BSEE are noted above in BSEE Information Collection—30 CFR part 285.

This final rule decreases BOEM’s annual burden hours overall by 290; the non-hour costs remain unchanged. As discussed in the section-by-section analysis above and in the supporting statement available at <https://www.reginfo.gov>, this rule revises the following BOEM paperwork burdens:

**BILLING CODE 4340–98–P**

Section(s) in 30 CFR 585	Reporting and Recordkeeping Requirement <sup>1</sup>	Burden Changes and/or Additions
<b>Subpart B – The Renewable Energy Leasing Schedule</b>		
150	This section references the leasing schedule published by the Secretary.	New subpart B added. No new annual burden hours.
<b>Subpart C – Issuance of OCS Renewable Energy Leases</b>		
<b>Subpart E – Lease and Grant Administration</b>		
413	Submit merger application, negotiate with BOEM any inconsistencies on terms and conditions.	10-hour burdens x 1 request = 10 annual burden hours.
<b>Subpart F – Payments and Financial Assurance Requirements</b>		
<b>Subpart G – Plans and Information Requirements</b>		
600(a); 601(a), (b); 605 thru 614; 238; 810	Within time specified after issuance of a competitive lease or grant, or within time specified after determination of no competitive interest, submit copies of SAP, including required information to assist BOEM to comply with NEPA/Coastal Zone Management Act (CZMA) such as hazard info, air quality, SMS, and all required information, certifications, requests, etc., in format specified.	-240 annual burden hours (-240 burden hours and -1 SAP from approved OMB control number).
615(b)	Submit annual report summarizing compliance from site assessment activities.	-60 annual burden hours (-60 burden hours and -2 reports from approved OMB control number).
<b>Part 586—Alternate Uses of Existing Facilities on the OCS</b>		
Subpart J of part 585 was removed and replaced with part 586 in the Reorganizations of Title 30 Final Rule (88 FR 6376, January 31, 2023). This final rule does not change the information collection burdens for part 586.		
<b>Total Burden</b>		<b>-290 Hours</b> <b>Responses</b>

**BILLING CODE 4340-98-C**

Subpart B. This final rule adds a new subpart B for the renewable energy leasing schedule published by the Secretary of the Interior. BOEM estimates no burdens for this subpart, but the lettering for the subsequent subparts is revised accordingly.

Subpart C. Section 585.216(c) relates to eligibility for bidding credits as set forth in the FSN before the lease auction takes place. Bidders seeking a bidding credit in the auction must establish that they are eligible for each bidding credit

that they seek. Bidders may participate in the auction without applying for or receiving a bidding credit, at their discretion. BOEM is keeping the annual burden hours the same as in the 2023 approved OMB Control Number 1010-0176 (2023 approval) but attributes the hours to the requirements of the bidding credit eligibility criteria.

Subpart E. Section 585.413 aligns the regulations with the existing practice allowing for lease and grant consolidation. BOEM adds 10 annual burden hours to the 2023 approval

attributable to § 585.413 to account for submission of applications to consolidate all or part of two or more adjacent leases or grants by the same lessee or grantee into one new lease or grant, and to negotiate with BOEM on inconsistencies in terms and conditions.

Subpart G. Section 585.600(a) significantly revises the requirement for SAPs. Under this final rule, a SAP is required only when site assessment activities involve an engineered foundation. BOEM will not require a SAP for floating site assessment

facilities, such as met buoys. BOEM also has the discretion to waive certain information requirements in a proposed plan, which could add flexibility to the permit application process. BOEM removes 240 annual burden hours from § 585.600(a).

Section 585.615(b) relates to other reports or notices that must be submitted periodically under an approved SAP. With the narrowing of the SAP requirement to site assessment activities involving an engineered foundation, BOEM estimates fewer reports or notices filed under this section. BOEM removes 60 annual burden hours from § 585.615(b).

This final rule allows the deferral of detailed geotechnical survey reporting from COP submission under the existing § 585.626(b) to FDR submission under 30 CFR 285.585.701(a). This change does not increase annual burden hours.

*Title of Collection:* Renewable Energy Modernization (Final Rulemaking).

*OMB Control Number:* 1010–0195.

*Form Numbers:* None.

*Type of Review:* New.

*Respondents/Affected Public:*

Respondents primarily are private sector companies interested in developing or operating OCS renewable energy leases and grants; affected State, local, and Tribal governments; and other companies that submit information regarding OCS renewable energy projects.

*Total Estimated Number of Annual Responses:* Decrease of 2 annual responses.

*Total Estimated Number of Annual Burden Hours:* Decrease of 290 hours.

Due to a ROCIS system limitation, BOEM is unable to show a negative number for responses and hours in ROCIS; therefore, the table for 1010–0195 found on <https://www.reginfo.gov> shows a place marker of one response and one hour.

*Respondent's Obligations:* Responses to ICs under this part are mandatory to obtain, or retain, an OCS renewable energy lease or grant.

*Frequency of Collection:* The frequency of collection varies depending upon BOEM's decisions to issue OCS leases or grants for renewable energy development, a company's decision to seek a lease or grant, and the manner in which the lessee or grantee elects to develop its lease or grant.

*Total Estimated Annual Non-Hour Burden Cost:* No non-hour costs.

Once the rule becomes effective and OMB approves the IC request 1010–0195, BOEM plans to revise the existing OMB Control Number 1010–0176 for the affected subparts discussed above and adjust the annual burden hours

accordingly. For OMB Control Number 1010–0176, the existing annual burden hours are 9,876 and responses are 200. The final rule requirement changes reduce the annual burden hours to 9,586 annual burden hours and 198 responses. The ICs related to 30 CFR part 585 do not include questions of a sensitive nature. BOEM will continue to protect proprietary information according to FOIA and the Department's implementing regulations, which address disclosure of information to the public.<sup>34</sup>

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the collection of information. BOEM solicits your comments regarding non-hour cost burdens arising from this rule. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) total capital and startup cost component, and (2) annual operation, maintenance, and disclosure cost component, to provide the information. You should describe the methods you use to estimate your cost components, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased: (1) before October 1, 1995; (2) to comply with requirements not associated with the IC arising from this rule; (3) for reasons other than to provide information or to keep records for the U.S. Government; or (4) as part of customary and usual business or private practices.

As part of BOEM's continuing effort to reduce paperwork and respondent burdens, BOEM invites the public and other Federal agencies to comment on any aspect of this IC, including:

(1) Is the IC necessary or useful for BOEM to properly perform its functions?

(2) Are the estimated annual burden hour increases and decreases resulting from this final rule reasonable?

(3) Is the estimated annual non-hour cost burden resulting from this IC reasonable?

(4) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(5) Is there a way to minimize the IC burden on those who must respond, such as by using appropriate automated digital, electronic, mechanical, or other forms of information technology?

Send your comments and suggestions on this IC by the date indicated in the **DATES** section to the Desk Officer for the Department at OMB–OIRA at (202) 395–5806 (fax) or via the <https://www.reginfo.gov> portal (online). You may view the IC request(s) at <https://www.reginfo.gov/public/do/PRAMain>. Due to a ROCIS system limitation, BOEM is unable to show a negative number for responses and hours in ROCIS; therefore, the table for 1010–0195 found on <https://www.reginfo.gov> shows a place marker of one response and one hour. Please provide a copy of your comments to the BOEM IC Clearance Officer (see the **ADDRESSES** section). You may contact Anna Atkinson, BOEM IC Clearance Officer at (703) 787–1025 with any questions. Please reference Renewable Energy Modernization Rule (1010–0195) in your comments.

*J. National Environmental Policy Act (NEPA)*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed environmental analysis under NEPA is not required because this final rule is covered by a categorical exclusion (see 43 CFR 46.205). This final rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental categorical exclusion in that this action is “of an administrative, financial, legal, technical, or procedural nature.” BOEM has also determined that the final rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Multiple commenters asserted that BOEM should conduct a NEPA review for the final rule. BOEM disagrees with this assertion as this rulemaking does not authorize any activities. Nothing in this rulemaking reduces or eliminates BOEM's environmental review of renewable energy activities, including site characterization (geotechnical and geophysical surveys, biological surveys) and site assessment activities (deployment of met towers and buoys). This review is completed during BOEM's development of an EA pursuant to NEPA which typically concludes with the release of a Final EA and a Finding of No Significant Impact between publication of a PSN and a FSN (i.e., prior to issuing a lease). BOEM's EAs analyze environmental impacts of activities expected to take place following lease issuance, including site characterization and site assessment activities. BOEM also conducts environmental review of proposed development activities through a NEPA

<sup>34</sup> See 43 CFR part 2 and 30 CFR 585.114.

analysis of the COP. BOEM identifies and avoids or reduces potential environmental impacts throughout the process of offshore wind planning, including using spatial data and stakeholder input to identify appropriate areas for potential wind energy development. This process will not change as a result of these regulations. In addition, every BOEM environmental analysis pursuant to NEPA considers the potential cumulative impacts of wind energy development prior to approving development activities.

#### K. Data Quality Act

In promulgating this rule, the Department did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C, sec. 515, 114 Stat. 2763, 2763A–153–154). In accordance with the Data Quality Act, the Department has issued guidance regarding the quality of information that it relies upon for regulatory decisions. This guidance is available at the Department's website at: <https://www.doi.gov/ocio/policy-mgmt-support/information-and-records-management/iq>. No comments were received on the Data Quality Act during the public comment period.

#### L. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Under E.O. 13211, the Department is required to prepare and submit to OMB a “Statement of Energy Effects” for “significant energy actions.” This should include a detailed statement of any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies) expected to result from the action and a discussion of reasonable alternatives and their effects. This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This final rule does not add new regulatory compliance requirements that would result in significant adverse energy effects, rather the regulatory changes will help reduce compliance burdens on the OCS renewable energy industry that may hinder the continued development or use of domestically produced energy resources. Reduced regulatory burdens do not adversely affect productivity, competition, or prices within the energy sector. For these reasons, this final rule is not a significant energy action under the definition in E.O. 13211, and

therefore, a Statement of Energy Effects is not required. No comments were received on E.O. 13211 during the public comment period.

#### M. Congressional Review Act (CRA)

This action is subject to the CRA, and the Department will submit a rule report to each chamber of Congress and to the Comptroller General of the United States. This action meets the criteria in 5 U.S.C. 804(2).

#### N. Severability

If a court holds any provisions of this final rule or their applicability to any persons or circumstances invalid, the remainder of the provisions and their applicability to other people or circumstances will not be affected.

#### List of Subjects

##### 30 CFR Part 285

Continental shelf, Energy, Environmental protection, Historic preservation, Marine resources, Marine safety, Natural resources, Ocean resources, Offshore energy, Offshore structures, Outer continental shelf, Renewable energy, Reporting and recordkeeping requirements, Safety, Wind energy.

##### 30 CFR Part 585

Administrative practice and procedure, Assessment plans, Coastal zone, Compliance, Electric power, Energy, Environmental protection, Government leases, Intergovernmental relations, Marine resources, Natural resources, Ocean resources, Offshore energy, Offshore structures, Outer continental shelf, Payments, Planning, Power resources, Renewable energy, Reporting and recordkeeping requirements, Revenue sharing, Right-of-way, Right-of-use-and-easement, Wind energy.

#### Delegation of Signing Authority

This action by the Deputy Assistant Secretary is taken herein pursuant to an existing delegation of authority.

#### Steven H. Feldgus,

*Principal Deputy Assistant Secretary, Land and Minerals Management.*

For the reasons stated in the preamble, BSEE amends 30 CFR part 285 and BOEM amends 30 CFR part 585 as follows:

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

- 1. The authority citation for part 285 continues to read as follows:

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

#### Subpart A—General Provisions

- 2. Amend § 285.103 by revising paragraph (a) to read as follows:

##### **§ 285.103 When may BSEE prescribe or approve departures from the regulations in this part?**

(a) BSEE may prescribe or approve departures from the provisions of this part when departures are necessary because the applicable provision(s) as applied to a specific circumstance:

(1) Are impractical or unduly burdensome and the departure is necessary to achieve the intended objectives of the renewable energy program;

(2) Fail to conserve the natural resources of the OCS;

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

(4) Fail to protect sites, structures, or objects of historical or archaeological significance.

\* \* \* \* \*

- 3. Amend § 285.105 by revising paragraph (d) to read as follows:

##### **§ 285.105 What are my responsibilities under this part?**

\* \* \* \* \*

(d) Comply with all applicable laws and regulations, the terms of your lease or grant under 30 CFR part 585 or 586, reports, notices, and approved plans prepared under this part, 30 CFR part 585 or 586, and any conditions imposed by BOEM or BSEE through its review of any of these reports, notices, and approved plans, as provided in this part or in 30 CFR part 585 or 586;

\* \* \* \* \*

- 4. Revise § 285.110 to read as follows:

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

Unless otherwise stated, you must submit one electronic copy of all plans, applications, reports, or notices required by this part to BSEE. BSEE will inform you if it requires paper copies of specific documents. Unless stated otherwise, documents should be submitted to the relevant contacts listed on the BSEE website.

- 5. Amend § 285.112 by:

■ a. Revising the definitions of “Commercial activities” and “Commercial operations”;

■ b. Adding in alphabetical order the definition for “Critical Safety Systems and Equipment”;

■ c. Revising the definition of “Decommissioning”;

- d. Adding in alphabetical order the definitions of “Fabrication” and “Project Design Envelope”; and
- e. Revising the definition of “Site assessment activities”.

The additions and revisions read as follows:

#### **§ 285.112 Definitions.**

\* \* \* \* \*

*Commercial activities* means, under renewable energy leases and grants, all activities associated with the generation, storage, or transmission of electricity or other energy product from a renewable energy project on the OCS, and 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 operations* means the generation of electricity or other energy product for commercial use, sale, transmission, or distribution from a commercial lease.

*Critical Safety Systems and Equipment* means safety systems and equipment designed to prevent or ameliorate fires, spillages, or other major accidents that could result in harm to health, safety, or the environment in the area of your facilities.

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

\* \* \* \* \*

*Fabrication* means the cutting, fitting, welding, or other assembly of project elements.

\* \* \* \* \*

*Project Design Envelope (PDE)* means a reasonable range of design parameters proposed in a lessee's plan for components of the project, such as type, dimensions, and number of wind turbine generators; foundation type; location of the export cable route; location of an onshore substation; location of the grid connection point; and construction methods and timing.

\* \* \* \* \*

*Site assessment activities* means those initial activities conducted to assess an area on the OCS, such as resource assessment surveys (e.g., meteorological and oceanographic) or technology testing, involving the installation of bottom-founded facilities.

\* \* \* \* \*

- 6. Amend § 285.113 by revising paragraph (b)(1) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

If you have a . . .

Then BSEE will review data and information for possible release:

(1) Commercial lease .....

At the earlier of: (i) 3 years after the commencement of commercial operations; or (ii) 3 years after the lease terminates.

\* \* \* \* \*

\* \* \* \* \*

\* \* \* \* \*

\*

\* \* \* \* \*

- 7. Revise § 285.116 to read as follows:

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

BSEE may publish a request for information (RFI) in the **Federal Register** to solicit information from industry, State and local agencies, federally recognized Tribes, and other interested entities for evaluating the offshore renewable energy industry, including the identification of potential challenges or obstacles to its continued development. An RFI may relate to the identification of environmental, technical, regulatory, or economic matters that promote or detract from continued development of renewable energy technologies on the OCS. BSEE may use the information received to refine its renewable energy program, including to facilitate OCS renewable energy development in a safe and environmentally responsible manner and to ensure a fair return to the United States for use of the OCS.

- 8. Add § 285.117 to read as follows:

#### **§ 285.117 Severability.**

If a court holds any provisions of this subpart or their applicability to any

persons or circumstances invalid, the remainder of the provisions and their applicability to any persons or circumstances will not be affected.

- 9. Revise § 285.118 to read as follows:

#### **§ 285.118 What are my appeal rights?**

(a) Any party adversely affected by a final decision issued by BSEE under this part may appeal that decision to the Interior Board of Land Appeals (IBLA), under 30 CFR part 290 and 43 CFR part 4, subpart E.

(b) Any final decision will remain in full force and effect during the pendency of an appeal unless a stay is granted pursuant to 43 CFR part 4.

#### **Subpart D—Lease and Grant Administration**

- 10. Amend § 285.400 by revising paragraph (f) to read as follows:

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

\* \* \* \* \*

(f) BSEE may assess civil penalties, as authorized by section 24 of the OCS Lands Act and as determined under the procedures set forth in 30 CFR part 250, subpart N, if you fail to comply with any provision of this part, or any term

of a lease, grant, or order issued under the authority of this part:

(1) After notice of such failure and expiration of any reasonable period allowed for corrective action; or

(2) BSEE determines that the failure constitutes, or constituted, a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

\* \* \* \* \*

- 11. Amend § 285.415 by revising paragraph (b) to read as follows:

#### **§ 285.415 What is a lease or grant suspension?**

\* \* \* \* \*

(b) A suspension extends the expiration date for the relevant period of your lease or grant for the length of time the suspension is in effect.

\* \* \* \* \*

- 12. Amend § 285.417 by revising paragraph (b)(2) to read as follows:

#### **§ 285.417 When may BSEE order a suspension?**

\* \* \* \* \*

(b) \* \* \*

(2) You must furnish an electronic copy of the study and results to BSEE pursuant to § 285.110;

\* \* \* \*

■ 13. Revise § 285.420 to read as follows:

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

If BSEE orders a suspension, as provided in § 285.417, BOEM may waive or defer your payment obligations during the suspension. BOEM's decision to waive or defer payments will depend on the reasons for the suspension, including your responsibility for the circumstances necessitating a suspension.

**Subpart F—Information Requirements**

■ 14. Revise § 285.602 to read as follows:

**§ 285.602 What records must I maintain?**

Until BOEM releases your financial assurance under 30 CFR 585.534, you must maintain and provide to BSEE, upon request, all data and information related to compliance with the required terms and conditions of your lease, grant, reports submitted under this part and approved plans.

■ 15. Amend § 285.614 by revising paragraph (b) to read as follows:

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

\* \* \* \*

(b) If you are installing a facility or a combination of facilities deemed by BOEM to be complex or significant, as provided in 30 CFR 585.613(a)(1), you must comply with the requirements of subpart G of this part and submit the Safety Management System (SMS) description required by § 285.810 before construction may begin.

■ 16. Revise § 285.637 to read as follows:

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

(a) If you are conducting activities on your lease that do not require a FERC license (*i.e.*, wind power projects), then you may commence commercial operations after:

(1) You submit information consistent with § 285.702(c) and (d) for facilities installed prior to commencing commercial operations;

(2) Your CVA submits the project verification report, as described in § 285.708(a)(5), including information required by § 285.708(b)(1), or interim report(s), as described in § 285.712(a) for facilities installed prior to commencing commercial operations;

(3) Your CVA submits the Critical Safety Systems and Equipment commissioning records, as described in § 285.708(a)(6) or interim report(s), as described in § 285.712(a), for facilities installed prior to commencing commercial operations; and

(4) BSEE has not notified you of any objections to the submittals in paragraphs (a)(1) and (3) of this section within the timeframes in §§ 285.700(d) and 285.712(a), as applicable. You may continue commercial operations while BSEE reviews your submittals.

(b) To continue commercial operations as additional facilities complete commissioning, you must submit information in paragraphs (a)(1) and (3) of this section for facilities installed after commercial operations have commenced.

(c) You must notify BSEE within 10 business days after you commence commercial operations.

■ 17. Amend § 285.638 by revising the first sentence of paragraph (a) to read as follows:

**§ 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 decommission your project as set forth in subpart I of this part. \* \* \*

\* \* \* \*

**Subpart G—Facility Design, Fabrication, and Installation**

■ 18. Revise § 285.700 to read as follows:

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

(a) You must submit the following reports to BSEE before installing facilities described in your approved COP (30 CFR 585.632(a)) and, when required by 30 CFR part 585, in your approved SAP (30 CFR 585.614(b)) or GAP (30 CFR 585.651):

(1) A Facility Design Report (FDR); and

(2) A Fabrication and Installation Report (FIR).

(b) You may submit separate FDRs and FIRs for integrated asset packages unless otherwise agreed to by BSEE (*e.g.*, wind turbine generator (WTG), offshore substation/electrical service platform, array cables, export cables, and seabed preparation). If you submit separate FDRs and FIRs by integrated asset packages, you must:

(1) Ensure FDR(s) and FIR(s) for integrated asset package(s) are complete (*e.g.*, the WTG package includes the

RNA, blades, tower, foundation, and transition piece, if applicable);

(2) Explain to BSEE how all FDR(s) and FIR(s) for integrated asset packages will function together effectively in an integrated manner in accordance with your project design; and

(3) Demonstrate that such integration has been verified by your CVA.

(c) You may submit your FDRs and FIRs before or after SAP, COP, or GAP approval.

(d) Subject to the requirements in paragraph (b) of this section, you may commence fabrication and installation of the facilities on the OCS as described in each report:

(1) If BSEE deems your report submitted before SAP, COP, or GAP approval and notifies you of its non-objection to the FDR and FIR or does not respond with objections within 60 business days of SAP, COP, or GAP approval; or

(2) If BSEE deems your report submitted after SAP, COP, or GAP approval and notifies you of its non-objection to the FDR and FIR or does not respond with objections within 60 business days of the report being deemed submitted.

(e) You may commence procurement of discrete parts of the project that are commercially available in standardized form and type-certified components, or fabrication activities that do not take place on the OCS (*e.g.*, manufacturing), prior to the submittal of the reports required under paragraph (a) of this section or any plans required under 30 CFR parts 585 and 586. The procurement and fabrication of facility components allowed under this section are subject to verification and certification by your CVA, and BSEE may object to the installation of said components on the OCS if it considers that the components or their fabrication are inconsistent with accepted industry or engineering standards, the approved SAP, COP, or GAP, the FDR or FIR, or BSEE's regulations.

(f) If BSEE has objections, we will notify you in writing within 60 business days of the report being deemed submitted. Following initial notification of any objections, BSEE may follow up with written correspondence detailing its objections to the report and requesting that certain actions be undertaken. You cannot commence fabrication or installation activities on the OCS that are addressed in such reports until you resolve all objections to BSEE's satisfaction.

■ 19. Amend § 285.701 by:

■ a. Revising paragraphs (a)(1) through (10);

- b. Adding paragraphs (a)(11) through (13);
- c. Revising paragraphs (b), (c), and (d); and

■ d. Removing paragraph (e).

