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Title 30 — Mineral Resources

Chapter V — Bureau of Ocean Energy Management, Department of the Interior

Subchapter B — Offshore

Part 585 Renewable Energy on the Outer Continental Shelf

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PART 585—RENEWABLE ENERGY ON THE OUTER CONTINENTAL SHELF

Authority: 43 U.S.C. 1337.

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Subpart A—General Provisions

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§ 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. prtensp.	Gen. prtensp.	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					

Requirements to qualify to hold leases or grants on the OCS:	Corp.	Ltd. prtensp.	Gen. prtensp.	LLC	Trust
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>i.e.</i> , 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.
(2) Limited lease	At 3 years after the lease terminates.
(3) ROW or RUE grant	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.

- (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]

Subpart B—The Renewable Energy Leasing Schedule

Source: 89 FR 42728, May 15, 2024, unless otherwise noted.

§ 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]

Subpart C—Issuance of OCS Renewable Energy Leases

Source: 89 FR 42729, May 15, 2024, unless otherwise noted.

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	We may order or grant a suspension of the operations period as provided in §§ 585.415 through 585.421	

Lease period	Extension or suspension	Requirements
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		

- (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]

Subpart D—Right-of-Way (ROW) Grants and Right-of-Use and Easement (RUE) Grants for Renewable Energy Activities

Source: 89 FR 42735, May 15, 2024, unless otherwise noted.

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]

Subpart E—Lease and Grant Administration

Source: 89 FR 42736, May 15, 2024, unless otherwise noted.

§§ 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 topped 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]

Subpart F—Payments and Financial Assurance Requirements

Source: 89 FR 42740, May 15, 2024, unless otherwise noted.

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
INITIAL PAYMENTS FOR LEASES					
(1) If your lease is issued competitively	Bid Deposit	As set in Final Sale Notice/depends on bid	With bid	<i>Pay.gov</i>	§ 585.501.
	Bonus Balance		Within 10 business days of receiving the	30 CFR 1218.51	§ 585.225.

¹ There is no acquisition fee for ROW grants or RUE grants.

	Payment	Amount	Due date	Payment mechanism	Section reference
(2) If your lease is issued non-competitively	Acquisition Fee	\$0.25 per acre, unless otherwise set by the Director	unsigned lease With application	Pay.gov	§ 585.502.
(3) All leases	Initial Rent	\$3 per acre per year	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 ¹					
(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.
	Subsequent Rent		Annually or in 5-year batches	30 CFR 1218.51	

¹ 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 § 585.628(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

Before BOEM will . .	You must provide . . .
.	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	<p>(i) The lease or grant expires or is terminated and BOEM determines you have met your secured obligations, unless BOEM:</p> <p>(A) Determines that the future potential liability resulting from any undetected problem is