The revisions and additions read as follows:

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

(a) \* \* \*

Required documents	Required contents
(1) Cover letter .....	(i) Proposed facility designations; (ii) Lease, ROW grant or RUE grant number; (iii) Area; name and block numbers; and (iv) The type of facility.
(2) Location plat .....	(i) Latitude and longitude coordinates, Universal Mercator grid-system coordinates, State plane coordinates in the Lambert or Transverse Mercator Projection System; (ii) Distances in feet from the nearest block lines. These coordinates must be based on the NAD (North American Datum) 83 datum plane coordinate system; and (iii) The location of any project easements.
(3) Front, Side, and Plan View drawings .....	(i) Facility dimensions and orientation; (ii) Elevations relative to Mean Lower Low Water; and (iii) Pile sizes and penetration.
(4) Complete set of structural drawings .....	The approved for construction fabrication drawings should be submitted including, e.g., (i) Cathodic protection systems; (ii) Jacket design; (iii) Pile foundations; (iv) Mooring, tendon and tethering systems; (v) Foundations and anchoring systems; and (vi) Associated cable and pipeline designs.
(5) Summary of environmental data used for design.	A summary of the environmental data used in the design or analysis of the facility. Examples of relevant data include information on: (i) Extreme weather; (ii) Seafloor conditions; and (iii) Waves, wind, current, tides, temperature, snow and ice effects, marine growth, and water depth. (i) Loading information (e.g., live, dead, environmental); (ii) Structural information (e.g., design-life; material types; cathodic protection systems; design criteria; fatigue life; jacket design; deck design; production component design; foundation pilings and templates, and mooring, tethering or tendon systems; fabrication and installation guidelines); (iii) Location of foundation boreholes and foundation piles; (iv) Foundation information (e.g., soil stability, design criteria); and (v) For a floating facility, structural integrity, stability, and ballast information. This includes foundations, piles, templates, anchors or anchor systems, mooring, tethering and tendon systems.
(6) Summary of the engineering design data .....	Self-explanatory. All studies pertinent to facility design or installation, e.g., oceanographic and soil reports including the results of the survey required in 30 CFR 585.610(b), 585.626(b), or 585.645(b). (i) Loads imposed by the jacket; (ii) Decks; (iii) Production components; (iv) Foundations, foundation pilings and templates, and anchoring systems; and (v) Mooring, tendon or tethering systems.
(7) A complete set of design calculations .....	Reports and supporting data from geotechnical surveys, <i>in situ</i> explorations, laboratory tests, analyses, burial or drivability assessments, and recommended design parameters.
(8) Project-specific studies used in the facility design or installation.	The industry standards you will apply to ensure the facilities are designed to meet § 285.105.
(9) Description of the loads imposed on the facility.	A risk assessment that identifies the Critical Safety Systems and Equipment and a description of the identified Critical Safety System and Equipment.
(10) Geotechnical reports .....	Additional information required by BSEE.
(11) Design Standards .....	
(12) Critical Safety Systems and Equipment .....	
(13) Other information .....	

(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) as listed in paragraph (a)(6)(v) of this section. The design must also consider:

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

(2) Mooring, tendon, or tethering systems.

(c) You must submit your FDR to BSEE pursuant to § 285.110 and provide

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

(d) If you are required to use a CVA, the FDR must include the following certification statement with accompanying justification: “The design of this structure has been certified by a BSEE-approved CVA to be in accordance with accepted engineering practices and the approved SAP, GAP, or COP, as applicable, and has been designed to provide for safety. The certified design and as-built plans and specifications will be on file at [provide location].”

- 20. Amend § 285.702 by:
- a. Revising paragraphs (a)(1) through (7);
- b. Adding paragraphs (a)(8) through (10);
- c. Removing paragraph (d);
- d. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;
- e. Adding new paragraph (b); and
- f. Revising newly redesignated paragraph (d).

The revisions and additions read as follows:

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

(a) \* \* \*

Required documents	Required contents
(1) Cover letter .....	(i) Proposed facility designation, lease, ROW grant, or RUE grant number; (ii) Area, name, and block number; and (iii) The type of facility.
(2) Schedule .....	Fabrication and installation schedule information.
(3) Fabrication information .....	The industry standards you will use to ensure the facilities are fabricated to the design criteria identified in your Facility Design Report.
(4) Installation process information .....	Details associated with the deployment activities, equipment, and materials, including onshore and offshore equipment and support, and anchoring and mooring patterns.
(5) Federal, State, and local permits (e.g., EPA, Army Corps of Engineers). ....	Either one copy of the permit or information on the status of the application.
(6) Quality assurance .....	Certificates ensuring adherence to a nationally or internationally recognized quality assurance standard. Alternate means of compliance must be approved on a case-by-case basis.
(7) Environmental information .....	Information about: (i) Water discharge; (ii) Waste disposal; (iii) Vessel information; (iv) Onshore waste receiving treatment or disposal facilities; and (v) If you submitted this data as part of your SAP, COP, or GAP, you may incorporate the information by reference.
(8) Commissioning procedures for Critical Safety Systems and Equipment. ....	Original equipment manufacturer procedures or other BSEE accepted engineering practices for commissioning of Critical Safety Systems and Equipment as identified in § 285.701(a)(12).
(9) Project easement .....	Information about installation of any cables, pipelines, or facilities. Information on burial methods and vessels.
(10) Other information .....	Additional information required by BSEE.

(b) You must submit your FIR to BSEE pursuant to § 285.110.

\* \* \* \* \*

(d) If you are required to use a CVA, the FIR must include the following certification statement with accompanying justification: “The fabrication and installation of this structure has been certified by a BSEE-approved CVA to be in accordance with accepted engineering practices, the FDR, and the approved SAP, GAP, or COP, as applicable. The certified design and as-built plans and specifications will be on file at [provide location].”

■ 21. Amend § 285.703 by revising paragraphs (a) and (c) to read as follows:

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

(a) You must submit a Project Modification or Repair Report to BSEE in which you certify that major repairs and major modifications of renewable energy structures and crucial components to a completed project conform to accepted engineering practices.

(1) A “major repair” is a corrective action involving structural members affecting the structural integrity of all or a portion of the facility or substantial repair of a Critical Safety Systems and Equipment, including those identified in your FDR.

(2) A “major modification” is an alteration involving structural members affecting the structural integrity of all or

a portion of the facility or substantial alteration of Critical Safety Systems and Equipment, including those as identified in your FDR.

\* \* \* \* \*

(c) If you are required to use a CVA, the report described in paragraph (a) of this section must include the following certification statement with accompanying justification: “The [major modification or major repair] of this [structure or Critical Safety Systems and Equipment] has been certified by a BSEE-approved CVA to be in accordance with accepted engineering practices, the FDR, and the approved SAP, GAP, or COP as applicable.”

■ 22. Add § 285.704 to read as follows:

**§ 285.704 After receiving the FDR, FIR, or project verification reports, what will BSEE do?**

(a) *Determine whether the report is deemed submitted.* Within 20 business days after receiving your proposed FDR, FIR, or project verification report, BSEE will review your submission. BSEE will deem your FDR, FIR, or project verification report submitted if BSEE determines it is sufficiently complete and accurate to fulfill the applicable requirements of § 285.701, § 285.702, or § 285.712.

(b) *Identify problems and deficiencies.* If BSEE determines that your submission has not met the conditions in paragraph (a) of this section, BSEE will notify you of the problem or

deficiency within 20 business days after BSEE receives your FDR, FIR, or project verification report. BSEE will not deem your FDR, FIR, or project verification report submitted until you have corrected all problems or deficiencies identified in the notice.

(c) *Notify you when the report is deemed submitted.* BSEE will notify you when the FDR, FIR, or project verification reports are deemed submitted. If BSEE has not notified you within 20 business days that your report has problems or deficiencies, it is deemed submitted. Until your report is deemed submitted, the time period in § 285.700(d) does not begin running.

■ 23. Revise § 285.705 to read as follows:

**§ 285.705 When must I use a Certified Verification Agent (CVA)?**

(a) Unless BSEE waives this requirement under paragraph (c) of this section, you must use one or more CVAs to review and verify your FDRs, FIRs, and the Project Modification and Repair Reports.

(b) The purpose of a CVA is to:

(1) Ensure that your facilities are designed, fabricated, and installed in conformance with accepted engineering practices and the FDR(s) and FIR(s); and that the design of the facilities is suitable for the location where they will be installed;

(2) Ensure Critical Safety Systems and Equipment are commissioned in

accordance with the procedures identified in § 285.702(a)(8);

(3) Ensure that major repairs and major modifications are completed in conformance with accepted engineering practices; and

(4) Provide BSEE and you with reports of all incidents that affect the facility design, fabrication, and installation, including commissioning of Critical Safety Systems and Equipment, for the project and its components.

(c) BSEE may waive in whole or in part the requirement that you use a CVA if you can demonstrate the following:

If you demonstrate that . . .

Then BSEE may waive the requirement for a CVA for the following:

- (1) The facility design conforms to a standard design that has been used successfully in a similar environment, and the installation design conforms to accepted engineering practices.
- (2) The relevant fabricator has successfully fabricated similar facilities, and the facility will be fabricated in conformance with accepted engineering practices and to a nationally or internationally recognized quality assurance standard.
- (3) The installation company has successfully installed similar facilities in a similar offshore environment, and your structures will be installed in conformance with accepted engineering practices.
- (4) Major repairs or major modifications will be completed in conformance with accepted engineering practices and to a nationally or internationally recognized quality assurance standard.

The design of your structure(s).

The fabrication of your structure(s).

The installation of your structure(s).

The major repair or major modification on your structure(s).

(d) You must submit a request to waive, in whole or in part, the requirement to use a CVA to BSEE in writing.

(1) BSEE will review your request to waive, in whole or in part, the use of the CVA and notify you of its decision.

(2) If BSEE does not waive, in whole or in part, the requirement for a CVA, you may file an appeal under § 285.118.

(3) If BSEE waives, in whole or in part, the requirement that you use a CVA, your project engineer must perform the same duties and responsibilities as would have the CVA, except as otherwise provided. You must submit the project engineer's qualifications to BSEE as a part of your waiver request to demonstrate that your project engineer is a professional engineer with relevant experience and expertise in the facilities they will be verifying/certifying.

■ 24. Amend § 285.706 by:

■ a. Revising paragraphs (a), (b)(2) and (7), (c), and (d);

■ b. Removing paragraph (e); and

■ c. Redesignating paragraph (f) as paragraph (e).

The revisions read as follows:

**§ 285.706 How do I nominate a CVA for BSEE approval?**

(a) A CVA must be nominated by the lessee and approved by BSEE before conducting any verification or certification activities for which they have been nominated. If you intend to use multiple CVAs, you must nominate a general project CVA who will manage the overall project verification and certification approach and who will ensure consistency and oversight among the CVAs, especially in transition areas between different CVAs. The general project CVA must be nominated no later than COP submission.

(b) \* \* \*

(2) Technical capabilities of the individual or the primary staff for the specific project, including relevant professional licenses, certifications, and accreditations;

\* \* \* \* \*

(7) The scope and level of work to be performed by the CVA, including all relevant reports and facilities that the CVA will verify or certify.

(c) Individuals or organizations acting as CVAs must not function in any capacity that will create a conflict of interest or the appearance of a conflict of interest. The CVA must not have prepared, or been directly involved in, any work related to the preparation of design, fabrication, installation, modification, or repair plans for which they will provide verification or certification services.

(d) The verification and certification must be conducted by or under the direct supervision of a registered professional engineer.

\* \* \* \* \*

■ 25. Amend § 285.707 by:

■ a. Revising the second sentence of paragraph (a);

■ b. Removing "and" from paragraph (b)(8);

■ c. Redesignating paragraph (b)(9) as paragraph (b)(10);

■ d. Adding new paragraph (b)(9); and

■ e. Revising paragraph (c).

The revisions and addition read as follows:

**§ 285.707 What are the CVA's primary duties for facility design review?**

(a) \* \* \* The CVA must verify to BSEE that the facility is designed to withstand the environmental and functional load conditions appropriate for the intended service life at the proposed location and has been designed to minimize risk to personnel as required by § 285.105(a).

(b) \* \* \*

(9) Risk assessments supporting the design for human safety and how the results are used in the design; and

\* \* \* \* \*

(c) For any floating facility, the CVA or project engineer must also verify 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, tendon or tethering systems.

■ 26. Revise § 285.708 to read as follows:

**§ 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 and of the commissioning of Critical Safety Systems and Equipment;

(2) Monitor the fabrication and installation of the facility and the commissioning of Critical Safety Systems and Equipment 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 § 285.710;

(5) Certify in Project Verification Reports that project components are fabricated and installed in accordance with accepted engineering practices and to a nationally or internationally recognized quality assurance standard

or to an equivalent alternate means of quality assurance considered on a case-by-case basis, your BOEM-approved SAP, COP, or GAP (as applicable), and your FIR. If multiple CVAs are involved in your project, the general project CVA must submit the final report containing such certification for the project. The Project Verification Report must identify the location of all records pertaining to facility fabrication and installation as required in § 285.714(c);

(6) Provide records documenting that Critical Safety Systems and Equipment are commissioned in accordance with the procedures identified in § 285.702(a)(8); and

(7) Identify the location of all records pertaining to commissioning of Critical Safety Systems and Equipment, as required in § 285.714(c).

(b) To comply with paragraphs (a)(4) and (5) of this section, the CVA or project engineer must monitor the fabrication and installation of the facility and the commissioning of Critical Safety Systems and Equipment to certify that they have been built and installed according to your FDRs and FIRs.

(1) If the CVA or project engineer finds that either fabrication and installation procedures or Critical Safety Systems and Equipment commissioning procedures, or both, have been changed or design specifications have been modified, the CVA or project engineer must inform you and BSEE; and

(2) If you accept the modifications, you must also inform BSEE.

■ 27. Revise § 285.709 to read as follows:

#### **§ 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 your FIRs and adherence to such procedures;

(5) Welder and welding procedure qualification and identification;

(6) Structural tolerances specified, and adherence to those tolerances;

(7) Nondestructive examination requirements and evaluation results of the specified examinations;

(8) Destructive testing requirements and results;

(9) Repair procedures;

(10) Installation of corrosion-protection systems and splash-zone protection;

(11) Erection procedures to ensure that overstressing of structural members does not occur;

(12) Alignment procedures;

(13) Dimensional check of the overall structure, including any turrets, turret-and-hull interfaces, any mooring line and chain and riser tensioning line segments, and tendon or tethering systems; and

(14) Status of quality-control records at various stages of fabrication.

(b) For any floating facility, the CVA or project engineer must also verify 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, tendon, or tethering systems.

■ 28. Revise § 285.710 to read as follows:

#### **§ 285.710 When conducting onsite installation inspections, what must the CVA or project engineer do?**

(a) 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 and commissioning of items required by this section.

(b) The CVA or project engineer must verify, as appropriate, all of the following:

(1) Loadout and initial flotation procedures;

(2) Towing operation procedures to the specified location, including a review of the towing records;

(3) Launching and uprigthing activities;

(4) Submergence activities;

(5) Pile or anchor installations;

(6) Installation of mooring, tendon, and tethering systems;

(7) Final deck and component installations;

(8) Installation at the locations set forth in your FDR(s) and FIR(s); and

(9) Commissioning of Critical Safety Systems and Equipment.

(c) For a fixed or floating facility, the CVA or project engineer must verify that proper procedures were used during the following:

(1) The loadout of the jacket, decks, piles, or structures from each fabrication site;

(2) The actual installation of the facility or major modification and the related installation activities; and

(3) Commissioning of Critical Safety Systems and Equipment.

(d) For a floating facility, the CVA or project engineer must verify structural integrity, stability, and ballast, and 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 and tendon systems.

(e) The CVA or project engineer must conduct an onsite inspection of the installed facility as approved in your CVA scope of work.

(f) The CVA or project engineer must make periodic onsite inspections to witness the commissioning of Critical Safety Systems and Equipment in order to verify that:

(1) The Critical Safety Systems and Equipment function as designed; and

(2) The final commissioning Critical Safety Systems and Equipment records are complete.

(g) The CVA or project engineer must spot-check the equipment, procedures, and recordkeeping as necessary to determine compliance with the applicable documents incorporated by reference and the regulations under this part.

■ 29. Amend § 285.712 by:

■ a. Revising paragraph (a) and the first sentence of paragraph (b) introductory text;

■ c. Removing “and” at the end of paragraph (b)(3);

■ d. Removing the period at the end of paragraph (b)(4) and adding in its place “; and”; and

■ e. Adding paragraph (b)(5).

The revisions and addition read as follows:

#### **§ 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 BSEE all reports and records required by this subpart. The CVA or project engineer must also submit interim reports to you and BSEE, as requested by BSEE. BSEE will review and respond within 30 days.

(b) For each report required by this subpart, the CVA or project engineer must submit the final report to BSEE pursuant to § 285.110. \* \* \*

\* \* \* \* \*

(5) Summarize any issues with the design and any incidents during facility fabrication and installation, or Critical Safety System and Equipment commissioning, and how those issues were resolved.

**§ 285.713 [Removed and Reserved]**

- 30. Remove and reserve § 285.713.
- 31. Amend § 285.714 by:
  - a. Revising the section heading;
  - b. Redesignating paragraphs (a)(4) and (5) as paragraphs (a)(5) and (6), respectively;
  - c. Adding new paragraph (a)(4); and
  - d. Revising paragraph (c).

The revisions and addition read as follows:

**§ 285.714 What records relating to FDRs, FIRs, and Project Modification and Repair Reports must I keep?**

- (a) \* \* \*
- (4) The records of the commissioning of Critical Safety Systems and Equipment;
  - \* \* \* \* \*
  - (c) You must provide BSEE with the location of these records, as required in §§ 285.701(c) and (d), 285.702(c) and (d), 285.703(b), and 285.708(a)(5) and (7).

**Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPS, COPS, and GAPs**

- 32. Revise § 285.810 to read as follows:

**§ 285.810 When must I submit a Safety Management System (SMS) and what must I include in my SMS?**

You are required to use a Safety Management System (SMS) for activities conducted on the OCS to develop or operate a lease, from met buoy placement and site assessment work through decommissioning, and to provide your SMS to BSEE upon request. You must also submit a detailed description of the SMS with your COP (as provided in 30 CFR 585.627(d)) and, when required by this part, your SAP (as provided in § 285.614(b)) or GAP (as provided in § 285.651). Your SMS must address:

- (a) How you will ensure the safety of your personnel or anyone else on or near your facilities, such as:
  - (1) Health and safety risks that anyone on your facilities or engaged in lease activities are likely to face during activities covered by the SMS;
  - (2) Policies and strategies that will be used to control such risks;
  - (3) Procedures and nationally or internationally recognized standards that will be followed to ensure the safety of the activities covered by the SMS;
  - (4) Methods that will be used to monitor the implementation of the SMS and maintain the safety of activities covered by the SMS, including

management of change and stop work practices; and

(5) Procedures for personnel to report unsafe work conditions both to the lessee or its designated operator and to BSEE.

(b) Remote monitoring, control, and shut down capabilities, such as:

(1) Aspects of operations and mechanical and structural integrity that will be monitored remotely;

(2) Circumstances under which remote monitoring will be activated and how it will be maintained;

(3) Maintenance of the security of the remote sensing and control capabilities;

(4) Monitoring of conditions if remote sensing equipment fails; and

(5) Conditions that will result in the shutdown of one or more facilities.

(c) Emergency response procedures, such as:

(1) Types of incidents to be addressed (e.g., serious injury to workers during maintenance, unexploded ordnance encountered during construction, damage due to hurricane or allision by vessels or aircraft, unauthorized access into remote monitoring capabilities, evacuation, and search and rescue);

(2) Potential response activities, including U.S. Coast Guard (USCG), other government agencies, and contractor support, for each category of incident;

(3) Management controls, authorities, and reporting to be employed for each response;

(4) Locations from which emergency response will be controlled; and

(5) Resources available to assist in the response.

(d) Fire suppression equipment, such as a description of how and when it will be used, if needed.

(e) How and when you will test your SMS, such as:

(1) Plans, processes, and schedules for:

(i) Self or third-party auditing of the SMS; and

(ii) Regular testing of certain SMS components, including remote shutdown capabilities and emergency response readiness; and

(2) Corrective action processes to improve the effectiveness of your SMS based on the results of audits, tests, investigations of incidents (including near-misses), feedback from the field, and other information sources.

(f) How you will ensure personnel who conduct activities on your facilities are properly trained and have the capability to safely perform duties, such as:

(1) Required training for personnel who conduct activities on your facilities; and

(2) Required knowledge and skills to ensure that personnel perform duties safely for the duration of activities.

- 33. Revise § 285.811 to read as follows:

**§ 285.811 Am I required to obtain a certification of my SMS?**

You are not required to obtain a certification that your SMS meets acceptable health and safety standards (e.g., ANSI/ASSP Z10.0, API RP 75, ISO 45001) from a recognized accreditation organization. However, BSEE will consider such certification in determining the frequency and scope of SMS-related inspections that it conducts under this subpart, as well as the scope and nature of its oversight over any audit-induced corrective actions.

- 34. Add § 285.812 to read as follows:

**§ 285.812 How must I implement my SMS?**

(a) Your SMS must be functional before you begin, and must remain functional while you perform, any activity on the OCS pursuant to a lease, including met buoy placement and site assessment work, or for any activities described in your approved SAP, COP, or GAP. You must conduct all activities described in your approved SAP, COP, or GAP in accordance with the SMS you described under § 285.810.

(b) You must regularly demonstrate to BSEE that your SMS is being implemented effectively by submitting the following to BSEE in accordance with § 285.110:

(1) By March 31st of each year, summarize safety and work hour performance data for the prior calendar year in which you conducted site assessment, construction, operations, or decommissioning activities in accordance with your lease terms, using a form available on the BSEE website; and

(2) Once every 3 years and upon BSEE's request, provide a report to BSEE summarizing the results of your most recent SMS audit, corrective actions implemented or being implemented as a result of that audit, and an updated description of your SMS highlighting changes that were made since the last such submission to BSEE.

- 35. Amend § 285.815 by revising the second sentence of paragraph (a) to read as follows:

**§ 285.815 What must I do if I have facility damage or an equipment failure?**

(a) \* \* \* If you have a major repair, you must submit a report to BSEE under § 285.703.

- \* \* \* \* \*
- 36. Revise § 285.820 to read as follows:

**§ 285.820 Will BSEE conduct inspections?**

BSEE may inspect OCS facilities and any vessels engaged in activities authorized under this part. When we conduct these inspections, we will:

(a) Verify that you are conducting activities in compliance with subsection 8(p) of the OCS Lands Act; the regulations in this part; the terms, conditions, and stipulations of your lease or grant; approved plans; and other applicable laws and regulations.

(b) Determine whether proper safety equipment has been installed and is operating properly according to your SMS, as required in § 285.810.

■ 37. Revise § 285.821 to read as follows:

**§ 285.821 Will BSEE conduct scheduled and unscheduled inspections?**

BSEE may conduct both scheduled and unscheduled inspections.

■ 38. Amend § 285.822 by revising paragraphs (a)(1) and (b) to read as follows:

**§ 285.822 What must I do when BSEE conducts an inspection?**

(a) \* \* \*

(1) Provide access to all facilities on your lease (including your project easement) or grant and any vessels engaged in activities authorized under this part; and

\* \* \* \* \*

(b) You must retain the records referenced in paragraph (a)(2)(iii) of this section until BOEM releases your financial assurance under 30 CFR 585.534 and provide them to BSEE upon request within the time period specified by BSEE.

\* \* \* \* \*

■ 39. Revise § 285.824 as follows:

**§ 285.824 How must I conduct self-inspections?**

(a) You must develop a comprehensive self-inspection plan covering all of your facilities. You must keep this self-inspection plan wherever you keep your records and make it available to BSEE upon request. Your self-inspection plan must specify:

(1) The type, extent, and frequency of inspections that you will conduct for both the above-water and the below-water structures of all facilities and pertinent components of the mooring, tendon, or tethering systems for any floating facilities;

(2) How you will monitor the corrosion protections for both above-water and below-water structures; and

(3) How you will fulfill the requirement for annual on-site inspection of all Critical Safety Systems and Equipment.

(b) You must conduct an onsite inspection of each of your facilities at least once a year. This inspection must include, but is not limited to, all Critical Safety Systems and Equipment.

(1) You must develop and retain summary reports for all such inspections for each calendar year. The summary report must note any failures of operability, required maintenance of Critical Safety Systems and Equipment, or required replacement of the Critical Safety Systems and Equipment identified during inspection.

(2) You must retain records of inspections and summary reports for the previous 2 calendar years and make them available to BSEE on request.

(c) You must submit a report annually to BSEE no later than November 1st that must include:

(1) A list of facilities inspected for structural condition and corrosion protection in the preceding 12 months;

(2) The type of inspection employed (*i.e.*, visual, magnetic particle, ultrasonic testing); and

(3) A summary of the inspection indicating what repairs, if any, were needed and the overall structural condition of the facility.

■ 40. Amend § 285.830 by revising paragraph (d) to read as follows

**§ 285.830 What are my incident reporting requirements?**

\* \* \* \* \*

(d) You must report all spills of oil or other liquid pollutants in accordance with 30 CFR 250.187(d).

**Subpart I—Decommissioning**

■ 41. Amend § 285.900 by adding paragraph (c) to read as follows:

**§ 285.900 Who must meet the decommissioning obligations in this subpart?**

\* \* \* \* \*

(c) If a lessee or grant holder has installed a facility on a lease or grant that was authorized by an authority other than BOEM and that approving authority has imposed a decommissioning obligation, such obligation will substitute for the requirements of this subpart. The decommissioning requirements in this subpart will apply to such a facility if the authorizing agency has not imposed or enforced a decommissioning obligation.

■ 42. Amend § 285.902 by revising the introductory text of paragraph (a) to read as follows:

**§ 285.902 What are the general requirements for decommissioning for facilities authorized under my SAP, COP, or GAP?**

(a) Except as otherwise authorized under § 285.909, within 2 years following termination of a lease or grant, or earlier if BSEE determines a facility is no longer useful for operations, you must:

\* \* \* \* \*

■ 43. Amend § 285.905 by adding paragraph (e) to read as follows:

**§ 285.905 When must I submit my decommissioning application?**

\* \* \* \* \*

(e) Ninety (90) calendar days after BSEE determines a facility is no longer useful for operations.

**PART 585—RENEWABLE ENERGY ON THE OUTER CONTINENTAL SHELF**

■ 44. The authority citation for part 585 continues to read as follows:

**Authority:** 43 U.S.C. 1337.

■ 45. Revise subpart A to read as follows:

**Subpart A—General Provisions**

Sec.

585.100 Authority.

585.101 What is the purpose of this part?

585.102 What are BOEM's responsibilities under this part?

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

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

585.105 What are my responsibilities under this part?

585.106 What happens if I fail to comply with this part?

585.107 Who can acquire or hold a lease or grant under this part?

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

585.109 When must I notify BOEM if an action has been filed alleging that I am insolvent or bankrupt?

585.110 When must I notify BOEM of mergers, name changes, or changes of business form?

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

585.112 When and how does BOEM charge me processing fees on a case-by-case basis?

585.113 Definitions.

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

585.115 Paperwork Reduction Act statements—information collection.

585.116 Requests for information.

585.117 Severability.

585.118 What are my appeal rights?  
585.119–585.149 [Reserved]

## Subpart A—General Provisions

### § 585.100 Authority.

The authority for this part derives from section 8 of the Outer Continental Shelf Lands Act (OCS Lands Act) (43 U.S.C. 1337). The Secretary of the Interior delegated to the Bureau of Ocean Energy Management (BOEM) the authority to manage the development of energy on the Outer Continental Shelf (OCS) from sources other than oil and gas, including renewable energy, through the issuance of leases, easements, and right-of-way for activities that produce or support the production, transportation, or transmission of energy.

### § 585.101 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 OCS;

(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 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, or RUE grant.

(d) This part will not convey access rights for oil, gas, or other minerals.

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

(a) BOEM will ensure that any activities authorized in this part are carried out in a manner that provides for and reaches a rational balance among the following goals to the extent they conflict or are otherwise in tension, none of which inherently outweighs or supplants any other:

(1) Safety;

(2) Protection of the environment;

(3) Prevention of waste, including economic waste and physical waste of energy resources from sources other than oil and gas;

(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 to 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 of the exclusive economic zone, the high seas, and the territorial seas (as determined by the Secretary);

(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, research, monitoring,

and enforcement of activities authorized

by a lease or grant under this part.

(b) BOEM will require compliance with all applicable laws, regulations, other requirements, and the terms of your lease or grant and approved plans under this part. BOEM will approve, disapprove, or approve with conditions any plans, applications, or other documents submitted to BOEM for approval under the provisions of this part.

(c) Unless otherwise provided in this part, BOEM may give oral directives or decisions whenever prior BOEM approval is required under this part. BOEM will document in writing any such oral directives within 10 business days.

(d) BOEM will establish practices and procedures to govern the collection of all payments due to the Federal Government required under the regulations of this part, including any cost recovery fees, rents, operating fees, and other fees or payments. BOEM will do this in accordance with the terms of this part, the leasing notice, the lease or grant under this part, and applicable Office of Natural Resources Revenue (ONRR) regulations or guidance.

(e) BOEM will provide for coordination and consultation with the Governor of any State, the executive of any local government, and the executive of any Indian Tribe that may be affected by a lease, easement, or ROW under this section. BOEM 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.

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

(a) BOEM may prescribe or approve departures from the provisions of this

part when BOEM deems the departure necessary because the applicable provisions as applied to a specific circumstance:

(1) Are impractical or unduly burdensome and the departure is necessary to achieve the intended objectives of the renewable energy program;

(2) Fail to conserve the natural resources of the OCS;

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

(4) Fail to protect sites, structures, or objects of historical or archaeological significance.

(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 this part;

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

(4) Be documented in writing.

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

Except as otherwise authorized by law, it is unlawful for any person to construct, operate, or maintain any facility to produce, transport, or support generation of electricity or other energy product derived from a renewable energy resource on any part of the OCS, except in accordance with the terms of a lease, easement, or ROW issued under the OCS Lands Act.

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

As a lessee, applicant, operator, or holder of a ROW or 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 BOEM as required by this part;

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

(d) Comply with all applicable laws and regulations, the terms of your lease

or grant under this part, reports, notices, and approved plans prepared under this part, and any conditions imposed by BOEM through its review of any of these reports, notices, and approved plans, as provided in this part;

(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 BOEM representatives, within the time specified by BOEM, 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.

#### **§ 585.106 What happens if I fail to comply with this part?**

(a) BOEM 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) BOEM 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, BOEM 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 to take the actions specified in a notice of noncompliance issued under this part within the time limit specified provides the basis for issuance of a cessation order by BSEE, as provided in 30 CFR 285.401 and/or cancellation of the lease or grant by the Secretary as provided in § 585.422.

(e) BOEM may assess civil penalties, as authorized by section 24 of the OCS Lands Act and as determined under the

procedures set forth in 30 CFR part 550, subpart N, if you fail to comply with any provision of this part or any term of a lease, grant, or order issued under the authority of this part:

(1) After notice of such failure and expiration of any reasonable period allowed for corrective action; or

(2) BOEM determines that the failure constitutes, or constituted, a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

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

(a) You may acquire or hold a lease or grant under this part if you can demonstrate that you have the technical and financial capabilities to conduct the activities authorized by the lease or grant and you are a(n):

(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 5 U.S.C. 105;

(6) State of the United States; or

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

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

(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 BOEM explicitly has approved an exception for this transaction;

(2) BOEM 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) After written notice and your opportunity to be heard, BOEM determines that:

(i) You no longer meet the qualification requirements for acquiring or holding a lease or grant in paragraph (a) of this section.

(ii) You have:

(A) Violated an applicable law, regulation, order, lease or grant

provision, approved plan, or the prohibitions prescribed in a final sale notice; or otherwise engaged in illegal activity, anti-competitive or collusive behavior, fraud, or misrepresentation; and

(B) Failed to take timely remedial action as specified in the written notice provided by BOEM of the basis for the disqualification.

(c) As long as a party is excluded or disqualified from acquiring or holding a lease or grant under this part, it is also ineligible to participate in BOEM's competitive and noncompetitive lease or grant issuance processes, including auctions, conducted under this part, even as an agent for another entity. A party can restore its eligibility by completing the remedial action specified in the notice of the proposed disqualification.

(d) You may share ownership interests in a lease with one or more other persons, provided that all interest holders in the lease are eligible to hold a lease pursuant to this section and § 585.108.

#### **§ 585.108 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 U.S. Citizenship and Immigration Services form issued by the appropriate Federal immigration authority evidencing legal status as a resident alien.

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

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

Requirements to qualify to hold leases or grants on the OCS:	Corp.	Ltd. prtsp.	Gen. prtsp.	LLC	Trust
(1) Original certificate or certified copy from the State of incorporation stating the name of the corporation exactly as it must appear on all legal documents .....	XX	.....	.....	.....	.....
(2) Certified statement by Secretary/Assistant Secretary over corporate seal, certifying that the corporation is authorized to hold OCS leases .....	XX	.....	.....	.....	.....
(3) Evidence of authority of titled positions to bind corporation, certified by Secretary/Assistant Secretary over corporate seal, including the following:	XX	.....	.....	.....	.....
(i) Certified copy of resolution of the board of directors with titles of officers authorized to bind corporation .....	.....	.....	.....	.....	.....
(ii) Certified copy of resolutions granting corporate officer authority to issue a power of attorney .....	.....	.....	.....	.....	.....
(iii) Certified copy of power of attorney or certified copy of resolution granting power of attorney .....	.....	.....	.....	.....	.....
(4) Original certificate or certified copy of partnership or organization paperwork registering with the appropriate State official .....	.....	XX	XX	XX	.....
(5) Copy of articles of partnership or organization evidencing filing with appropriate Secretary of State, certified by Secretary/Assistant Secretary of partnership or member or manager of LLC .....	.....	XX	XX	XX	.....
(6) Original certificate or certified copy evidencing State where partnership or LLC is registered. Statement of authority to hold OCS leases, certified by Secretary/Assistant Secretary, OR original paperwork registering with the appropriate State official .....	.....	XX	XX	XX	.....
(7) Statements from each partner or LLC member indicating the following:	.....	XX	XX	XX	.....
(i) If a corporation or partnership, statement of State of organization and authorization to hold OCS leases, certified by Secretary/Assistant Secretary over corporate seal, if a corporation .....	.....	.....	.....	.....	.....
(ii) If an individual, a statement of citizenship .....	.....	.....	.....	.....	.....
(8) Statement from general partner, certified by Secretary/Assistant Secretary that:	.....	XX	.....	.....	.....
(i) Each individual limited partner is a U.S. citizen and;	.....	.....	.....	.....	.....
(ii) Each corporate limited partner or other entity is incorporated or formed and organized under the laws of a U.S. State or territory .....	.....	.....	.....	.....	.....
(9) Evidence of authority to bind partnership or LLC, if not specified in partnership agreement, articles of organization, or LLC regulations, i.e., certificates of authority from Secretary/Assistant Secretary reflecting authority of officers .....	.....	XX	XX	XX	.....
(10) Listing of members of LLC certified by Secretary/Assistant Secretary or any member or manager of LLC .....	.....	.....	.....	XX	.....
(11) Copy of trust agreement or document establishing the trust and all amendments, properly certified by the trustee with reference to where the original documents are filed .....	.....	.....	.....	.....	XX
(12) Statement indicating the law under which the trust is established and that the trust is authorized to hold OCS leases or grants .....	.....	.....	.....	.....	XX

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

**§ 585.109 When must I notify BOEM if an action has been filed alleging that I am insolvent or bankrupt?**

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

**§ 585.110 When must I notify BOEM of mergers, name changes, or changes of business form?**

You must notify BOEM in writing of any merger, name change, or change of business form. You must notify BOEM 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.

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

Unless otherwise stated, you must submit one electronic copy of all plans, applications, reports, or notices required

by this part to BOEM. BOEM will inform you if it requires paper copies of specific documents. Unless stated otherwise, documents should be submitted to the relevant contacts listed on the BOEM website.

**§ 585.112 When and how does BOEM charge me processing fees on a case-by-case basis?**

(a) BOEM 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 BOEM.

(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 BOEM-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) through (4) of this section, but we will not stop 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) 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 stop processing your document if you do not pay the bill by the date payment is due. 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 § 585.118 and 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 this section. If we adjust the fee downward, we will not pay interest.

#### **§ 585.113 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 or 30 CFR part 285, 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 or 30 CFR part 285;

(2) That is used, or is proposed to be used, as a support base for activities approved under this part or 30 CFR part 285; or

(3) In which there is a reasonable probability of significant effect on land or water uses from activities approved under this part, or 30 CFR part 285.

*Affected State* means with respect to any activities proposed, conducted, or approved under this part or 30 CFR part 285, 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 or 30 CFR part 285;

(2) That is used, or is scheduled to be used, as a support base for activities approved under this part or 30 CFR part 285; or

(3) In which there is a reasonable probability of significant effect on land or water uses from activities approved under this part or 30 CFR part 285.

*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 topics 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 BOEM 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.

*Bidding credits* means the value assigned by BOEM, expressed in monetary terms, to the factors or actions demonstrated, or committed to, by a bidder at a BOEM lease auction during the competitive lease award process. The type(s) and value(s) of any bidding credit(s) awarded to any given bidder will be set forth in the Final Sale Notice.

*BOEM* means Bureau of Ocean Energy Management of the Department of the Interior.

*BSEE* means Bureau of Safety and Environmental Enforcement of the Department of the Interior.

*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 30 CFR part 285.

*Coastal environment* means the physical atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

*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* means, under renewable energy leases and grants, all activities associated with the generation, storage, or transmission of electricity or other energy product from a renewable energy project on the OCS, and 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* means the generation of electricity or other energy product for commercial use, sale, transmission, or distribution from a commercial lease.

*Critical Safety Systems and Equipment* means safety systems and equipment designed to prevent or ameliorate fire, spillages, or other major accidents that could result in harm to health, safety, or the environment in the area of your facilities.

*Decommissioning* means removing BOEM and BSEE approved facilities and returning the site of the lease or grant to a condition that meets the requirements under subpart I of 30 CFR part 285.

*Director* means the Director of BOEM, 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.

*Fabrication* means the cutting, fitting, welding, or other assembly of project elements.

*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. BOEM and BSEE 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, with the weights determined by a density function. 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 or a 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.

*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.

*Lease area* means an area on the OCS that BOEM has identified for leasing for potential development of renewable energy resources.

*Lessee* means the holder of a lease, a BOEM-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* means nautical miles, as opposed to statute miles.

*Multiple factor auction* means an auction that involves the use of bidding credits to incentivize goals or actions that support public policy objectives or maximize public benefits through the competitive leasing auction process. For any multiple factor auction, the monetary value of the bidding credits, if any, would be added to the value of the cash bid to determine the highest bidder.

*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 issued 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 or within the exclusive economic zone of the United States and adjacent to any territory of the United States and does not include any area conveyed by Congress to a territorial government for administration.

*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 and/or 30 CFR part 285 or 586 are conducted on the OCS. The term "project" may be used elsewhere in this part 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 or RUE), 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 Design Envelope (PDE)* means a reasonable range of design parameters proposed in a lessee's plan for components of the project, such as type, dimensions, and number of wind turbine generators; foundation type; location of the export cable route; location of an onshore substation; location of the grid connection point; and construction methods and timing.

*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, maintaining, repairing and replacing: gathering,

transmission, and distribution, and inter-array cables; power and pumping stations; facility anchors; pipelines; and associated facilities and other appurtenances on the OCS as necessary for the full enjoyment of the lease.

*Provisional winner* means a bidder that BOEM determines at the conclusion of the auction to have submitted the winning bid. The provisional winner becomes the winning bidder after the favorable completion of BOEM's bid review, Department of Justice antitrust review, bidder obligations under § 585.225(b), and any appeals process under § 585.118(c).

*Receipt*, as used in this part to describe the time when a document is received by any party in the absence of documentation to the contrary, is deemed to have taken place:

(1)(i) Five (5) business days after the date the document was given to the U.S. Postal Service (or deposited in one of its mailboxes), properly addressed and with proper postage affixed, or was given to a delivery service (or deposited in one of its receptacles), properly addressed and with the delivery cost prepaid; or

(ii) On the date on which the document was properly addressed and sent electronically.

(2) This definition also applies to variants of the words "receipt" and "receive" where those terms are used in this part to describe the receipt of a document when the timing of receipt triggers a regulatory time period or consequence.

*Renewable Energy* means energy resources other than oil and gas and

minerals as defined in 30 CFR part 580. 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 BOEM 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 BOEM 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.

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

*We, us, and our* refer to BOEM, or its possessive, depending on the context.

*You and your* means an applicant, lessee, the operator, or designated operator, ROW grant holder or RUE grant holder under this part, or the designated agent of any of these, or the possessive of each, depending on the context. The terms *you* and *your* also include contractors and subcontractors of the entities specified in the preceding sentence.

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

(a) BOEM 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) and the regulations contained in 43 CFR part 2.

(b) BOEM 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.

If you have a . . .	Then BOEM will review data and information for possible release:
(1) Commercial lease .....	At the earlier of: (i) 3 years after the commencement of commercial operations; or (ii) 3 years after the lease terminates. At 3 years after the lease terminates.
(2) Limited lease .....	At the earliest of: (i) 10 years after the approval of the grant; (ii) Grant termination; or (iii) 3 years after the completion of construction activities.
(3) ROW or RUE grant .....	

(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.

#### **§ 585.115 Paperwork Reduction Act statements—information collection.**

(a) The Office of Management and Budget (OMB) has approved the information collection requirements in this part 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 subparts in the rule requiring the information and its title, summarizes the reasons for collecting the information, and summarizes how BOEM 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, Bureau of Ocean Energy

Management, 45600 Woodland Road, Sterling, VA 20166.

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

30 CFR 585 subpart and title	Reasons for collecting information and how used
(1) Subpart A—General Provisions .....	To inform BOEM of actions taken to comply with general operational requirements on the OCS. To ensure that operations on the OCS meet statutory and regulatory requirements, are safe and protect the environment, and result in diligent development on OCS leases.
(2) Subpart B—The Renewable Energy Leasing Schedule.	To enable BOEM to publish a proposed five-year leasing schedule for the OCS renewable energy program.
(3) Subpart C—Issuance of OCS Renewable Energy Leases.	To provide BOEM with information needed to determine when to use a competitive process for issuing a renewable energy lease, to identify auction formats and bidding systems and variables that we may use when that determination is affirmative, and to determine the terms under which we will issue renewable energy leases.
(4) Subpart D—ROW Grants and RUE Grants for Renewable Energy Activities.	To issue ROW grants and RUE grants for OCS renewable energy activities that are not associated with a BOEM-issued renewable energy lease.
(5) Subpart E—Lease and Grant Administration	To ensure compliance with regulations pertaining to a lease or grant, including designation of operator, assignment, segregation, consolidation, suspension, renewal, termination, relinquishment, and cancellation.
(6) Subpart F—Payments and Financial Assurance Requirements.	To ensure that payments and financial assurance payments for renewable energy leases comply with subpart E.
(7) Subpart G—Plans and Information Requirements.	To enable BOEM to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 <i>et seq.</i> ), the Coastal Zone Management Act (CZMA) (16 U.S.C. 1451 <i>et seq.</i> ), and other Federal laws and to ensure the safety of the environment on the OCS.

#### **§ 585.116 Requests for information.**

BOEM may publish a request for information (RFI) in the **Federal Register** for the following reasons:

(a) To solicit information from industry, federally recognized Tribes, State and local agencies, and other interested entities for evaluating the offshore renewable energy industry, including the identification of potential challenges or obstacles to its continued development. An RFI may relate to the identification of environmental, technical, regulatory, or economic matters that promote or detract from continued development of renewable energy technologies on the OCS. BOEM may use the information received to refine its renewable energy program, including to facilitate OCS renewable energy development in a safe and environmentally responsible manner and to ensure a fair return to the United States for use of the OCS.

(b) To assess interest in leasing all or part of the OCS for activities authorized in this part.

(c) To determine whether there is competitive interest in a specific OCS renewable energy proposal received by BOEM, such as an unsolicited request for a lease under § 585.231(b) or a RUE or ROW grant under § 585.307(a).

(d) To seek other information that BOEM needs for this program.

#### **§ 585.117 Severability.**

If a court holds any provisions of this part or their applicability to any persons or circumstances invalid, the remainder of the provisions and their applicability

to any persons or circumstances will not be affected.

#### **§ 585.118 What are my appeal rights?**

(a) Except as stated in paragraph (c) of this section, any party adversely affected by a final decision issued by BOEM under this part may appeal that decision to the Interior Board of Land Appeals (IBLA), under 30 CFR part 590 and 43 CFR part 4, subpart E.

(b) Any final decision will remain in full force and effect during the pendency of an appeal unless a stay is granted under 43 CFR part 4.

(c) A bidder adversely affected by BOEM's determination of a provisional winner made under this part may appeal to the BOEM Director, but decisions determining a provisional winner may not be appealed to the IBLA.

(1) A bidder that elects to appeal a provisional winner selection decision must file a written appeal with the Director within 15 business days after receipt of the decision.

(2) Such appeal must be accompanied by a statement of reasons. Before reversing a provisional winner selection decision, the Director will provide the provisional winner a reasonable opportunity to respond in writing to the appellant's statement of reasons. The Director will issue a written determination either affirming or reversing the decision. The Director's decision is not appealable to the IBLA under this section.

(3) BOEM will not execute a lease or grant until the 15-business-day appeal

period closes and all timely filed appeals are resolved.

(4) The review authority of the Office of Hearings and Appeals does not apply to either the provisional winner selection decisions made under this part or the Director's final determination affirming or reversing a provisional winner selection decision.

#### **§§ 585.119–585.149 [Reserved]**

■ 46. Revise subpart B to read as follows:

#### **Subpart B—The Renewable Energy Leasing Schedule**

Sec.

585.150 What is the Renewable Energy Leasing Schedule?

585.151–585.199 [Reserved]

#### **Subpart B—The Renewable Energy Leasing Schedule**

#### **§ 585.150 What is the Renewable Energy Leasing Schedule?**

At least once every 2 years, the Secretary will publish a schedule with a list of locations under consideration for leasing, along with a projection of when lease sales are anticipated to occur for the 5-year period following the schedule's publication. This schedule will include a general description of the area covered by each proposed lease sale, the calendar year in which each lease sale is projected to occur, and the reasons for any changes made to the previous schedule. Any proposed lease sale covered by the schedule will be subject to all applicable regulations, including area identification,

coordination with relevant parties, and applicable environmental reviews.

#### **§ 585.151–585.199 [Reserved]**

■ 47. Revise subpart C to read as follows:

### **Subpart C—Issuance of OCS Renewable Energy Leases**

Sec.

#### **General Lease Information**

- 585.200 What rights are granted with a lease issued under this part?
- 585.201 How will BOEM issue leases?
- 585.202 What types of leases will BOEM issue?
- 585.203 With whom will BOEM consult before issuance of leases?
- 585.204 What areas are available for leasing consideration?
- 585.205 How will leases be mapped?
- 585.206 What is the lease size?
- 585.207–585.209 [Reserved]

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

- 585.210 What are the steps in BOEM's competitive lease award process?
- 585.211 What is the Call?
- 585.212 What is area identification?
- 585.213 What information is included in the PSN?
- 585.214 What information is included in the FSN?
- 585.215 What may BOEM do to assess whether competitive interest for a lease area still exists before the auction?
- 585.216 How are bidding credits awarded and used?
- 585.217–585.219 [Reserved]

#### **Competitive Lease Award Process—Auction Provisions**

- 585.220 How will BOEM award leases competitively?
- 585.221 What general provisions apply to all auctions?
- 585.222 What other auction rules must bidders follow?
- 585.223 What supplemental information will BOEM provide in a PSN and FSN?

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

- 585.224 What will BOEM do after the auction?
- 585.225 What happens if BOEM accepts a bid?
- 585.226 What happens if the provisional winner fails to meet its obligations?
- 585.227–585.229 [Reserved]

#### **Noncompetitive Lease Award Process**

- 585.230 May I request a lease if there is no Call?
- 585.231 Will BOEM issue leases noncompetitively?
- 585.232 May I acquire a lease noncompetitively after responding to a request for information or a Call for Information and Nominations?
- 585.233–585.234 [Reserved]

#### **Commercial and Limited Lease Periods**

- 585.235 What are the lease periods for a commercial lease?
- 585.236 If I have a limited lease, how long will my lease remain in effect?
- 585.237 What is the effective date of a lease?
- 585.238 May I develop my commercial lease in phases?
- 585.239 Are there any other renewable energy research activities that will be allowed on the OCS?
- 585.240–585.299 [Reserved]

### **Subpart C—Issuance of OCS Renewable Energy Leases**

#### **General Lease Information**

##### **§ 585.200 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 G of this part; and

(2) BOEM 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 BOEM approval as provided in § 585.238.

##### **§ 585.201 How will BOEM issue leases?**

BOEM will issue leases on a competitive basis, as provided under §§ 585.210 through 585.226. 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 §§ 585.230 through 585.232. We will issue leases on forms approved by BOEM and will include terms, conditions, and stipulations identified and developed as appropriate.

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

BOEM may issue commercial or limited leases for OCS activities under § 585.104. BOEM may issue a lease for OCS renewable energy research activities under § 585.239.

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

For leases issued under this part, through either the competitive or noncompetitive process, BOEM, prior to issuing the lease, will coordinate and consult with relevant Federal agencies (including, in particular, those agencies involved in planning activities that are undertaken to avoid or minimize conflicts among users and maximize the economic and ecological benefits of the OCS, including multifaceted spatial planning efforts), any affected federally recognized Indian Tribes, the Native Hawaiian Community or Alaska Native Corporations, as appropriate, the Governor of any affected State, and the executive of any affected local government, as directed by subsections 8(p)(4) and (7) of the OCS Lands Act or other relevant Federal laws. Federal statutes that require BOEM to consult with interested parties or Federal agencies or to respond to findings of those agencies include the Endangered Species Act (ESA) and the Magnuson-Stevens Fishery Conservation and Management Act. BOEM also engages in consultation with Tribal and State historic preservation officers pursuant to the National Historic Preservation Act (NHPA).

##### **§ 585.204 What areas are available for leasing consideration?**

BOEM may offer any appropriately platted area of the OCS, as provided in § 585.205, 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.

##### **§ 585.205 How will leases be mapped?**

BOEM 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.

##### **§ 585.206 What is the lease size?**

(a) BOEM 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 and 30 CFR part 285. The lease may include whole lease blocks or portions of a lease block.

#### § 585.207–585.209 [Reserved]

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

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

(a) BOEM may publish an RFI under § 585.116.

(b) BOEM will award leases through a competitive lease award process unless competitive interest does not exist. BOEM will publish details for each auction and lease through appropriate notices in the **Federal Register**. Each competitive lease award process will include the following steps:

(1) *Call for information and nominations (Call).* BOEM will publish a Call in the **Federal Register** requesting information to determine qualifications of prospective bidders and interest in preliminarily identified OCS lease areas.

(2) *Area identification.* BOEM will identify OCS areas for leasing consideration and related analysis in consultation with appropriate Federal agencies, State and local governments, federally recognized Tribes, Alaska Native Claims Settlement Act (ANCSA) corporations, and other interested parties.

(3) *Proposed Sale Notice (PSN).* BOEM will publish a PSN, or a notice of its availability, in the **Federal Register**, announcing BOEM's intention to conduct an auction for prospective lease areas. The PSN will set forth provisions and information concerning the proposed auction and lease and will invite stakeholder comments.

(4) *Final Sale Notice (FSN).* BOEM will publish an FSN, or a notice of its availability, in the **Federal Register** setting forth final information concerning the auction and lease.

(5) *Auction.* BOEM will hold an auction under the regulations in this part and the FSN.

(6) *Lease award.* BOEM will award leases subsequent to the completion of the aforementioned steps under the regulations in this part and the FSN.

##### § 585.211 What is the Call?

(a) The Call is a notice that BOEM will publish in the **Federal Register** requesting responses from stakeholders interested in bidding on designated OCS

areas and comments from interested and potentially affected parties. The responses may inform the area identification process and will enable BOEM to determine whether there exists competitive interest in the proposed lease area. BOEM may request additional information from stakeholders related to environmental, economic, and other issues.

(b) The Call may include the following:

(1) The areas that BOEM has preliminarily identified for leasing consideration;

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

(3) Request for comments regarding feasibility for development, including the energy resource and opportunity for grid connection;

(4) Possible lease terms and conditions;

(5) A request to potential bidders to nominate one or more areas for a commercial renewable energy lease within the preliminarily identified leasing areas. Such nominations must include:

(i) The specific OCS blocks that the respondent is interested in leasing;

(ii) A general description of the respondent's objectives and how respondent proposes to achieve those objectives;

(iii) A preliminary schedule of the respondent's proposed activities, including those potentially leading to commercial operations, to the extent known;

(iv) Information regarding respondent's coordination, or intent to coordinate, with any other entity for the purposes of acquiring a lease from BOEM, if applicable;

(v) Documentation demonstrating the respondent's qualification to acquire a lease or grant as specified in §§ 585.107 and 585.108;

(vi) Available and pertinent information concerning renewable energy and environmental conditions in the nominated areas, including energy and resource data and information used to evaluate the areas; and

(vii) Any additional information requested by BOEM in the Call;

(c) Respondents have 45 calendar days from the date the Call is published in the **Federal Register** to reply, unless BOEM specifies another time period of

not less than 30 calendar days in the Call.

(d) BOEM may use the information received in response to a Call to:

(1) Identify lease areas;

(2) Develop options for its lease provisions (e.g., stipulations, payments, terms, and conditions);

(3) Inform its environmental analysis conducted under applicable Federal requirements, including, but not limited to, NEPA, the Endangered Species Act (ESA) (16 U.S.C. 1531–1544), and the CZMA; and

(4) Determine whether competitive interest exists in all or a portion of any potential lease area. If BOEM determines no competitive interest exists, BOEM may follow the noncompetitive leasing process set forth in § 585.231(d) through (j).

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

(a) Area identification is the process by which BOEM delineates one or more OCS areas for leasing consideration and environmental analysis if the areas appear appropriate for renewable energy development. This process is based on an area's relevant attributes, such as other uses of the area, environmental factors or characteristics, stakeholder comments, industry nominations, feasibility for development, and other relevant information. BOEM consults with interested parties during this process as specified in § 585.210(b)(2).

(b) BOEM may consider areas nominated by respondents to a Call and other areas determined appropriate for leasing.

(c) For the identified areas, BOEM will evaluate:

(1) The potential effects of leasing the identified areas on the human, marine, and coastal environments;

(2) The feasibility of development; and

(3) Potential measures, including lease stipulations, to mitigate potential adverse impacts. Such measures are identified and refined through the area identification process, as well as through environmental review and consultations and published for comment in the Proposed Sale Notice.

(d) BOEM may hold public hearings on the environmental analyses associated with leasing the identified areas, after appropriate notice.

(e) At the end of the area identification, BOEM may offer selected areas for leasing.

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

(a) The PSN is a notice that BOEM will publish in the **Federal Register** for each prospective auction. The PSN will

request public comment on the items listed in this section. Public comments will inform BOEM's decisions regarding auction format and lease terms and conditions. At a minimum, the PSN will include or describe the availability of information pertaining to:

- (1) The proposed leases to be offered, including:
  - (i) The proposed lease areas, including size and location;
  - (ii) The proposed lease terms and conditions, including the proposed rental rate and operating fee rate;
  - (iii) Other proposed payment requirements, as applicable; and
  - (iv) Proposed requirements for performance under the lease, such as site-specific lease stipulations and environmental mitigation measures;
- (2) Steps a bidder must take to obtain and maintain eligibility to participate in the auction (e.g., financial forms, bid deposits);
- (3) The proposed availability and potential value of bidding credit(s), if any are offered, and the actions or commitments required to obtain them;
- (4) A detailed description of the proposed auction format and procedures as further described in § 585.223;
- (5) The maximum number or specific sets of lease areas that any given bidder may be allowed to bid on or to acquire in an auction, if applicable;
- (6) Lease award procedures, including how and when a lease will be awarded and executed, and how BOEM will address unsuccessful bids and applications;
- (7) A copy of, or a reference to, the official BOEM lease form; and
- (8) Other relevant matters, as determined by BOEM.

(b) The PSN may be used to gauge competitive interest by requiring prospective bidders to reaffirm their intent to participate in the auction as a prerequisite for continued eligibility.

(c) A prospective bidder is encouraged to identify in its comments any specific proposed terms and conditions in the PSN that may preclude its participation in the auction.

(d) The PSN's public comment period is 60 calendar days from the date of its publication in the **Federal Register**, unless BOEM specifies another time period of not less than 30 calendar days in the PSN.

(e) BOEM will notify any potentially affected federally recognized Indian Tribes, States, local governments, and ANCSA corporations of the PSN's publication, and will provide copies of the PSN to these entities upon written request.

#### **§ 585.214 What information is included in the FSN?**

(a) The FSN is a notice that BOEM will publish in the **Federal Register** at least 30 calendar days before each prospective auction. The FSN will describe the final auction details and will include or describe the availability of information pertaining to:

- (1) The leases to be offered, including:
  - (i) The lease areas, including size and location;
  - (ii) Lease terms and conditions, including the rental rate and the operating fee rate;
  - (iii) Other payment requirements, as applicable; and
  - (iv) Requirements for performance under the lease, including site-specific lease stipulations and environmental mitigation measures;
- (2) Steps a bidder must take to ensure eligibility to participate in the auction (e.g., financial forms, bid deposits);
- (3) The availability and potential value of bidding credit(s), if any are offered, and the actions or commitments required to obtain them.
- (4) A detailed description of the auction format and procedures as further described in § 585.223;

(5) The maximum number or specific sets of lease areas that any given bidder may be allowed to bid on or to acquire in an auction, if applicable;

(6) Lease award procedures, including how and when a lease will be awarded and executed, and how BOEM will handle unsuccessful bids and applications;

(7) A copy of, or a reference to, the official BOEM lease form; and

(8) Other relevant matters as determined by BOEM.

(b) The terms of the FSN may differ from the proposed terms of the PSN.

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

(a) At any time BOEM has reason to believe that competitive interest in any lease area no longer exists before the area's auction, BOEM may issue a notice in the **Federal Register**, as described in § 585.116, requesting information regarding competitive interest in that area. BOEM will consider respondents' comments to determine whether competitive interest in that area remains. BOEM may decide to end the competitive process for any area if it determines that competitive interest no longer exists.

(b) If BOEM determines after considering respondents' comments to such a notice that competitive interest remains, BOEM will continue with the competitive process set forth in §§ 585.210 through 585.226.

(c) If BOEM determines at any time before the auction that only a single party remains interested in a lease area, BOEM may proceed either with the auction or with the noncompetitive process set forth in § 585.231(d) through (j) following payment by that party of the acquisition fee specified in § 585.502(a).

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

(a) BOEM will determine the highest bid, taking into account the combined value of the monetary (cash) component and the non-monetary component(s), represented by bidding credits. The PSN and FSN will explain the following details, if bidding credit(s) are available for that auction:

(1) Eligibility and application requirements;

(2) The value of each available bidding credit, which will be either a sum certain or a percentage of the bid; and

(3) Procedures for applying each available bidding credit to bids submitted during the auction.

(b) Eligibility for bidding credits must be established in advance of any lease auction, in accordance with the specifications of the FSN. Such eligibility may be based on actions that the bidder has already undertaken or actions that it has committed to undertake in the future, provided that BOEM has agreed to the terms by which such a commitment will be made. BOEM may offer bidding credits for any of the following:

(1) Power purchase agreements;

(2) Eligibility for, or applicability of, renewable energy credits or subsidies;

(3) Development agreements by a potential lessee that facilitate shared transmission solutions and grid interconnection;

(4) Technical merit, timeliness, or financing and economic considerations;

(5) Environmental considerations, public benefits, or compatibility with State and local needs;

(6) Agreements or commitments by the developer that would facilitate OCS renewable energy development or other OCSLA goals; or

(7) Any other factor or criteria to further development of offshore renewable energy, as identified by BOEM in the PSN and FSN.

(c) Before the auction, bidders seeking to use bidding credits must establish that they meet the eligibility criteria for each bidding credit according to the FSN provisions.

(d) Before the auction, BOEM will determine each bidder's eligibility for bidding credits, and the value of those

bidding credits, and will inform each eligible bidder of the value of the bidding credits to which it may be entitled.

(e) A provisional winner who is awarded bidding credits must pay an amount equal to the cash component of its winning bid less any bid deposit retained by BOEM under § 585.501.

#### **§ 585.217–585.219 [Reserved]**

#### **Competitive Lease Award Process—Auction Provisions**

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

(a) BOEM will award leases competitively using an objective, fair, reasonable, and competitive auction process that provides a fair return to the United States. As described in the FSN, leases will be awarded to the highest bidder.

(b) BOEM may use any analog or digital method to conduct the auction. The specific process and procedural details for each auction will be noticed in the PSN and finalized in the FSN.

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

(a) If BOEM determines competitive interest exists to develop a renewable energy resource in any OCS area and decides to issue a lease for that area, BOEM will conduct an auction to award the lease.

(b) The auction's format, procedures, and other details will be specified in the FSN, as outlined in § 585.214. Possible auction formats include, but are not limited to, sealed bidding and ascending bidding.

(c) The FSN will specify the potential use of alternatives if the primary auction method, system, or mechanism malfunctions. Alternatively, BOEM may take action consistent with paragraph (d) of this section until the malfunction is resolved.

(d) Any time before a provisional winner is determined, BOEM may delay, suspend, or cancel an auction due to a natural or man-made disaster, technical malfunction, security breach, unlawful bidding activity, administrative necessity, or any other reason that BOEM determines may adversely affect the fair and efficient conduct of the auction. In its discretion, BOEM may restart the auction at whatever point it deems appropriate, reasonable, fair, and efficient for all participants; or, alternatively, BOEM may cancel the auction in its entirety.

(e) BOEM will determine the provisional winner for each lease area under the auction rules and bidding procedures prescribed in the FSN.

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

(a) Bidders must submit a deposit to participate in an auction under § 585.501(a), unless otherwise specified in the FSN. A provisional winner's bid deposit will be credited toward the balance due on its bid.

(b) Only bidders qualified by BOEM under §§ 585.107 and 585.108 are permitted to bid during an auction.

(c) Only an authorized agent may act on a bidder's behalf during an auction. Bidders must submit the names of their authorized agents to BOEM before the auction, as prescribed in the FSN.

(d) Each bidder must follow the auction process specified in the FSN and may not take any action to disrupt or alter the process beyond its intended function.

(e) A bidder is responsible for immediately contacting BOEM if it is unable to submit its bid for any reason during an auction. If a bidder fails to timely notify BOEM of its inability to bid, it may not dispute the auction or lease award on that basis. If a bidder timely notifies BOEM of its inability to submit a bid, BOEM, in its discretion, may suspend the auction, continue the auction using an alternative method, or continue the auction without the participation of the affected bidder.

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

(a) In addition to the information described in §§ 585.213 and 585.214, BOEM may provide the following auction information, as appropriate, in the PSN and FSN:

(1) *Bidding instructions, procedures, and systems, including the bid variables.* How the auction will be conducted and what systems and procedures will be utilized.

(2) *Bid deposit.* The amount a bidder must pay under § 585.501(a) to be eligible to bid. The FSN will prescribe the process and deadline for submitting a bid deposit.

(3) *Mock auction.* Notice of a practice auction before the actual auction. Only bidders eligible for the actual auction will be permitted to participate in the mock (*i.e.*, practice) auction.

(4) *Auction date, starting time and location.* The starting time will include the relevant time zone, and the location will indicate where the auction will take place.

(5) *Minimum bid.* The price at which the bidding will start.

(6) *Information BOEM will release to bidders between rounds.* This information may include prior round results and other updates.

(7) *Tie-breaking provision.* This provision describes the method that

BOEM will use to break a tie between two or more identical high bids offered for the same lease area, or package of lease areas.

(8) *Next highest bidder.* The method that BOEM will use to determine the next highest bidder of a completed auction in the event the provisional winner fails to meet its obligations or is unable to acquire a lease for any reason, or if a competitively issued lease or any portion thereof is relinquished or cancelled within six months of the auction.

(b) The list in paragraph (a) of this section is not exhaustive. BOEM may include in the FSN any other information relevant to that auction.

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

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

(a) At the conclusion of the auction, BOEM will:

(1) Declare the bidding closed.

(2) Assess whether the bids meet the requirements of BOEM's regulations and the FSN. BOEM may disqualify bids based on this review.

(3) Under 43 U.S.C. 1337(c), provide the Department of Justice, in consultation with the Federal Trade Commission, the opportunity to conduct an antitrust review of the lease sale results. BOEM may disqualify bids based on the results of this review.

(4) BOEM will declare the provisional winner of each lease area.

(b) BOEM may reject any and all bids received, regardless of the amount offered.

(c) BOEM will accept or reject bids within 90 calendar days of auction closure; BOEM may extend that time by notice to bidders within 15 calendar days before the 90 calendar day period ends.

(d) BOEM will deem rejected any bid not accepted within the 90 calendar-day period, or any extension. BOEM will provide each rejected bidder a written explanation for the rejection and will refund, without interest, any monies deposited by the rejected bidder.

(e) BOEM may withdraw all or part of a lease area from the lease sale between auction closure and lease execution. In the event that a portion of the lease area is withdrawn, the provisional winner has the option to refuse the lease without penalty, to propose new lease terms for BOEM's concurrence, or to accept the lease with the reduced area.

(f) BOEM may re-auction any lease area or portions thereof that remain unsold at the conclusion of an auction. BOEM may restart the competitive

leasing process at any point in the process set forth in § 585.210 that it deems reasonable and appropriate (e.g., Call, area identification, PSN, or FSN).

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

(a) BOEM will identify and notify the lease area's provisional winner of the amount due on each winning bid, which equals the cash component of the provisional winner's bid less its bid deposit retained by BOEM under § 585.501. BOEM will provide an unsigned copy of the lease to the provisional winner.

(b) Within 10 business days after receipt of the unsigned copy, or as otherwise specified by BOEM under paragraph (d) of this section, the provisional winner must:

(1) Execute the lease and return it to BOEM;

(2) File financial assurance as required by §§ 585.516 through 585.529; and

(3) Pay the amount due.

(c) When the bid deposit exceeds the amount due, BOEM will refund the overage without interest.

(d) A provisional winner may request in writing an extension of the 10-day time limit in paragraph (b) of this section. BOEM, in its discretion, may grant such a request.

(e) BOEM will execute the lease by signing the lease on behalf of the United States only after the provisional winner completes the requirements in paragraph (b) of this section and any appeals timely filed under § 585.118(c)(1) have been resolved. After BOEM executes the lease, the provisional winner becomes the winning bidder, and BOEM will send the winning bidder an electronic version of the fully executed copy of the lease. The lease takes effect as set forth in § 585.237.

(f) The winning bidder must pay the first 12 months' rent under § 585.503(a) within 45 calendar days after receiving a copy of the executed lease from BOEM.

(g) In the event that a lessee does not meet the commitments it made to obtain any bidding credits, the lessee will be required to repay the value of the bidding credits that it received adjusted for inflation.

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

(a) If BOEM determines that a provisional winner has failed to timely complete the steps outlined in § 585.225(b) or § 585.316, or has otherwise failed to comply with applicable laws, regulations, or FSN

provisions, BOEM may take one or more of the following actions:

(1) Decline to execute the applicable lease.

(2) Decline to execute the lease for any other lease areas that the provisional winner won during the auction.

(3) Require forfeiture of the bid deposit. In the event the bid deposit exceeds the amount of the winning bid, BOEM would limit the required forfeiture to the lesser amount.

(4) Refer the matter to the Department of the Interior's Administrative Remedies Division for suspension or debarment review pursuant to 2 CFR part 180 as implemented at 2 CFR part 1400.

(5) Pursue any other remedy available.

(b) If BOEM declines to execute a lease with the provisional winner under paragraph (a) of this section, BOEM may decide to select a new provisional winner by either repeating the auction under § 585.224(f), or pursuant to the procedures in § 585.223(a)(8), by selecting the next highest bid submitted during the auction, or by using other procedures specified in the FSN.

(c) BOEM's decisions under this section are appealable under § 585.118.

#### **§ 585.227–585.229 [Reserved]**

#### **Noncompetitive Lease Award Process**

#### **§ 585.230 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. BOEM 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 § 585.114.

(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 §§ 585.107 and 585.108.

(g) An acquisition fee, as specified in § 585.502(a).

#### **§ 585.231 Will BOEM issue leases noncompetitively?**

(a) BOEM will consider unsolicited requests for a lease on a case-by-case basis and may issue a lease noncompetitively in accordance with this part. BOEM will issue a lease noncompetitively only if it has determined after public notice that no competitive interest exists. BOEM will not consider an unsolicited request for a lease under this part that is proposed in a lease area that is scheduled for a lease auction under this part.

(b) At BOEM's discretion, BOEM may issue an RFI under § 585.116 relating to your unsolicited lease request and will consider comments received to determine if competitive interest exists. If BOEM decides not to issue an RFI and, therefore, not to continue processing your unsolicited lease request, it will refund your acquisition fee.

(c) If BOEM determines that competitive interest exists in the lease area:

(1) BOEM will proceed with the competitive process set forth in §§ 585.210 through 585.226;

(2) If you submit a bid for the lease area in a competitive lease sale, your acquisition fee will be applied to the deposit for your bonus bid; and

(3) If you do not submit a bid for the lease area in a competitive lease sale, BOEM will not refund your acquisition fee.

(d) If BOEM determines that there is no competitive interest in a lease and that further investigation of the area is in the public interest, it will:

(1) Publish in the **Federal Register** a determination of no competitive interest.

(2) Prepare and provide you with a written estimate of the proposed fee to pay for the processing costs under § 585.112, including any environmental review that BOEM may require before lease issuance.

(3) Conduct environmental reviews required by Federal law and consult with affected Federal agencies, federally recognized Indian Tribes, and State and local governments.

(e) The following deadlines apply after issuance of a determination of no competitive interest:

(1) Within 90 calendar days of receiving the written estimate of the fee, or longer (as determined at BOEM's discretion), you must pay the fee for any environmental review under § 585.112.

Failure to pay the required fee may result in withdrawal of the determination of no competitive interest.

(2) A determination of no competitive interest expires two years after its publication, unless BOEM determines that it should be extended for good cause. BOEM reserves the right to withdraw a determination of no competitive interest before it expires if BOEM determines that you have failed to exercise due diligence in obtaining a lease.

(f) After BOEM publishes the determination of no competitive interest, you will be responsible for submitting any consistency certification and necessary data and information in a timely manner to the applicable State CZMA agencies and BOEM pursuant to 15 CFR part 930, subpart D.

(g) After completing its review of your lease request, BOEM may offer you a noncompetitive lease.

(h) If you accept the terms and conditions of the lease, BOEM will issue the lease. You must comply with the terms and conditions of your lease and the applicable provisions of this part. If BOEM issues you a lease, BOEM will send you an electronic copy of the lease form.

(1) Within 10 business days after you receive the lease you must:

- (i) Execute and return the lease; and
- (ii) File financial assurance as required under §§ 585.516 through 585.529.

(2) You must pay the first 12 months' rent no later than 45 calendar days after you receive your copy of the executed lease from BOEM under § 585.503(a)(1).

(i) BOEM will publish in the **Federal Register** a notice announcing the issuance of your lease.

(j) If you do not accept the terms and conditions in a timely manner, BOEM will not issue a lease. Additionally, if you do not comply with the

requirements for financial assurance, BOEM may decide not to issue a lease. If BOEM does not issue a lease due to your noncompliance or non-acceptance, BOEM will not refund your acquisition fee, or any fees paid under paragraph (e)(1) of this section.

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

(a) If you submit an area of interest for a possible lease and BOEM 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 § 585.502(a).

(c) After receiving the acquisition fee, BOEM will follow the process outlined in § 585.231(d) through (j).

**§§ 585.233–585.234 [Reserved]**

**Commercial and Limited Lease Periods**

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

(a) The lease periods within the term of your commercial lease are defined as follows:

(1) *Preliminary period.* Each commercial lease has a preliminary period of up to five years. During the preliminary period, the lessee must submit a COP. The preliminary period begins on the effective date of the lease and ends either when a COP is received by BOEM for review or at the expiration of five years, whichever occurs first.

(2) *COP review period.* A commercial lease has a COP review period. The COP review period begins when BOEM receives a COP from the lessee and ends upon COP approval, disapproval, or approval with conditions pursuant to § 585.628. During the COP review

period, BOEM conducts the necessary reviews and consultations associated with the COP.

(3) *Design and construction period.* The design and construction period begins at COP approval and ends when the operations period begins. During the design and construction period BSEE completes the FDR and FIR review(s), and the lessee undertakes project construction.

(4) *Operations period.* A commercial lease has an operations period of 35 years; or the duration specified in the lease; or the duration included and approved as part of your COP. The operations period begins when the requirements of 30 CFR 285.637(a) are met through the submission of final reports and records for your project. Additional time may be added to the operations period through a lease suspension under § 585.415 issued during this period; a lease extension requested pursuant to paragraph (b) of this section; or a lease renewal under § 585.425.

(b) You may request an extension of any of the lease periods outlined in paragraph (a) of this section for good cause, including if the project is designed and verified for a longer duration. In its discretion, BOEM may approve your request.

(c) If you intend to develop your lease in phases under § 585.238, you must propose lease period schedules for each phase in your COP.

(d) If you intend to segregate or consolidate your lease under §§ 585.408 through 585.413, you and your assignees may propose lease period schedules in your segregation or consolidation application.

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

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

Lease period	Extension or suspension	Requirements
(1) Each limited lease has a preliminary period of 12 months within which to submit a GAP. The preliminary period begins on the effective date of the lease.	If we receive a GAP that satisfies the requirements of §§ 585.640 through 585.648, the preliminary period will be automatically extended for the period of time necessary for us to conduct a technical and environmental review of the GAP.	The GAP must meet the requirements of §§ 585.640 through 585.648.
(2) Each limited lease has an operations period as specified by BOEM (if the lease is issued competitively) or negotiated with the applicant (if the lease is issued noncompetitively). In either case, the duration of the operations period will depend on the intended use of the lease. The operations period begins on the date that we approve your GAP.	We may order or grant a suspension of the operations period as provided in §§ 585.415 through 585.421.	

(b) You may request an extension of any of the lease periods outlined in

paragraph (a) of this section for good

cause. In its discretion, BOEM may approve your request.

**§ 585.237 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 BOEM approves, a lease may be dated and become effective the first day of the month in which it is signed by the lessor.

**§ 585.238 May I develop my commercial 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. You must also propose a lease period schedule for each phase described in your COP in accordance with § 585.235(c). BOEM may condition its approval of subsequent phases described in a phased development COP.

**§ 585.239 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 section, BOEM will coordinate and consult with other relevant Federal agencies, affected federally recognized Indian Tribes, any other affected State(s), and affected local government executives.

(c) BOEM 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 section 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 BOEM 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 this part and 30 CFR part 285, other applicable laws, and terms and conditions of such leases or grants.

(e) Any lease, RUE, or ROW that BOEM 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 this part and 30 CFR part 285, except as otherwise provided in the lease or grant.

(f) BOEM will issue a public notice of any lease, RUE, or ROW issued to a Federal agency or to a State, or an approved MOA for such research activities.

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

**§§ 585.240–585.299 [Reserved]**

■ 48. Revise subpart D to read as follows:

**Subpart D—Right-of-Way (ROW) Grants and Right-of-Use and Easement (RUE) Grants for Renewable Energy Activities**

Sec.

**ROW Grants and RUE Grants**

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

585.301 What do ROW grants and RUE grants include?

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

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

585.304 [Reserved]

**Obtaining ROW Grants and RUE Grants**

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

585.306 What action will BOEM take on my request?

585.307 How will BOEM determine whether competitive interest exists for ROW grants and RUE grants?

585.308 How will BOEM conduct an auction for ROW grants and RUE grants?

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

585.310–585.314 [Reserved]

**Financial Requirements for ROW Grants and RUE Grants**

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

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

585.317–585.399 [Reserved]

**Subpart D—Right-of-Way (ROW) Grants and Right-of-Use and Easement (RUE) Grants for Renewable Energy Activities****ROW Grants and RUE Grants****§ 585.300 What types of activities are authorized by ROW grants and RUE grants issued under this part?**

(a) A 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) A 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 a ROW grant or RUE grant for a project easement authorized under § 585.200(b) to serve your lease.

**§ 585.301 What do ROW grants and RUE grants include?**

(a) A ROW grant:

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

(2) Is of a width sufficient to accommodate potential changes at the design and installation phases of the project, with an option for the grant holder to relinquish unused portions of the ROW after construction is complete; and

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

(b) A 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 a RUE will be determined by BOEM on a case-by-case basis and set forth in each RUE grant.

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

(a) To acquire a ROW grant or RUE grant, you must provide evidence that you meet the qualifications set forth in §§ 585.107 and 585.108.

(b) A 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 BOEM 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.

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

The periods within the term of your grant are defined as follows:

(a) Each ROW or RUE grant has a preliminary period of 12 months from the effective date of the ROW or RUE grant within which to submit a GAP. The preliminary period begins on the effective date of the grant. You must submit a GAP no later than the end of the preliminary period for your grant to remain in effect. However, you may submit a GAP before the issuance of your ROW or RUE grant.

(b) Each ROW or RUE grant has an operations period as set by BOEM (if the grant is issued competitively) or negotiated with the applicant (if the grant is issued noncompetitively). In either case, the duration of the operations period will depend on the intended use of the grant. The operations period begins on the date that we approve your GAP.

(c) You may request an extension of any of the grant periods outlined in paragraphs (a) and (b) of this section for good cause. In its discretion, BOEM may approve your request.

#### **§ 585.304 [Reserved]**

#### **Obtaining ROW Grants and RUE Grants**

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

You must submit a request for a new or modified ROW grant or RUE grant to BOEM pursuant to § 585.111. 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.

#### **§ 585.306 What action will BOEM take on my request?**

BOEM will consider requests for ROW grants and RUE grants on a case-by-case basis and may issue a grant competitively, as provided in § 585.308, or noncompetitively if we determine after public notice that there is no competitive interest. BOEM will coordinate and consult with relevant Federal agencies, 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, BOEM will first determine if there is competitive interest, as provided in § 585.307.

(b) If BOEM determines there is no competitive interest in a ROW or RUE grant, BOEM will publish a notice in the **Federal Register** of such determination. After BOEM publishes this notice, you are responsible for submitting any required consistency certification and necessary data and information in a timely manner to BOEM and the applicable State CZMA agency pursuant to 15 CFR part 930, subpart D. BOEM may establish terms and conditions for a noncompetitive grant and offer the grant to you:

(1) If you accept the terms and conditions of the grant, BOEM will issue the grant.

(2) If you do not accept the terms and conditions of the grant, BOEM may agree to modify the terms and conditions or may decide not to issue the grant.

#### **§ 585.307 How will BOEM 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, generally 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.

(c) BOEM may consider a State's or Regional Transmission Operator/Independent System Operator's process that identifies a transmission project that needs a ROW and/or a RUE grant to achieve its intended purpose. BOEM may determine that there is no competitive interest that would be consistent with OCSLA's goal of allowing the expeditious and orderly development of OCS energy projects, if offering the ROW and/or RUE competitively could challenge the

viability of the transmission project intended to be located on State submerged lands and the OCS (e.g., technical and economic feasibility or practicality concerns, including significant delays, by having different entities holding the right to develop the transmission project in State submerged lands and the OCS).

#### **§ 585.308 How will BOEM conduct an auction for ROW grants and RUE grants?**

(a) If BOEM 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 §§ 585.210 through 585.226.

(b) If you are the successful bidder in an auction, you must pay the first year's rent, as provided in § 585.316.

#### **§ 585.309 What is the effective date of a ROW grant or a RUE grant?**

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

#### **§§ 585.310–585.314 [Reserved]**

#### **Financial Requirements for ROW Grants and RUE Grants**

#### **§ 585.315 What deposits are required for a competitive ROW grant or RUE grant?**

(a) You must make a deposit, as required in § 585.501(a), regardless of whether the auction is a sealed-bid, oral, electronic, or other auction format. BOEM 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.

#### **§ 585.316 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 Office of Natural Resources Revenue (ONRR), as provided in the sale notice.

(b) An annual rent for the first year of the grant, as specified in § 585.508.

#### **§§ 585.317–585.399 [Reserved]**

■ 49. Revise subpart E to read as follows:

**Subpart E—Lease and Grant Administration**

Sec.

585.400–585.404 [Reserved]

**Designation of Operator**

585.405 How do I designate an operator?

585.406 Who is responsible for fulfilling lease and grant obligations?

585.407 [Reserved]

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

585.408 May I assign my lease or grant interest?

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

585.410 When will my assignment result in a segregated lease?

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

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

585.413 How do I consolidate leases or grants?

585.414 [Reserved]

**Lease or Grant Suspension**

585.415 What is a lease or grant suspension?

585.416 How do I request a lease or grant suspension?

585.417 When may BOEM order a suspension?

585.418 How will BOEM issue a suspension?

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

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

585.421 How long will a lease or grant suspension be in effect?

**Lease or Grant Cancellation**

585.422 When can my lease or grant be canceled?

585.423–585.424 [Reserved]

**Lease or Grant Renewal**

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

585.426 When must I submit my request for renewal?

585.427 How long is a renewal?

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

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

585.430–585.431 [Reserved]

**Lease or Grant Termination**

585.432 When does my lease or grant terminate?

585.433 What must I do after my lease or grant terminates?

585.434 When may BOEM authorize facilities to remain in place following termination of a lease or grant?

**Lease or Grant Relinquishment, Contraction, or Cancellation**

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

585.436 Can BOEM require lease or grant contraction?

585.437 [Reserved]

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

585.439–585.499 [Reserved]

**Subpart E—Lease and Grant Administration****§ 585.400–585.404 [Reserved]****Designation of Operator****§ 585.405 How do I designate an operator?**

(a) If you intend to designate an operator who is not the lessee or grant holder, you must identify the proposed operator in your SAP (under § 585.610(a)(3)), COP (under § 585.626(a)(2)), or GAP (under § 585.645(a)(2)), as applicable. If no operator is designated in a SAP, COP, or GAP, BOEM 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 BOEM 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 BOEM and identify the new designated operator within 72 hours on a form approved by BOEM. The lessee(s) or grantee(s) is the operator and responsible for compliance until BOEM 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 the operator, notwithstanding its subsequent resignation.

**§ 585.406 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 and 30 CFR

part 285, unless otherwise provided in this part.

(b) If your designated operator fails to fulfill any of your obligations under the lease or grant and this part, BOEM 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 this part.

(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 this part.

**§ 585.407 [Reserved]****Lease or Grant Assignment, Segregation, and Consolidation****§ 585.408 May I assign my lease or grant interest?**

(a) You may assign all or part of your lease or grant interest, including record title, to one or more parties, subject to BOEM 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. Your application to assign a lease or grant may include a request to modify the existing lease or grant period schedule consistent with § 585.235(d).

(b) 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 BOEM approves the assignment.

(c) The assignment takes effect on the first day of the month following the date on which BOEM approves your request, unless you request an earlier effective date and BOEM approves that earlier date, but such earlier effective date, if prior to the date of BOEM's approval, does not relieve you of your obligations accrued between that earlier effective date and the date of approval.

(d) You do not need to request an assignment for business mergers, name changes, or changes of business form. You must notify BOEM of these events under § 585.110.

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

(a) You must request approval of each assignment on a form approved by BOEM 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 §§ 585.516 through 585.537.

(c) The assignee must submit proof of eligibility and other qualifications specified in §§ 585.107 and 585.108.

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

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

(a) When there is an assignment by all record title owners of 100 percent of the record title to one or more aliquots in a lease, the assigned and retained portions become segregated into separate and distinct leases. In such a case, both the new lease and the remaining portion of the original lease are referred to as "segregated leases" and the assignee becomes the record title owner of the new lease, which is subject to all the terms and conditions of the original lease. The financial assurance requirements of subpart F of this part apply separately to each segregated lease.

(b) If a record title owner transfers an undivided interest of less than 100 percent of the record title interest in any given aliquot, that transfer will not segregate the portions of that aliquot, or the whole aliquot, in which part of the record title was transferred, into a separate lease from the portions in which no interest was transferred. Instead, that transfer will create a joint ownership between the assignee and assignor in the portions of the lease in which part of the record title interest was transferred.

(c) When a lease becomes segregated, BOEM may issue separate Plan approvals for a segregated lease or take other actions within its discretion.

**§ 585.411 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 BOEM approves your assignment. Our approval of the assignment does not relieve you of these accrued obligations. BOEM 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.

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

(a) As assignee, you are liable for all lease or grant obligations that accrue after BOEM 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 30 CFR part 285, subpart I.

(b) Assignees are bound to comply with each term or condition of the lease or grant and the regulations in this part and 30 CFR part 285. You are jointly and severally liable for the performance of all obligations under the lease or grant and under the regulations in this part and 30 CFR part 285 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.

**§ 585.413 How do I consolidate leases or grants?**

(a) You may apply to consolidate all or part of two or more adjacent leases or grants held by the same lessee or grant holder into one new lease or grant, subject to BOEM's approval. The application must include a description of the leases or grants, or portions thereof, to be consolidated, including the relevant lease number, lease blocks, and aliquots.

(b) An approved consolidation will create a new lease or grant that will be subject to the terms and conditions of the consolidated leases or grants.

(c) To the extent the leases or grants to be consolidated have different times remaining in the relevant lease or grant periods, BOEM will default to using the shorter remaining periods in the new lease or grant but will consider requests for a revised lease or grant period schedule included in the consolidation application.

(d) To the extent the leases or grants to be consolidated have other different terms and conditions, BOEM will default to using the terms and conditions in the most recently issued lease or grant to be consolidated for the new lease. BOEM will consider requests for modifications on a case-by-case basis and, in its discretion, approve such requests for good cause.

(e) Before BOEM will approve your consolidation request, BOEM will assess appropriate financial assurance obligations for the new lease or grant per §§ 585.516 and 585.517 or §§ 585.520 and 585.521.

(f) Any consolidated leases and grants that have been absorbed into the new

lease or grant in their entirety will be considered terminated at the time of consolidation approval.

**§ 585.414 [Reserved]**

**Lease or Grant Suspension**

**§ 585.415 What is a lease or grant suspension?**

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

(1) As approved by BOEM at your request, as provided in § 585.416; or

(2) As ordered by BOEM, as provided in § 585.417 or by BSEE as provided in 30 CFR 285.417.

(b) A lease or grant suspension extends the expiration date for the relevant period 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 under the terms of the lease or grant suspension.

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

(a) You must submit a written request to BOEM that includes the following information no later than 90 calendar days before the expiration of your appropriate lease or grant period:

(1) The reasons you are requesting suspension of your lease or grant, including an explanation why the suspension is necessary.

(2) The length of additional time requested.

(3) An explanation why it is in the public interest to approve the suspension.

(4) Any other information BOEM may require.

(b) If you are unable to timely submit a COP or GAP, as required, you may request a suspension to extend the preliminary period of your lease or grant. Your request must include a revised schedule for submission of your COP or GAP, as appropriate.

**§ 585.417 When may BOEM order a suspension?**

BOEM may order a suspension under the following circumstances:

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

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

**§ 585.418 How will BOEM issue a suspension?**

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

(b) BOEM 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. BOEM may authorize certain activities during the period of the suspension, as set forth in the suspension order.

#### **§ 585.419 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.

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

(a) While BOEM evaluates your request for a suspension under § 585.416, 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 BOEM to complete its evaluation of your request, but you will not be required to make payments during the time of the extension.

(b) If BOEM approves your request for a suspension under § 585.416, or orders a suspension under § 585.417, BOEM may waive or defer your payment obligations during the suspension. BOEM's decision to waive or defer payments will depend on the reasons for the suspension, including your responsibility for the circumstances necessitating a suspension.

#### **§ 585.421 How long will a lease or grant suspension be in effect?**

A lease or grant suspension will be in effect for the period specified by BOEM.

(a) BOEM will not approve a lease or grant suspension request pursuant to § 585.416 for a period longer than 2 years.

(b) If BOEM determines that the circumstances giving rise to a suspension ordered under § 585.417 cannot be resolved within 5 years, the Secretary may initiate cancellation of the lease or grant.

#### **Lease or Grant Cancellation**

#### **§ 585.422 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 this part; 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 BOEM specifies) after you receive notice from BOEM. 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 § 585.635, or other approved activities under your GAP, as provided in § 585.656;

(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.

#### **§§ 585.423–585.424 [Reserved]**

#### **Lease or Grant Renewal**

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

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

#### **§ 585.426 When must I submit my request for renewal?**

(a) You must request a renewal from BOEM:

(1) No later than 180 days before the termination date of your limited lease or grant.

(2) No later than two years before the termination date of the operations period of your commercial lease.

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

#### **§ 585.427 How long is a renewal?**

BOEM will set the length of the renewal at the time of renewal on a case-by-case basis.

(a) For commercial leases, the length of the renewal will not exceed the original operations period unless a longer time is negotiated by the parties.

(b) For limited leases, the length of the renewal will not exceed the original operations period.

(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.

#### **§ 585.428 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 BOEM.

(b) You may request a suspension of your lease or grant, as provided in § 585.416, while we consider your request.

(c) For the period BOEM 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.

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

BOEM 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.

(g) Other relevant factors, as appropriate.

#### **§ 585.430–585.431 [Reserved]**

#### **Lease or Grant Termination**

##### **§ 585.432 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 period of your lease or grant, unless the relevant period is extended under § 585.235(b) or § 585.236(b), a request for renewal of your lease or grant is pending a decision by BOEM, or your lease or grant is suspended or renewed as provided in this subpart, in which case it terminates on the date set forth in the notice of suspension or renewal;

(b) A cancellation, as set forth in § 585.422; or

(c) Relinquishment, as set forth in § 585.435.

##### **§ 585.433 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 your BOEM-issued lease for hydrokinetic facilities or an application approved by BSEE under 30 CFR part 285, subpart I.

(c) If you fail to comply with your BOEM-issued lease for hydrokinetic facilities or decommissioning application:

(1) BOEM 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.

##### **§ 585.434 When may BOEM authorize facilities to remain in place following termination of a lease or grant?**

(a) In your decommissioning application that you submit to BSEE in accordance with 30 CFR 285.905 and 285.906, you may request that certain facilities authorized in your lease or grant remain in place for activities authorized in this part, elsewhere in this

subchapter, or by other applicable Federal laws.

(b) BOEM 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 BOEM 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 BOEM 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 toppled in place. BOEM will evaluate all such requests.

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

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

(a) You may surrender a lease or grant, or a designated subdivision thereof, by filing with BOEM a properly completed official relinquishment form available on the BOEM website. A relinquishment takes effect on the date BOEM receives your completed form, subject to the continued obligation of the lessee or grant holder and the surety to:

(1) Make all payments due on the lease or grant, including any accrued rent and deferred bonuses;

(2) Decommission all facilities on the relinquished lease or grant (or portion thereof) to BSEE's satisfaction; and

(3) Perform any other outstanding obligations under the lease or grant.

(b) After you submit a completed relinquishment form for a lease or grant, ONRR will bill you for any outstanding payments that have accrued from obligations arising under the relinquished lease or grant.

##### **§ 585.436 Can BOEM require lease or grant contraction?**

At an interval no more frequent than every 5 years, BOEM 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. BOEM will notify you of our proposal to contract the lease or grant area.

(a) BOEM 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 this part.

(b) Prior to taking action to contract the lease or grant area, BOEM will issue a decision addressing your contentions that the area is needed.

(c) You may appeal this decision under § 585.118.

#### **§ 585.437 [Reserved]**

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

(a) If a lease or grant (or portion thereof) is relinquished, contracted, or cancelled under § 585.435, § 585.436, or § 585.422, respectively, BOEM may restart the competitive leasing process at any point set forth in § 585.210 that it deems reasonable and appropriate (e.g., Call, area identification, PSN, or FSN), subject to all necessary environmental analyses and consultations.

(b) If a competitively issued lease or grant (or portion thereof) is relinquished or cancelled under § 585.435 or § 585.422, respectively, within six months of the auction, BOEM may reoffer the lease or grant (or portion thereof) to the next highest bidder from that auction, if one can be identified. If BOEM decides to reoffer to the next highest bidder, the price will be the next best bid, or a prorated amount based on the size of the relinquished share, as long as the next best bid reflects a fair return to the government.

#### **§ 585.439–585.499 [Reserved]**

■ 50. Revise subpart F to read as follows:

#### **Subpart F—Payments and Financial Assurance Requirements**

Sec.

#### **Payments**

585.500 How do I make payments under this part?

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

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

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

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

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

- 585.506 What operating fees must I pay on a commercial lease?  
 585.507 What rent payments must I pay on a project easement?  
 585.508 What rent payments must I pay on ROW grants or RUE grants associated with renewable energy projects?  
 585.509 Who is responsible for submitting lease or grant payments to ONRR?  
 585.510 May BOEM defer, reduce, or waive my lease or grant payments?  
 585.511–585.515 [Reserved]

#### **Financial Assurance Requirements for Commercial Leases**

- 585.516 What are the financial assurance requirements for each stage of my commercial lease?  
 585.517 How will BOEM determine the supplemental financial assurance associated with commercial leases?  
 585.518–585.519 [Reserved]

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

- 585.520 What financial assurance must I provide when I obtain my limited lease, ROW grant, or RUE grant?  
 585.521 Do my financial assurance requirements change as activities progress on my limited lease or grant?  
 585.522–585.524 [Reserved]

#### **Requirements for Financial Assurance Instruments**

- 585.525 What general requirements must a financial assurance instrument meet?

- 585.526 What instruments other than a surety bond may I use to meet the financial assurance requirement?  
 585.527 May I demonstrate financial strength and reliability to meet the financial assurance requirement for lease or grant activities?  
 585.528 May I use a third-party guaranty to meet the financial assurance requirement for lease or grant activities?  
 585.529 Can I use a lease- or grant-specific decommissioning account to meet the financial assurance requirements related to decommissioning?

#### **Changes in Financial Assurance**

- 585.530 What must I do if my financial assurance lapses?  
 585.531 What happens if the value of my financial assurance is reduced?  
 585.532 What happens if my surety wants to terminate the period of liability of my financial assurance?  
 585.533 How does my surety obtain cancellation of my financial assurance?  
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#### **Subpart F—Payments and Financial Assurance Requirements**

##### **Payments**

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

(a) For acquisition fees or the initial 12 months' rent paid for the preliminary period of your lease, you must make your electronic payments through the Fees for Services page on the BOEM website at <https://www.boem.gov>, and you must include one copy of the Pay.gov confirmation receipt page with your unsolicited request.

(b) For all other required rent payments and for operating fee payments, you must make your payments as required in 30 CFR 1218.51.

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

	Payment	Amount	Due date	Payment mechanism	Section reference
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##### **Initial payments for leases**

(1) If your lease is issued competitively.	Bid Deposit .....	As set in Final Sale Notice/depends on bid.	With bid .....	Pay.gov .....	§ 585.501.
(2) If your lease is issued non-competitively.	Acquisition Fee .....	\$0.25 per acre, unless otherwise set by the Director.	Within 10 business days of receiving the unsigned lease.	30 CFR 1218.51.	§ 585.225.
(3) All leases .....	Initial Rent .....	\$3 per acre per year .....	With application .....	Pay.gov .....	§ 585.502.
			Within 45 calendar days after receiving your copy of the executed lease from BOEM.	Pay.gov .....	§ 585.503.

##### **Subsequent payments for leases and project easements**

(4) All leases .....	Subsequent Rent, unless otherwise provided in the terms of the lease.	\$3 per acre per year .....	Annually .....	30 CFR 1218.51.	§§ 585.503 and 585.504.
(5) If you have a project easement.	Rent, unless otherwise provided in the terms of the grant.	Greater of \$5 per acre per year or \$450 per year.	Upon COP or GAP approval, then annually.	30 CFR 1218.51.	§ 585.507.
(6) If your commercial lease is producing.	Operating Fee .....	Determined by the formula in § 585.506.	Annually .....	30 CFR 1218.51.	§ 585.506.

##### **Payments for ROW grants and RUE grants<sup>1</sup>**

(7) All ROW grants and RUE grants.	Initial Rent .....	Greater of \$5 per acre per year or \$450 per year, unless otherwise established in the grant.	Grant execution .....	Pay.gov .....	§ 585.508.
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	Payment	Amount	Due date	Payment mechanism	Section reference
	Subsequent Rent .....	.....	Annually or in 5-year batches.	30 CFR 1218.51.	

<sup>1</sup> There is no acquisition fee for ROW grants or RUE grants.

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

(a) For a competitively issued lease or grant, BOEM may require a bid deposit before the auction as established in the FSN.

(b) The provisional winner of a lease must pay the balance of its accepted bid in accordance with § 585.225.

**§ 585.502 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 § 585.500.

(b) If BOEM 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 C 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.

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

(a) The rent for a commercial lease is \$3 per acre per year, unless otherwise established in the FSN or lease.

(1) You must pay ONRR the first 12 months' rent no later than 45 calendar days after you receive your copy of the

executed lease from BOEM under § 585.500(c)(3).

(2) You must pay ONRR as provided in 30 CFR 1218.51 the rent due at the beginning of each subsequent 1-year period for the entire lease area until the facility begins commercial operations as specified in § 585.506 or as otherwise specified in the FSN or lease:

(i) For leases issued competitively, BOEM will specify in the FSN and lease any adjustment to the rent that will take effect during commercial operations but before the operations period.

(ii) For leases issued noncompetitively, BOEM will specify in the lease any adjustment to the rent that will take effect during commercial operations but before the operations period.

(3) You must pay ONRR as provided in 30 CFR 1218.51 the rent due for a project easement in addition to the lease rent as provided in § 585.507. You must commence rent payments for your project easement upon BOEM's approval of your COP or GAP.

(b) After your lease begins commercial operations, you must pay the operating fees in the amount specified in § 585.506. Regardless of whether the lease is awarded competitively or noncompetitively, BOEM will specify in the lease when operating fees commence.

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

If you develop your commercial lease in phases as approved by BOEM in your COP under § 585.238, you must pay ONRR as provided in 30 CFR 1218.51:

(a) Rent on the portion of the lease that has not commenced commercial operations.

(b) Operating fees on the portion of the lease that has commenced commercial operations, in the amount specified in § 585.506 and as described in § 585.503(b).

(c) Rent for a project easement in addition to lease rent, as provided in § 585.507. You must commence rent payments for your project easement upon our approval of your COP.

**§ 585.505 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/or your lease instrument.

(b) You must pay ONRR the initial 12 months' rent 45 days after you receive the lease copies from BOEM in accordance with the requirements provided in § 585.500(c)(3).

(c) You must pay ONRR as provided in 30 CFR 1218.51 the rent due at the beginning of each subsequent 1-year period on the entire lease area for the duration of your operations period.

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

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

Once you commence commercial operations, you must pay ONRR as provided in 30 CFR 1218.51 operating fees on your commercial lease as described in § 585.503.

(a) BOEM will determine the annual operating fee for activities relating to the generation of electricity on your lease based on the 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:

**EQUATION 1 TO PARAGRAPH (b)**

F (annual operating fee)	=	M (nameplate capacity)	*	H (hours per year)	*	c (capacity factor)	*	P (power price)	*	r (operating fee rate)
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(c) BOEM 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 BOEM specifies otherwise, the operating fee rate “*r*” is 0.02 for each year the operating fee applies when you begin commercial operations. 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 § 585.510.

(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. BOEM:

(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 Department of Energy (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) BOEM 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 the operations period on a lease, BOEM 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, BOEM 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 BOEM adjusts the capacity factor.

(iii) The process by which BOEM 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 § 585.510.

(4) For the nameplate capacity “*M*,” BOEM 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 ONRR in accordance with the provisions under 30 CFR 1218.51.

(e) BOEM 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.

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

(a) You must pay rent to ONRR as provided in 30 CFR 1218.51 for your project easement in the amount of \$5 per acre, subject to a minimum of \$450 per year, unless specified otherwise in the lease.

(1) The size of the project easement will be determined according to § 85.628(g)(1).

(2) The size of a project easement area for an accessory platform is limited to the areal 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 as provided in § 585.500;

(2) You must submit all subsequent rent payments in accordance with the regulations at 30 CFR 1218.51; and

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

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

(a) For each ROW grant BOEM approves under subpart D of this part, you must pay annual rent of \$5 per acre to ONRR as provided in 30 CFR 1218.51 and as determined by § 585.301(a), but in no case less than \$450, for use of the grant, unless specified otherwise in the grant.

(b) For each RUE grant BOEM approves under subpart D of this part, you must pay rent to ONRR as provided in 30 CFR 1218.51 in the amount 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 § 585.500, and all subsequent rent payments to ONRR in accordance with the regulations at 30 CFR 1218.51.

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

(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 30 CFR 1218.52.

(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.

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

(a) The BOEM Director may defer, reduce, or waive the rent or operating fee or components of the operating fee, such as the fee rate or capacity factor, when the Director determines that continued activities would be uneconomic without the requested deferral, reduction, or waiver, or that it is necessary to encourage continued or additional activities.

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

(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 deferral, reduction, or waiver; or

(ii) A deferral, 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 period will be subject to a full waiver of the operating fee.

**§§ 585.511–585.515 [Reserved]****Financial Assurance Requirements for Commercial Leases****§ 585.516 What are the financial assurance requirements for each stage of my commercial lease?**

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

Before BOEM will . . .	You must provide . . .
(1) Execute a commercial lease or approve an assignment of an existing commercial lease..	A bond or other authorized financial assurance in the amount of 12 months' rent.
(2) Allow you to install facilities approved in your SAP.	A supplemental bond or other authorized financial assurance in an amount determined by BOEM based on the anticipated decommissioning costs of the proposed facilities.
(3) Allow you to install facilities approved in your COP.	A supplemental bond or other authorized financial assurance in an amount determined by BOEM based on anticipated decommissioning costs of the proposed facilities. If you propose to incrementally fund your financial assurance instrument, BOEM must approve the schedule for providing the appropriate financial assurance.

(b) Each bond or other authorized financial assurance must guarantee compliance with this part, the applicable plan approvals, and the terms and conditions of the lease.

(c) For hydrokinetic commercial leases, supplemental financial assurance may be required in an amount determined by BOEM prior to installation of facilities pursuant to a FERC license.

**§ 585.517 How will BOEM determine the supplemental financial assurance associated with commercial leases?**

(a) BOEM determines the amount of your supplemental financial assurance based on the estimated costs to meet all accrued lease obligations, including:

(1) The projected amount of annual rent and other payments due to the United States over the next 12 months, to the extent that amount is not covered in the initial financial assurance provided in § 585.516(a)(1);

(2) Any past due rent and other payments;

(3) Other monetary obligations; and

(4) The estimated cost of facility decommissioning, as required by 30 CFR part 285, subpart I.

(b) If your cumulative potential obligations and liabilities increase or decrease, we may adjust the amount of the supplemental financial assurance.

(1) If we propose adjusting your financial assurance amount, we will notify you of the proposed adjustment and give you an opportunity to comment; and

(2) We may approve a reduced financial assurance amount if you request it and if the reduced amount that you request is sufficient to cover your obligations and liabilities calculated under paragraph (a) of this section.

**§§ 585.518–585.519 [Reserved]****Financial Assurance for Limited Leases, ROW Grants, and RUE Grants****§ 585.520 What financial assurance must I provide when I obtain my limited lease, ROW grant, or RUE grant?**

Before BOEM will execute your limited lease, ROW grant, or RUE grant, or approve an assignment of an interest therein, you or a proposed assignee must guarantee compliance with all terms and conditions of the lease or grant by providing a bond or other authorized financial assurance in the amount of 12 months' rent.

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

(a) BOEM may require you to increase or allow you to decrease the amount of your financial assurance as activities progress on your limited lease or grant based on the estimated costs to meet all accrued lease or grant obligations.

(b) The total amount of the financial assurance must be no less than the amount required to meet your limited lease and grant obligations, including:

(1) The projected amount of rent and other payments due to the United States over the next 12 months;

(2) Any past due rent and other payments;

(3) Other monetary obligations; and

(4) The estimated cost of facility decommissioning as required by 30 CFR part 285, subpart I.

(c) If BOEM proposes adjusting the amount of your financial assurance to ensure your limited lease and grant obligations are met, BOEM will notify you of the proposed adjustment and will provide you an opportunity to object.

(d) You may submit a written request to BOEM to reduce the amount of your

financial assurance if your proposed amount is not less than the sum of your obligations listed in paragraph (b) of this section. BOEM may approve your request in its discretion.

(e) You may satisfy the requirement for increased financial assurance on your limited lease or grant by increasing the amount of your existing bond or by providing a supplemental bond or other financial assurance.

(1) The supplemental bond or other financial assurance must meet the requirements specified in §§ 585.525 through 585.529.

(2) If you propose to incrementally fund your financial assurance, BOEM must approve the schedule for providing the appropriate financial assurance.

**§§ 585.522–585.524 [Reserved]****Requirements for Financial Assurance Instruments****§ 585.525 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 BOEM 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 BOEM. 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 BOEM-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 website at <https://www.fiscal.treasury.gov/surety-bonds/circular-570.html>.

(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 BOEM 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.

**§ 585.526 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 BOEM determines that such security protects BOEM to the same extent as the surety bond. BOEM will consider pledges of the following:

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

(2) A pledge of cash, in an amount equal to the required dollar amount of the financial assurance, to be deposited and maintained in a Federal depository account of the U.S. Treasury;

(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 BOEM;

(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 BOEM;

(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;

(7) Letters of credit, subject to the following conditions:

(i) The letter of credit provider must have an issuer credit rating from a Nationally Recognized Statistical Rating Organization (NRSRO) greater than or equal to investment grade from either Standard & Poor's Ratings Service or Moody's Investor Service, or a proxy credit rating determined by BOEM based on audited financial information (including an income statement, balance sheet, statement of cash flows, and the auditor's certificate) greater than or equal to investment grade from either Standard & Poor's Ratings Service or Moody's Investor Service;

(ii) The letter of credit must grant BOEM full authority to demand immediate payment in case of default in the performance of the terms and conditions of a lease or regulatory obligations;

(iii) The letter of credit must be irrevocable during its term and will be subject to collection by BOEM if not replaced by another letter of credit or other form of financial assurance at least 30 calendar days before its expiration date;

(iv) The expiration date of the letter of credit must not be less than 90 days following the date it becomes effective;

(v) The letter of credit must contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice of cancellation to BOEM at least 90 calendar days before the expiration date; and

(vi) The letter of credit must contain a venue provision, which requires any disputes to be adjudicated in a U.S. Federal court that is mutually agreed upon by BOEM and the issuers of the letter of credit;

(8) Another form of security approved by BOEM in its discretion; or

(9) A combination of security instruments described in paragraphs (a)(1) through (8) of this section.

(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 31 CFR part 203, Collateral Margins Table (which can be found at <https://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 paragraph (a)(4) or (5) of this section, you must provide BOEM 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.

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

BOEM may allow you to use your financial strength and reliability to meet financial assurance requirements if:

(a) You have an investment grade issuer credit rating. If any Securities and Exchange Commission (SEC)-recognized NRSRO provides a credit rating that differs from any other SEC-recognized NRSRO credit rating, BOEM will apply the highest rating for the purposes of determining your financial assurance requirements.

(b) You have a proxy credit rating determined by BOEM, which must be based on audited financial information for the most recent fiscal year (which must include an income statement, balance sheet, statement of cash flows, and the auditor's certificate).

(1) The audited financial information for your most recent fiscal year must cover a continuous twelve-month period within the twenty-four-month period prior to the lessee's receipt of the determination that you must provide supplemental financial assurance.

(2) In determining your proxy credit rating, BOEM may include the value of the offshore decommissioning liabilities

associated with any lease(s) or grants in which you have an ownership interest. Upon BOEM's request, you must provide the information that BOEM determines is necessary to properly evaluate your offshore decommissioning liabilities, including joint ownership interests and liabilities associated with your OCS leases and grants.

(c) Your co-lessee or co-grant-holder has an issuer credit rating or a proxy credit rating that meets the criteria set forth in paragraph (a) of this section; however, BOEM may require you to provide financial assurance for decommissioning obligations for which such co-lessee or co-grant-holder is not liable.

(d) You have a contract with a counterparty that projects net income will exceed three times the estimated decommissioning expenses associated with the facilities that will generate that income.

(e) If we approve your request to use your financial strength and reliability to meet your financial assurance requirements, you must submit annual updates.

(f) If the annual updates do not continue to demonstrate financial strength and reliability or BOEM has reason to believe that you are unable to meet the requirements of this section, after notice and opportunity for a hearing, BOEM 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.

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

(a) You may use a third-party guaranty to secure all or part of the obligations for which financial assurance was demanded by BOEM if the guarantor:

(1) Meets the credit rating or proxy credit rating criterion set forth in § 585.527(a); and

(2) Submits an agreement containing each of the provisions in paragraph (d) of this section.

(b) A third-party guarantor may limit its cumulative obligations to a fixed dollar amount as agreed to by BOEM at the time the third-party guaranty is provided.

(c) If, during the life of your third-party guaranty, your guarantor no longer meets the criterion referred to in paragraph (a)(1) of this section, you must:

(1) Notify BOEM within 72 hours of so learning; and  
(2) Submit a surety bond or other financial assurance covering the obligations previously secured by the third-party guaranty.

(d) 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 the guarantor must meet the legal and financial qualifications set forth in §§ 585.107 and 585.108.

(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 BOEM 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 BOEM to complete corrective action.

(4) The guaranty agreement must contain a confession of judgment, providing that, if BOEM determines that you or your operator is in default, the guarantor must not challenge the determination and must remedy the default.

(5) If your guarantor wants to terminate the period of liability, your guarantor must notify you and BOEM at least 90 days before the proposed termination date, obtain BOEM's 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.

(6) Each guaranty submitted pursuant to this section is deemed to contain all the terms described in paragraphs (d)(1) through (5) of this section, even if they are not actually in the agreement.

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

#### **§ 585.529 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, BOEM 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 BOEM and pledged to meet your lease or grant decommissioning and site clearance obligations;

(2) You must fund the account in the amount determined by and according to the payment schedule approved by BOEM. BOEM will estimate the cost of decommissioning, including site clearance; and

(3) Subject to BOEM's approval, a decommissioning account may be funded in whole or in part during the operations period of a lease or grant.

(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 BOEM 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 <https://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**

##### **§ 585.530 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 BOEM within 3 business days about the financial assurance lapse; and

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

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

##### **§ 585.531 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 BOEM.

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

(a) Terminating the period of liability of your financial assurance ends the period during which surety liability continues to accrue. The surety continues to be responsible for obligations and liabilities that accrued during the period of liability and before the date on which BOEM 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 BOEM its request to terminate the period of

liability under its financial assurance and notify you of that request no less than 90 days before the proposed termination date. If you intend to continue activities on your lease or grant, you must provide replacement financial assurance of equivalent or greater value. BOEM will terminate that period of liability within 90 days after BOEM receives the request.

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

BOEM will allow a surety to cancel financial assurance and will relieve the surety from liability for accrued obligations on the earliest to occur of the following:

(a) BOEM determines that there are no outstanding obligations covered by the financial assurance;

(b) The following occurs:

(1) BOEM accepts replacement financial assurance in an amount equal to or greater than the financial assurance

to be cancelled to cover the period of liability prior to termination; or

(2) The surety issuing the new financial assurance has expressly agreed to assume all outstanding liabilities under the original financial assurance that accrued during the period of liability that was terminated; and

(c) Seven years have elapsed since the termination of the period of liability if the new surety did not assume the accrued obligations for the terminated period of liability, unless there are any appeals or judicial litigation related to your liabilities covered by the financial assurance.

**§ 585.534 When may BOEM cancel my financial assurance?**

(a) When your lease or grant ends, your sureties remain responsible, and BOEM will cancel your financial assurance as shown in the following table:

Financial assurance	Your financial assurance will not be cancelled until . . .
(1) Financial assurance for commercial leases submitted under § 585.516(a)(1) and for grants or limited leases submitted under §§ 585.520 and 585.521.	Seven years after all operations and activities under the lease or grant cease, including decommissioning and site clearance, or a longer period as necessary to complete any appeals or judicial litigation related to your financial assurance obligation. BOEM may reduce or cancel your financial assurance or return some or all of your security if BOEM determines that the full amount is no longer needed.
(2) Supplemental financial assurance for commercial leases submitted under § 585.516 and for grants or limited leases submitted under §§ 585.520 and 585.521.	(i) The lease or grant expires or is terminated and BOEM determines you have met your secured obligations, unless BOEM: (A) Determines that the future potential liability resulting from any undetected problem is greater than the amount of your lease-specific financial assurance; and (B) Notifies the provider of the supplemental financial assurance that BOEM will wait 7 years before cancelling all or a part of the supplemental financial assurance (or longer period as necessary to complete any appeals or judicial litigation related to your secured obligations); or (ii) At any time when: (A) BOEM determines, in its discretion, that you no longer need to provide the supplemental financial assurance; (B) The operations for which the supplemental financial assurance was provided were cancelled before accrual of any decommissioning obligation; or (C) Cancellation of the supplemental financial assurance is appropriate because, under the regulations in this part, BOEM determines such financial assurance never should have been required.

(b) BOEM may require reinstatement of your financial assurance as if no cancellation had occurred if:

(1) A person makes a payment under the lease or grant, and the payment is rescinded or must be repaid by the recipient because the person making the payment is insolvent, bankrupt, subject to reorganization, or placed in receivership; or

(2) The responsible party represents to BOEM that it has discharged its obligations under the lease or grant, and the representation was materially false when the financial assurance was cancelled.

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

(a) BOEM may call for forfeiture of all or part of your financial assurance if:

(1) After notice and demand for performance by BOEM, 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 financial assurance.

(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.

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

(a) BOEM 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 BOEM 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.

#### **§ 585.537 How will BOEM proceed once my bond or other security is forfeited?**

(a) If BOEM 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, BOEM 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.

#### **§§ 585.538–585.539 [Reserved]**

#### **Revenue Sharing With States**

#### **§ 585.540 How will BOEM equitably distribute revenues to States?**

(a) BOEM 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 § 585.541 and an eligible State is determined in § 585.542, where a qualified project and qualified project area are determined in 585.541 and an eligible State is defined in § 585.113. 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 and are 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, BOEM 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 § 585.435 or § 585.436, BOEM will re-evaluate the project area to determine whether the

geographic center has changed. If it has, BOEM 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, BOEM 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  $i = 1, 2, \dots, n$ th 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 following formula:

$$\text{Formula 1 to paragraph (c)} \\ F_i = \frac{1}{S_i} \div \left( \sum_{i=1}^n \frac{1}{S_i} \right)$$

#### **§ 585.541 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 miles seaward of State submerged lands. A qualified project is subject to revenue sharing with those States that are eligible for revenue sharing under § 585.542. The entire area within a lease or grant for the qualified project, excluding project easements, is considered the qualified project area.

#### **§ 585.542 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 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.

#### **§ 585.543 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. BOEM will round dollar shares to the nearest whole dollar. The proportional share due each State would be calculated as follows:

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

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

(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:

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

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

#### **§§ 585.544–585.599 [Reserved]**

- 51. Revise subpart G to read as follows:

#### **Subpart G—Plans and Information Requirements**

##### **Sec.**

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

585.601 When must I submit my plans to BOEM?

585.602–585.604 [Reserved]

#### **Site Assessment Plan and Information Requirements for Commercial Leases**

585.605 What is a Site Assessment Plan (SAP)?

585.606 What must I demonstrate in my SAP?

585.607 How do I submit my SAP?

585.608–585.609 [Reserved]

#### **Contents of the Site Assessment Plan**

585.610 What must I include in my SAP?

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

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

585.613 How will BOEM process my SAP?

#### **Activities Under an Approved SAP**

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

585.615 What other reports or notices must I submit to BOEM under my approved SAP?

585.616 [Reserved]

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

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

585.619 [Reserved]

#### **Construction and Operations Plan for Commercial Leases**

585.620 What is a Construction and Operations Plan (COP)?

585.621 What must I demonstrate in my COP?  
 585.622 How do I submit my COP?  
 585.623–585.625 [Reserved]

#### **Contents of the Construction and Operations Plan**

585.626 What must I include in my COP?  
 585.627 What information and certifications must I submit with my COP to assist BOEM in complying with NEPA and other applicable laws?  
 585.628 How will BOEM process my COP?  
 585.629–585.630 [Reserved]

#### **Activities Under an Approved COP**

585.631 When must I initiate activities under an approved COP?  
 585.632 What documents must I submit before I may construct and install facilities under my approved COP?  
 585.633 [Reserved]  
 585.634 What activities require a revision to my COP, and when will BOEM approve the revision?  
 585.635 What must I do if I cease activities approved in my COP before the end of my commercial lease?  
 585.636–585.639 [Reserved]

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

585.640 What is a General Activities Plan (GAP)?  
 585.641 What must I demonstrate in my GAP?

585.642 How do I submit my GAP?  
 585.643–585.644 [Reserved]

#### **Contents of the General Activities Plan**

585.645 What must I include in my GAP?  
 585.646 What information and certifications must I submit with my GAP to assist BOEM in complying with NEPA and other applicable laws?  
 585.647 How will my GAP be processed for Federal consistency under the Coastal Zone Management Act?  
 585.648 How will BOEM process my GAP?  
 585.649 [Reserved]

#### **Activities Under an Approved GAP**

585.650 When may I begin conducting activities under my GAP?  
 585.651 When may I construct complex or significant OCS facilities on my limited lease or any facilities on my project easement proposed under my GAP?  
 585.652 How long do I have to conduct activities under an approved GAP?  
 585.653 What other reports or notices must I submit to BOEM under my approved GAP?  
 585.654 [Reserved]  
 585.655 What activities require a revision to my GAP, and when will BOEM approve the revision?  
 585.656 What must I do if I cease activities approved in my GAP before the end of my term?  
 585.657 What must I do upon completion of approved activities under my GAP?

#### **Cable and Pipeline Deviations**

585.658 Can my cable or pipeline construction deviate from my approved COP or GAP?  
 585.659–585.699 [Reserved]

#### **Environmental Protection Requirements Under Approved Plans**

585.700 What requirements must I include in my SAP, COP, or GAP regarding air quality?  
 585.701 How must I conduct my approved activities to protect marine mammals, threatened and endangered species, and designated critical habitat?  
 585.702 What must I do if I discover a potential archaeological resource while conducting my approved activities?  
 585.703 How must I conduct my approved activities to protect essential fish habitats identified and described under the Magnuson-Stevens Fishery Conservation and Management Act?

#### **Subpart G—Plans and Information Requirements**

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

(a) You must submit a SAP, COP, or GAP and receive BOEM approval before you conduct activities on your lease or grant as set forth in the following table:

Before you:

- (1) Conduct site assessment activities on your commercial lease, such as meteorological towers or other facilities that are installed on the seabed using a fixed-bottom foundation requiring professional engineering design and assessment of sediment, meteorological, and oceanographic conditions as part of the design.
- (2) Conduct any activities pertaining to construction of facilities for commercial operations on your commercial lease.
- (3) Conduct any activities on your limited lease or grant in any OCS area .....

You must submit and obtain approval for your:
SAP under §§ 585.605 through 585.613.
COP under §§ 585.620 through 585.628.
GAP under §§ 585.640 through 585.648.

(b) BOEM may waive certain types of information or analyses that you otherwise must provide in your proposed plan when you demonstrate that:

- (1) Sufficient applicable information or analysis is readily available to BOEM;
- (2) The coastal or marine resources that are the subject of the information requirement are not present or affected;
- (3) Other factors affect your ability to obtain or BOEM's need for the required information; or
- (4) Information is neither necessary nor required for a State to determine consistency with its coastal management program.

##### **§ 585.601 When must I submit my plans to BOEM?**

(a) You may submit your SAP anytime; however, your SAP must be submitted to and approved by BOEM

before you conduct activities requiring a SAP under § 585.600(a)(1).

(b) You must submit your COP by the end of the preliminary period of your commercial lease in accordance with § 585.235.

(1) Your COP must contain sufficient data and information for BOEM to complete its reviews and NEPA analysis.

(2) BOEM may need to conduct additional reviews of your COP, including environmental analysis under NEPA, if significant new information becomes available from your site assessment and characterization activities or if you substantially revise your COP. As a result of the additional reviews, BOEM may require that you revise your COP.

(c) You must submit your GAP by the end of the preliminary period for your limited lease in accordance with

§ 585.236, or the preliminary period for your grant in accordance with § 585.303.

##### **§§ 585.602–585.604 [Reserved]**

#### **Site Assessment Plan and Information Requirements for Commercial Leases**

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

(a) A SAP describes the site assessment activities meeting the criteria in § 585.600(a)(1) that you plan to perform on your commercial lease.

(b) You must receive BOEM approval of your SAP, as provided in § 585.613, before you can begin any proposed site assessment activities requiring such approval.

(c) If BOEM determines that your proposed site assessment facility or combination of facilities is complex or significant under § 585.613(a)(1), you must comply with the requirements in 30 CFR part 285, subpart G, regarding

facility design and construction and submit your SMS as required by 30 CFR 285.810.

#### **§ 585.606 What must I demonstrate in my SAP?**

Your SAP must demonstrate that you have planned and are prepared to conduct the proposed site assessment activities in a manner that:

- (a) Conforms to your responsibilities listed in § 585.105(a);
- (b) Conforms to all applicable laws, regulations, and provisions of your commercial lease;
- (c) Is safe;

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

(e) Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(f) Uses best available and safest technology;

(g) Uses best management practices; and

(h) Uses properly trained personnel.

#### **§ 585.607 How do I submit my SAP?**

You must submit your SAP to BOEM pursuant to § 585.111.

#### **§§ 585.608–585.609 [Reserved]**

#### **Contents of the Site Assessment Plan**

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

(a) Project information may be provided using a PDE. When you provide information using a PDE, BOEM reserves the right to determine what range of values for any given parameter is acceptable. Your SAP must include the following project-specific information, as applicable:

Project information:	Including:
(1) Contact information .....	The name, address, email address, and phone number of an authorized representative.
(2) The site assessment or technology testing concept ....	A discussion of the objectives; description of the proposed activities, including the technology you will use; and proposed schedule from start to completion.
(3) Designation of operator, if applicable .....	As provided in § 585.405.
(4) Commercial lease stipulations and compliance .....	A description of the measures you took, or will take, to satisfy the conditions of any lease stipulations related to your proposed activities.
(5) A location plat, or indicative layout .....	The range of surface locations and associated water depths for proposed structures, facilities, and appurtenances located both offshore and onshore, including all anchor and mooring data; and the location and associated water depths of all existing structures.
(6) General structural and project design, fabrication, and installation.	For facilities deemed complex or significant you must provide preliminary design information for each facility associated with your site assessment activity and subpart G of 30 CFR part 285 applies. For facilities not deemed complex or significant you must provide final design information.
(7) Deployment activities .....	A description of the safety, prevention, and environmental protection features or measures that you will use.
(8) Your proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.	A description of the measures you will use to avoid or minimize adverse effects and any potential incidental take, before you conduct activities on your lease, and how you will mitigate environmental impacts from your proposed activities, including a description of the measures you will use as required by §§ 585.700 through 585.703.
(9) Project verification strategy .....	An analysis supporting your recommendation as to whether your site assessment activities should be determined complex or significant. If your recommendation supports a complex or significant determination, describe your strategy for compliance with 30 CFR 285.705 through 285.714.
(10) References .....	A bibliographic list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans that you previously submitted or that are otherwise readily available to BOEM.
(11) Decommissioning and site clearance procedures ....	A discussion of general concepts and methodologies.
(12) Air quality information .....	Information as described in § 585.700.
(13) A listing of all Federal, State, and local authorizations or approvals required to conduct site assessment activities.	A statement indicating whether you have applied for or obtained such authorization or approval from the U.S. Coast Guard, U.S. Army Corps of Engineers, and any other applicable Federal, State, or local authorizers.
(14) A list of agencies and persons with whom you have communicated, or with whom you will communicate, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.
(15) Financial assurance information .....	Statements attesting that the activities and facilities proposed in your SAP are or will be covered by an appropriate bond or other approved financial assurance instrument as required in § 585.516 and §§ 585.525 through 585.529.
(16) Information you incorporate by reference .....	A list of the documents you have incorporated by reference and their public availability.
(17) Other information .....	Additional information as required by BOEM.

(b) You must include reports that document the results of surveys and

investigations that characterize and model the site of your proposed

assessment activities. Your reports must address the following topics:

Topic:	Purpose of report:	Including:
(1) Geological and geotechnical.	To define the baseline geological conditions of the seabed and provide sufficient data to develop a geologic model, assess geologic hazards, and determine the feasibility of the proposed site for your assessment facility.	(i) Desktop studies to collect available data from published sources and nearby sites. (ii) Geophysical surveys of the proposed area with sufficient areal coverage, depth penetration, and resolution to define the geological conditions of the seabed at the site that could impact, or be impacted by, your proposed site assessment activities. (iii) Geotechnical investigations of sufficient scope and detail to: ground truth the geophysical surveys; support development of a geological model; assess potential geological hazards that could impact the proposed site assessment activities; and provide geotechnical data for design of the site assessment facility, including type and approximate dimensions of the foundation. (iv) An overall site characterization report for your site assessment facility that integrates the findings of your studies, surveys, and investigations; describes the geological model; contains supporting data and findings; and states your recommendations.
(2) Biological .....	To determine the presence of biological features and marine resources.	A description of the results of surveys used to evaluate the spatial and temporal distribution and abundance of biological species in the site area, including migratory and non-migratory species of vertebrate animals such as fish, marine mammals, sea turtles, and coastal and marine birds; invertebrate animals; plants; algae; and other organisms; also including the presence of live bottoms, hard bottoms, topographic features, and other marine resources.
(3) Archaeological resources and other historic properties.	To provide BOEM with required information to conduct review of your SAP under NHPA.	Archeological resource and other historic property identification surveys with supporting data.
(4) Meteorological and oceanographic (metocean).	To provide an overall understanding of the meteorological and oceanographic conditions at the site of your proposed facility, and to identify conditions that may pose a significant risk to your facility.	Desktop studies to collect available data from hindcast or re-analysis models and field measurements in sufficient detail to support design of your facility and support the analysis of wake effects, sediment mobility and scour, and navigation risks.

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

(a) Your SAP must contain detailed information and analysis to assist BOEM

in complying with NEPA and other applicable laws.

(b) When proposing site assessment activities in an area where BOEM has no previous experience, your SAP must contain information about resources, conditions, and activities listed in the

following table that your proposed activities may significantly affect or that may have a significant effect on your proposed activities (including where the potential significance of the effect is unknown) and must contain any other information required by law.

Type of information:	Including:
(1) Hazard information .....	Meteorology, oceanography, sediment transport, geology, and shallow geological or manmade hazards.
(2) Water quality .....	Turbidity and total suspended solids from construction; impact from vessel discharges.
(3) Biological resources .....	Characterization of the spatial and temporal distribution and abundance of biological species in the site area, such as benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, plankton, sea grasses, and other plant life.
(4) Threatened or endangered species .....	As needed for ESA consultation.
(5) Sensitive biological resources or habitats .....	Essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, nearby marine protected areas, including State and Federal coastal and marine protected areas, as well as nearby national marine sanctuaries, and nearby marine national monuments, rookeries, hard bottom habitat, chemosynthetic communities, calving grounds, barrier islands, beaches, dunes, and wetlands.
(6) Archaeological resources use, other historic property use, Indigenous traditional cultural use, or use pertaining to treaty and reserved rights with Native Americans or other Indigenous peoples.	Required information to conduct review of the COP under the NHPA or other applicable laws or policies, including treaty and reserved rights with Native Americans or other Indigenous peoples.
(7) Social and economic conditions .....	Employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, coastal zone management programs, and a visual impact assessment.
(8) Coastal and marine uses .....	Military activities, vessel traffic, fisheries, and exploration and development of other natural resources. This includes a navigational safety risk assessment that provides a description of the predicted impacts of the project to navigation, and the measures you will use to avoid or minimize adverse impacts. This document must also be submitted to the U.S. Coast Guard to assist with its analysis if your proposal identifies potential impediments to safe navigation.

Type of information:	Including:
(9) Consistency Certification .....	If required by CZMA, under: (i) 15 CFR part 930, subpart D, if the SAP is submitted before lease issuance; (ii) 15 CFR part 930, subpart E, if the SAP is submitted after lease issuance.
(10) Other resources, conditions, and activities	As identified by BOEM.

(c) When proposing site assessment activities in an area BOEM previously considered, BOEM will review your SAP to determine if its impacts are consistent with those previously considered. If the anticipated effects of your proposed SAP activities are significantly different than those

previously anticipated, we may determine that additional NEPA and other relevant Federal reviews are required. In that case, BOEM will notify you of such determination, and you must submit information required in paragraph (b) of this section as appropriate.

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

Your SAP will be processed based on whether it is submitted before or after your lease is issued:

If your SAP is submitted:	Consistency review of your SAP will be handled as follows:
(a) Before lease issuance ....	You will furnish a copy of your SAP, consistency certification, and necessary data and information to conduct an adequate consistency review to the applicable State CZMA agency or agencies if required by 15 CFR part 930, subpart D, and submit a copy to BOEM in accordance with § 585.111.
(b) After lease issuance .....	You must submit a copy of your SAP, consistency certification, and necessary data and information pursuant to 15 CFR part 930, subpart E, to BOEM only if BOEM did not consider the proposed site assessment activities for your lease area under its previously submitted consistency determination under 15 CFR part 930, subpart C, and if required by 15 CFR part 930, subpart E. BOEM will forward to the applicable State CZMA agency or agencies one copy of your SAP, consistency certification, and necessary data and information required to conduct an adequate consistency review under 15 CFR part 930, subpart E, after BOEM has determined that all information requirements for the SAP are met.

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

(a) BOEM will review your submitted SAP, and additional information provided pursuant to § 585.611, 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; and

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

(b) BOEM will prepare a NEPA analysis, as appropriate.

(c) As appropriate, we will coordinate and consult with relevant Federal and State agencies, affected federally recognized Indian Tribes and executives of relevant local governments and will provide to other Federal, State, and local agencies and affected federally recognized 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, BOEM may disapprove your SAP.

(e) Upon completion of our technical and environmental reviews and other reviews required by Federal laws (e.g., CZMA), BOEM will approve,

disapprove, or approve with conditions 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 30 CFR 285.615(b); and

(2) If we disapprove your SAP, we will inform you of the reasons and allow you an opportunity to submit a revised plan addressing our concerns, and we may suspend your lease, as appropriate, to give you a reasonable amount of time to resubmit the SAP.

#### **Activities Under an Approved SAP**

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

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

(b) If you are installing a facility or a combination of facilities deemed by BOEM to be complex or significant, as provided in § 585.613(a)(1), you must comply with the requirements of 30 CFR part 285, subpart G, and also submit your Safety Management System description required by 30 CFR 285.810 before construction may begin.

#### **§ 585.615 What other reports or notices must I submit to BOEM under my approved SAP?**

You must prepare and submit to BOEM a report annually on November 1st of each year that summarizes your site assessment activities and the results

of those activities. BOEM 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 § 585.114.

#### **§ 585.616 [Reserved]**

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

(a) You must notify BOEM in writing before conducting site assessment activities not described in your approved SAP involving facilities that are installed on the seabed using a fixed-bottom foundation requiring professional engineering design and assessment of sediment, meteorological, and oceanographic conditions as part of the design. Your notice must describe in detail the type of activities you propose to conduct. We will determine whether the activities you propose require a revision to your SAP. We may request additional information from you, if necessary, to make this determination.

(b) If a revised SAP is required, BOEM will reassess, upon its receipt, whether the facility or combination of facilities described in it is complex or significant.

(1) If BOEM determines that the facilities described in your revised SAP are not complex or significant, you may conduct your approved activities under § 585.614(a).

(2) If BOEM determines that the facilities described in your revised SAP

are complex or significant, you must comply with § 585.614(b).

(c) BOEM will periodically review the activities conducted under an approved SAP. The frequency and extent of the review will be based on the significance of any changes in available information and on onshore or offshore conditions affecting or affected by the activities conducted under your SAP. If the review indicates that the SAP should be revised to meet the requirements of this part, BOEM will require you to submit the needed revisions.

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

(1) Activities on the OCS not described in your approved SAP that could have significant environmental impacts or that may affect threatened or endangered species, or that may affect designated critical habitat of such species, or that may result in incidental take of marine mammals;

(2) Modifications to the number, size, or type of facilities (including associated components) or equipment you will use outside of the PDE that was approved for your project;

(3) Changes in the geographical location or layout of your bottom disturbances, offshore facilities, or onshore support bases beyond the range of possible locations described in your approved SAP;

(4) Structural failure of any facility operated under your approved SAP; or

(5) Changes to any other activity specified by BOEM.

(e) We may begin the appropriate NEPA analysis and other relevant consultations when we determine that a proposed revision could:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional Federal authorizations; or

(3) Involve activities not previously identified and evaluated.

(f) When you propose a revision, we may approve the revision if we determine that the revision is:

(1) Designed not to cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; and

(2) Otherwise, consistent with the provisions of section 8(p) of the OCS Lands Act.

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

(a) If your COP or FERC license application describes the continued use of existing facilities approved in your SAP, you may keep such facilities in place on your lease during the time that BOEM reviews your COP or FERC reviews your license application.

(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, BOEM determines that such facilities may not remain in place, you must initiate the decommissioning process, as provided in 30 CFR part 285, subpart I.

(d) If FERC determines that such facilities may not remain in place, you must initiate the decommissioning process as provided in 30 CFR part 285, subpart I.

(e) You must decommission your site assessment facilities as set forth in 30 CFR part 285, subpart I, upon the termination of your lease. You must submit your decommissioning application as required in 30 CFR 285.905 and 285.906.

#### **§ 585.619 [Reserved]**

#### **Construction and Operations Plan for Commercial Leases**

#### **§ 585.620 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. BOEM 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 § 585.114.

(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 BOEM approval of your COP before you can begin any of the approved activities on your lease.

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

Your COP must demonstrate that you have planned and are prepared to conduct the proposed activities in a manner that:

(a) Conforms to your responsibilities listed in § 585.105(a);

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

(c) Is safe;

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

(e) Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(f) Uses best available and safest technology;

(g) Uses best management practices; and

(h) Uses properly trained personnel.

#### **§ 585.622 How do I submit my COP?**

(a) You must submit your COP to BOEM pursuant to § 585.111.

(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.

#### **§ 585.623–585.625 [Reserved]**

#### **Contents of the Construction and Operations Plan**

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

(a) Project information may be provided using a PDE. When you provide information using a PDE, BOEM reserves the right to determine what range of values for any given parameter is acceptable. Your COP must include the following project-specific information, as applicable:

Project information:	Including:
(1) Contact information .....	The name, address, email address, and phone number of an authorized representative.
(2) Designation of operator, if applicable .....	As provided in § 585.405.
(3) Commercial lease stipulations and compliance .....	A description of the measures you took, or will take, to satisfy the conditions of any lease stipulations related to your proposed activities.

Project information:	Including:
(4) A location plat, or indicative layout .....	The range of surface locations and associated water depths for proposed structures, facilities, and appurtenances located both offshore and onshore, including all anchor and mooring data, and the location and associated water depths of all existing structures.
(5) General structural and project design, fabrication, and installation.	Preliminary design information for each facility associated with your project including information needed to justify any request for an operations period exceeding the length provided in this part or the lease.
(6) Deployment activities .....	A description of safety, prevention, and environmental protection features or measures that you will use.
(7) A list of solid and liquid wastes generated .....	Disposal methods and locations.
(8) A listing of chemical products used (if stored volume exceeds Environmental Protection Agency (EPA) reportable quantities).	A list of chemical products used; the volume stored on location; their treatment, discharge, or disposal methods used; and the name and location of the onshore waste receiving, treatment, and/or disposal facility. A description of how these products would be brought onsite, the number of transfers that may take place, and the quantity that will be transferred each time.
(9) A description of any vessels, vehicles, and aircraft you will use to support your activities.	An estimate of the frequency and duration of vessel, vehicle, or aircraft traffic.
(10) A general description of the operating procedures and systems.	(i) Under normal conditions. (ii) In the case of accidents or emergencies, including those that are natural or man-made.
(11) Decommissioning and site clearance procedures .....	A discussion of general concepts and methodologies.
(12) A listing of all Federal, State, and local authorizations or approvals required to conduct the proposed activities, including commercial operations.	A statement indicating whether you have applied for or obtained such authorization or approval from the U.S. Coast Guard, U.S. Army Corps of Engineers, and any other applicable Federal, State, or local authorizers pertaining to energy gathering, transmission, or distribution (e.g., interconnection authorizations).
(13) Your proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.	A description of the measures you will use to avoid or minimize adverse effects and any potential incidental take before you conduct activities on your lease, and how you will mitigate environmental impacts from your proposed activities, including a description of the measures you will use as required by §§ 585.700 through 585.703.
(14) Information you incorporate by reference .....	A list of the documents you have incorporated by reference and their public availability.
(15) A list of agencies and persons with whom you have communicated, or with whom you will communicate, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.
(16) References .....	A bibliographic list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans you previously submitted or that are otherwise readily available to BOEM.
(17) Financial assurance .....	Statements attesting that the activities and facilities proposed in your COP are or will be covered by an appropriate bond or other approved financial assurance instrument as required in § 585.516 and §§ 585.525 through 585.529.
(18) Project verification strategy .....	You must describe your strategy for compliance with 30 CFR 285.705 through 285.714.
(19) Construction schedule .....	A reasonable schedule of construction activity showing significant milestones, including the commencement of commercial operations consistent with the requirements of 30 CFR part 285, subpart G.
(20) Air quality information .....	Information as described in § 585.700.
(21) Other information .....	Additional information as required by BOEM.

(b) You must include reports that document the results of surveys and investigations that characterize and model the site of your proposed project. Your reports must address the following topics:

Topic:	Purpose of report:	Including:
(1) Geological and geotechnical.	To define the baseline geological conditions of the seabed and provide sufficient data to develop a geologic model, assess geologic hazards, and determine the feasibility of the proposed site for your proposed facility.	(i) Desktop studies to collect available data from published sources and nearby sites. (ii) Geophysical surveys of the proposed area with sufficient areal coverage, depth penetration, and resolution to define the geological conditions of the site's seabed that could impact, or be impacted by, the proposed project. (iii) Geotechnical investigations of sufficient scope and detail to: ground truth the geophysical surveys; support development of a geological model; assess potential geological hazards that could impact the proposed project; and provide geotechnical data for preliminary design of the facility, including type and approximate dimensions of the foundation. (iv) An overall site characterization report for your facility that integrates the findings of your studies, surveys, and investigations; describes the geological model; contains supporting data and findings; and states your recommendations.

Topic:	Purpose of report:	Including:
(2) Biological .....	To determine the presence of biological features and marine resources..	A description of the results of biological surveys used to determine the presence of live bottoms, hard bottoms, topographic features, and other marine resources, including migratory populations such as fish, marine mammals, sea turtles, and sea birds.
(3) Archaeological resources and other historic properties.	To provide BOEM with required information to conduct review of the COP under NHPA.	Archaeological resources and other historic properties.
(4) Meteorological and oceanographic (metocean).	To provide an overall understanding of the meteorological and oceanographic conditions at the site of the proposed facility, and to identify conditions that may pose a significant risk to the facility.	Desktop studies to collect available data from hindcast or re-analysis models and field measurements in sufficient detail to support preliminary design of the facility and support the analysis of wake effects, sediment mobility and scour, and navigational risks

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

(a) Your COP must contain detailed information and analysis to assist BOEM

in complying with NEPA and other applicable laws. Your COP must contain information about those resources, conditions, and activities listed in the following table that your proposed activities may significantly affect, or

that may have a significant effect on your proposed activities (including where the potential significance of the effect is unknown) and must contain any other information required by law:

Type of information:	Including:
(1) Hazard information .....	Meteorology, oceanography, sediment transport, geology, and shallow geological or manmade hazards.
(2) Water quality .....	Turbidity and total suspended solids from construction; impact from vessel discharges.
(3) Biological resources .....	Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, plankton, seagrasses, and plant life.
(4) Threatened or endangered species .....	As required by ESA.
(5) Sensitive biological resources or habitats .....	Essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, nearby marine protected areas, including State and Federal coastal and nearby marine protected areas, as well as national marine sanctuaries and nearby marine national monuments, rookeries, hard bottom habitat, chemosynthetic communities, calving grounds, barrier islands, beaches, dunes, and wetlands.
(6) Archaeological resources use, other historic property use, Indigenous traditional cultural use, or use pertaining to treaty and reserved rights with Native Americans or other Indigenous peoples.	Required information to conduct review of the COP under the NHPA or other applicable laws or policies, including treaty and reserved rights with Native Americans or other Indigenous peoples.
(7) Social and economic resources .....	Employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, coastal zone management programs, and a visual impact assessment.
(8) Coastal and marine uses .....	Military activities, vessel traffic, fisheries, and exploration and development of other natural resources. This includes a navigational safety risk assessment that provides a description of the predicted impacts of the project to navigation and the measures you will use to avoid or minimize such adverse impacts. This document also must be submitted to the U.S. Coast Guard to assist with its analysis.
(9) Consistency Certification .....	If required by CZMA regulations: (i) 15 CFR part 930, subpart D, if your COP is submitted before lease issuance. (ii) 15 CFR part 930, subpart E, if your COP is submitted after lease issuance.
(10) Other resources, conditions, and activities	As identified by BOEM.

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

(1) One copy of your consistency certification either under subsection 307(c)(3)(B) of the CZMA (16 U.S.C. 1456(c)(3)(B)) and 15 CFR 930.76, or under subsection 307(c)(3)(A) of the CZMA (16 U.S.C. 1456(c)(3)(A)) and 15 CFR 930.57, stating that the proposed activities described in detail in your plans comply with the enforceable policies of the applicable States' approved coastal management programs

and will be conducted in a manner that is consistent with such programs; and

(2) "Necessary data and information," as required by 15 CFR 930.58.

(c) You must submit a detailed description of an oil spill response plan to BSEE in compliance with 33 U.S.C. 1321, including information identified in 30 CFR part 254 that is applicable to your activities.

(d) You must submit a detailed description of your safety management system to BSEE as required by 30 CFR 285.810.

**§ 585.628 How will BOEM process my COP?**

(a) BOEM will review your submitted COP, including the information provided under § 585.627, to determine if it contains the information necessary to conduct our technical and environmental reviews. We will notify you if your submitted COP lacks any necessary information.

(b) BOEM will prepare an appropriate NEPA analysis.

(c) If your COP is subject to Federal consistency review under CZMA

regulations at 15 CFR part 930, subpart E, you must submit your COP, consistency certification, and associated data and information under CZMA to BOEM after all information requirements for the COP are met, and the appropriate environmental assessment or draft environmental impact statement, if required, has been published. BOEM will forward the COP, consistency certification, and associated data and information to the applicable State CZMA agencies.

(d) As appropriate, BOEM will coordinate and consult with relevant Federal, State, and local agencies and affected federally recognized 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, BOEM may disapprove your COP.

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

(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 30 CFR 285.633(a); and

(2) If we disapprove your COP, we will inform you of the reasons and allow you an opportunity to submit a revised plan addressing our concerns, and we may suspend the COP review period of your lease, as appropriate, to give you a reasonable amount of time to submit the revised plan.

(g) If BOEM approves your project easement, BOEM will issue an addendum to your lease specifying the terms of the project easement.

(1) The project easement will provide sufficient off-lease area to accommodate potential changes at the design and installation phases with respect to any facilities or activities necessary for your project.

(2) Unused portions of the project easement may be relinquished after construction is complete.

(3) A project easement is subject to the following conditions:

(i) The rights granted will not prevent the granting of other rights by the United States, either before or after the granting of the project easement, provided that any subsequent authorization issued by BOEM in the area of a previously issued project

easement may not unreasonably interfere with activities approved or impede existing operations under the project easement; and

(ii) If the project easement is granted in an area where a lease, ROW or RUE grant has previously been issued, the project easement holder must agree that its activities will not unreasonably interfere with or impede existing operations under the lease or ROW or RUE grant.

#### **§ 585.629–585.630 [Reserved]**

#### **Activities Under an Approved COP**

##### **§ 585.631 When must I initiate activities under an approved COP?**

After your COP is approved, you are expected to commence construction on the OCS in accordance with the construction schedule included as a part of your approved COP, unless you notify BOEM in advance of a deviation from your schedule.

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

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

Document:	Requirements are found in:
(1) Facility Design Report.	30 CFR 285.701.
(2) Fabrication and Installation Report.	30 CFR 285.702.

(b) You must submit your Safety Management System, as required by 30 CFR 285.810.

(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 § 585.634, for BOEM approval before commencing the activity.

#### **§ 585.633 [Reserved]**

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

(a) You must notify BOEM in writing before conducting any activities on the OCS not described in your approved COP. Your notice must describe in detail the type of activities you propose to conduct. We will determine whether the activities you propose require a revision to your COP. We may request additional information from you, if necessary, to make this determination.

(b) BOEM 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, BOEM will require you to submit the needed revisions.

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

(1) Activities on the OCS not described in your approved COP that could have significant environmental impacts, that may affect threatened or endangered species, or affect designated critical habitat of such species, or that may result in incidental take of marine mammals;

(2) Modifications to the number, size, or type of facilities (including associated components) or equipment you will use outside of the PDE that was approved for your project;

(3) Material changes in the geographical location or layout of bottom disturbances, offshore facilities, or onshore support bases beyond the range of possible locations described in your approved COP;

(4) Structural failure of any facility operated under your approved COP;

(5) Submission of an FDR or FIR that contains new activities beyond the scope of or that is materially inconsistent with the COP that has been previously submitted; or

(6) Change in any other activity specified by BOEM.

(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 that could have significant environmental impacts, that may affect threatened or endangered species, or designated critical habitat of such species, or that may result in incidental take of marine mammals.

(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.

**§ 585.635 What must I do if I cease activities approved in my COP before the end of my commercial lease?**

You must notify BSEE, 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 § 585.422 and you must initiate the decommissioning process as set forth in 30 CFR part 285, subpart I.

**§§ 585.636–585.639 [Reserved]****General Activities Plan Requirements for Limited Leases, ROW Grants, and RUE Grants****§ 585.640 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 BOEM approval of your GAP before you can begin any of the proposed activities on your lease or grant.

**§ 585.641 What must I demonstrate in my GAP?**

Your GAP must demonstrate that you have planned and are prepared to conduct the proposed activities in a manner that:

(a) Conforms to your responsibilities listed in § 585.105(a);

(b) Conforms to all applicable laws, regulations, and provisions of your limited lease or grant;

(c) Is safe;

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

(e) Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or

objects of historical or archaeological significance;

(f) Uses best available and safest technology;

(g) Uses best management practices; and

(h) Uses properly trained personnel.

**§ 585.642 How do I submit my GAP?**

(a) You must submit your GAP to BOEM pursuant to § 585.111.

(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.

**§§ 585.643–585.644 [Reserved]****Contents of the General Activities Plan****§ 585.645 What must I include in my GAP?**

(a) Project information may be provided using a PDE. When you provide a range of parameters using a PDE, BOEM reserves the right to determine what range of values for any given parameter is acceptable. Your GAP must include the following project-specific information, as applicable:

Project information:	Including:
(1) Contact information .....	The name, address, email address, and phone number of an authorized representative.
(2) Designation of operator, if applicable .....	As provided in § 585.405.
(3) Your proposed construction, activities, and conceptual decommissioning plans, and/or technology testing concept.	A discussion of the objectives; description of the proposed activities, including the technology you will use; and proposed schedule from start to completion.
(4) ROW or RUE grant, or limited lease stipulations, if known.	A description of the measures you took, or will take, to satisfy the conditions of any grant or lease stipulations related to your proposed activities.
(5) A location plat, or indicative layout .....	The range of surface locations and associated water depths for proposed structures, facilities, and appurtenances located both offshore and onshore, including all anchor and mooring data; and the location and associated water depths of all existing structures.
(6) General structural and project design, fabrication, and installation.	Preliminary design information for each facility associated with your project.
(7) Deployment activities .....	A description of the safety, prevention, and environmental protection features or measures that you will use.
(8) Your proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.	A description of the measures you will use to avoid or minimize adverse effects and any potential incidental take before you conduct activities on your lease, and how you will mitigate environmental impacts from your proposed activities, including a description of the measures you will use as required by §§ 585.701 through 585.703.
(9) A list of solid and liquid wastes generated ...	Disposal methods and locations.
(10) A listing of chemical products used (if stored volume exceeds EPA reportable quantities).	A list of chemical products used; the volume stored on location; their treatment, discharge, or disposal methods used; and the name and location of the onshore waste receiving, treatment, and/or disposal facility. A description of how these products would be brought onsite, the number of transfers that may take place, and the quantity that will be transferred each time.
(11) A description of any vessels, vehicles, and aircraft you will use to support your activities.	An estimate of the frequency and duration of vessel, vehicle, and aircraft traffic.
(12) Reference information .....	A bibliographic list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans you previously submitted or that are otherwise readily available to BOEM.
(13) Decommissioning and site clearance procedures.	A discussion of general concepts and methodologies.
(14) Air quality information .....	As described in § 585.700.
(15) A listing of all Federal, State, and local authorizations or approvals required to conduct activities on your grant or limited lease.	A statement indicating whether you have applied for or obtained such authorization or approval from the U.S. Coast Guard, U.S. Army Corps of Engineers, and any other applicable Federal, State, or local authorizers pertaining to your activities.
(16) A list of agencies and persons with whom you have communicated, or with whom you will communicate, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.

Project information:	Including:
(17) Financial assurance information .....	Statements attesting that the activities and facilities proposed in your GAP are, or an explanation of how they will be, covered by an appropriate bond or other approved security, as required in §§ 585.520 and 585.521.
(18) Project verification strategy .....	You must describe your strategy for compliance with 30 CFR 285.705 through 285.714.
(19) Information you incorporate by reference ...	A list of the documents you have incorporated by reference and where they may be publicly accessed; for confidential information, you may reference information and data discussed in other plans previously submitted or that are otherwise readily available to BOEM.
(20) Other information .....	Additional information as required by BOEM.

(b) You must include reports that document the results of surveys and investigations that characterize and model the site of your proposed activities. Your reports must cover the following topics:

Topic:	Purpose of report:	Including:
(1) Geological and geotechnical.	To define the baseline geological conditions of the seabed and provide sufficient data to develop a geologic model, assess geologic hazards, and determine the feasibility of the proposed facility.	<ul style="list-style-type: none"> <li>(i) Desktop studies to collect available data from published sources and nearby sites.</li> <li>(ii) Geophysical surveys of the proposed area with sufficient areal coverage, depth penetration, and resolution to define the geological conditions of the seabed at the site that could impact, or be impacted by, the proposed project.</li> <li>(iii) Geotechnical investigations of sufficient scope and detail to: ground truth the geophysical surveys; support development of a geological model; assess potential geological hazards that could impact the proposed development; and provide geotechnical data for preliminary design of the facility, including type and approximate dimensions of the foundation.</li> <li>(iv) An overall site characterization report for your facility that integrates the findings of your studies, surveys, and investigations; describes the geological model; contains supporting data and findings; and states your recommendations.</li> </ul>
(2) Biological .....	To determine the presence of biological features and marine resources.	A description of the results of biological surveys used to determine the presence of live bottoms, hard bottoms, topographic features, and other marine resources, including migratory populations, such as fish, marine mammals, sea turtles, and sea birds.
(3) Archaeological resources and other historic properties.	To provide BOEM with required information to conduct review of the GAP under NHPA.	Archaeological resource and other historic property identification surveys with supporting data.
(4) Meteorological and oceanographic (metocean).	To provide an overall understanding of the meteorological and oceanographic conditions at the site of the proposed facility, and to identify conditions that may pose a significant risk to the facility.	Desktop studies to collect available data from hindcast or re-analysis models and field measurements in sufficient detail to support preliminary design of the facility and support the analysis of wake effects, sediment mobility and scour, and navigation risks.

(c) If you are applying for a project easement, or constructing a facility or a combination of facilities deemed by

BOEM to be complex or significant, you must provide the following additional information and comply with the

requirements of 30 CFR part 285, subpart G:

Project information:	Including:
(1) The construction and operation concept .....	A discussion of the objectives, description of the proposed activities, and tentative schedule from start to completion.
(2) All cables and pipelines, including cables on project easements.	The location, design, installation methods, testing, maintenance, repair, safety devices, exterior corrosion protection, inspections, and decommissioning.
(3) A general description of the operating procedures and systems.	<ul style="list-style-type: none"> <li>(i) Under normal conditions.</li> <li>(ii) In the case of accidents or emergencies, including those that are natural or manmade.</li> </ul>
(4) Construction schedule .....	A reasonable schedule of construction activity showing significant milestones including the commencement of activities consistent with the requirements of 30 CFR part 285, subpart G.
(5) Other information .....	Additional information as requested by BOEM.

(d) BOEM will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure in accordance with the terms of § 585.114.

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

You must submit, with your GAP, detailed information and analysis to

assist BOEM in complying with NEPA and other applicable laws.

(a) A GAP submitted for an area in which BOEM has not reviewed GAP activities under NEPA or other applicable Federal laws must describe those resources, conditions, and

activities listed in paragraphs (b)(1) through (10) of this section that your proposed activities may significantly affect or that may have a significant effect on your activities proposed in your GAP (including where the potential significance of the effect is unknown) and must contain any other information required by law.

(b) For a GAP submitted for an area in which BOEM has considered GAP activities under applicable Federal law

(e.g., a NEPA analysis and CZMA consistency determination for the GAP activities), BOEM will review the GAP to determine if its impacts are consistent with those previously considered. If the anticipated effects of your proposed GAP activities are significantly different than those previously anticipated, we may determine that additional NEPA and other relevant Federal reviews are required. In that case, BOEM will notify you of such determination, and you

must submit a GAP that describes those resources, conditions, and activities listed in the following table that your proposed activities may significantly affect or that may have a significant effect on your activities proposed in your GAP (including where the potential significance of the effect is unknown) and must contain any other information required by law, including:

Type of information:	Including:
(1) Hazard information .....	Meteorology, oceanography, sediment transport, geology, and shallow geological or manmade hazards.
(2) Water quality .....	Turbidity and total suspended solids from construction; impact from vessel discharges.
(3) Biological resources .....	Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, plankton, sea grasses, and other plant life.
(4) Threatened or endangered species .....	As required by the ESA (16 U.S.C. 1531 <i>et seq.</i> ).
(5) Sensitive biological resources or habitats .....	Essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, marine protected areas, including State and Federal coastal and marine protected areas, as well as nearby national marine sanctuaries and nearby marine national monuments, rookeries, hard bottom habitat, chemosynthetic communities, calving grounds, barrier islands, beaches, dunes, and wetlands.
(6) Archaeological resources use, other historic property use, Indigenous traditional cultural use, or use pertaining to treaty and reserved rights with Native Americans or other Indigenous peoples.	Required information to conduct review of the COP under the NHPA or other applicable laws or policies, including treaty and reserved rights with Native Americans or other Indigenous peoples.
(7) Social and economic conditions .....	Employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, coastal zone management programs, and a visual impact assessment.
(8) Coastal and marine uses .....	Military activities, vessel traffic, fisheries, and exploration and development of other natural resources. This includes a navigational safety risk assessment that provides a description of the predicted impacts of the project to navigation, and the measures you will use to avoid or minimize such adverse impacts. This document also must be submitted to the U.S. Coast Guard to assist with its analysis if your proposal identifies potential impediments to safe navigation.
(9) Consistency Certification .....	If required by CZMA, under:
(i) 15 CFR part 930, subpart D, if the GAP is submitted before lease or grant issuance;	
(ii) 15 CFR part 930, subpart E, if the GAP is submitted after lease or grant issuance.	
(10) Other resources, conditions, and activities .....	As required by BOEM.

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

Your GAP will be processed based on whether it is submitted before or after your lease or grant is issued:

If your GAP is submitted:	Consistency review of your GAP will be handled as follows:
(a) Before lease or grant issuance.	You will furnish a copy of your GAP, consistency certification, and necessary data and information to conduct an adequate consistency review to the applicable State CZMA agencies if required by 15 CFR part 930, subpart D. Submit a copy to BOEM pursuant to § 585.111.
(b) After lease or grant issuance.	You will submit a copy of your GAP, consistency certification, and necessary data and information to BOEM if required by 15 CFR part 930, subpart E. BOEM will forward to the applicable State CZMA agency or agencies one copy of your GAP, consistency certification, and necessary data and information to conduct an adequate consistency review required under 15 CFR part 930, subpart E, after BOEM has determined that all information requirements for the GAP are met.

#### **§ 585.648 How will BOEM process my GAP?**

(a) BOEM will review your submitted GAP, along with the information and

certifications you submitted in compliance with § 585.646, to determine if it contains the information

necessary to conduct our technical and environmental reviews.

(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) BOEM will prepare appropriate NEPA analysis.

(c) When appropriate, we will coordinate and consult with relevant State and Federal agencies and affected federally recognized Indian Tribes and provide to other local, State, and Federal agencies and affected federally recognized 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, BOEM may disapprove your GAP.

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

(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 30 CFR 285.653(b); and

(2) If we disapprove your GAP, we will inform you of the reasons and allow you an opportunity to submit a revised plan addressing our concerns, and we may suspend your lease or grant, as appropriate, to give you a reasonable amount of time to resubmit the GAP.

#### **§ 585.649 [Reserved]**

#### **Activities Under an Approved GAP**

#### **§ 585.650 When may I begin conducting activities under my GAP?**

After BOEM 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 BOEM has deemed to be complex or significant.

#### **§ 585.651 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 BOEM to be complex or significant, as provided in § 585.648(a)(1), you also must comply with the requirements of 30 CFR part 285, subpart G, and submit your safety management system description required by 30 CFR 285.810 before construction may begin.

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

After BOEM approves your GAP, you have:

(a) For a limited lease, the time period established under § 585.236(a)(2), unless we renew the operations period under §§ 585.425 through 585.429.

(b) For a ROW grant or RUE grant, the time provided in the terms of the grant.

#### **§ 585.653 What other reports or notices must I submit to BOEM under my approved GAP?**

You must prepare and submit to BOEM annually a report that summarizes the findings from any activities you conduct under your approved GAP and the results of those activities. BOEM will protect the information from public disclosure as provided in § 585.114.

#### **§ 585.654 [Reserved]**

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

(a) You must notify BOEM in writing before conducting any activities on the OCS not described in your approved GAP. Your notice must describe in detail the type of activities you propose to conduct. We will determine whether the activities you propose require a revision to your GAP. We may request additional information from you, if necessary, to make this determination. Upon receipt of your revised GAP, BOEM will make a determination as to whether it deems the facility or combination of facilities described in your revised GAP to be complex or significant.

(1) If BOEM determines that your revised GAP is not complex or significant, you may conduct your approved activities in accordance with § 585.650.

(2) If BOEM determines that your revised GAP is complex or significant, then you must comply with the requirements of § 585.651.

(b) BOEM 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, BOEM will require you to submit the needed revisions.

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

(1) Activities on the OCS not described in your approved GAP that

could have significant environmental impacts or that may affect threatened or endangered species, or that may affect designated critical habitat of such species or that may result in incidental take of marine mammals;

(2) Modifications to the number, size, or type of facilities (including associated components) or equipment you will use outside of the PDE that was approved for your project;

(3) Changes in the geographical location or layout of bottom disturbances, offshore facilities, or onshore support bases beyond the range of possible locations described in your approved GAP;

(4) Structural failure of any facility operated under your approved GAP; or

(5) Change to any other activity specified by BOEM.

(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 that could have significant environmental impacts or that may affect threatened or endangered species, or that may affect designated critical habitat of such species, or that may result in incidental take of marine mammals.

(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.

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

You must notify BOEM 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, BOEM may cancel your lease or grant under § 585.422, as applicable, and you must initiate the decommissioning process, as set forth in 30 CFR part 285, subpart I.

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

Upon completion of your approved activities under your GAP, you must

decommission your project as set forth in 30 CFR part 285, subpart I. You must submit your decommissioning application as provided in 30 CFR 285.905 and 285.906.

### Cable and Pipeline Deviations

#### **§ 585.658 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 BOEM 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, BOEM 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 BOEM with evidence of such notification;

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

(3) Submit a revised plan for BOEM 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.

#### **§ 585.659–585.699 [Reserved]**

### Environmental Protection Requirements Under Approved Plans

#### **§ 585.700 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 in 40 CFR part 55, according to the following table.

If your project is located . . .	You must . . .
(1) In the Gulf of Mexico west of 87.5° west longitude (western Gulf of Mexico) or offshore of the North Slope Borough of Alaska.	Include in your plan any information required for BOEM to make the appropriate air quality determinations for your project.
(2) Anywhere else on the OCS .....	Follow the appropriate implementing regulations as promulgated by the EPA under 40 CFR part 55.

(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) and offshore of the North Slope Borough of Alaska, you must submit to BOEM three copies of the modeling report and three sets of digital files as supporting information. The digital files must contain the formatted meteorological files used in the modeling runs, the model input file, and the model output file.

#### **§ 585.701 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 is likely to 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 BOEM-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;

(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 BOEM-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 are likely to 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 their habitat and to ensure no immitigable 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;

(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 as required;

(4) Your agreement to perform any relevant terms and conditions of the Incidental Take Statement that may result from the ESA consultation; and

(5) Your agreement to perform any relevant mitigation measures under an MMPA incidental take authorization.

**§ 585.702 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 BOEM 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.

**§ 585.703 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, BOEM finds that

essential fish habitat or habitat areas of particular concern may be adversely affected by your activities, BOEM must consult with National Marine Fisheries Service.

(b) Any conservation recommendations adopted by BOEM 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. BOEM may require additional surveys to define boundaries and avoidance distances.

(c) If required, BOEM will specify the survey methods and instrumentations for conducting the biological survey and will specify the contents of the biological report.

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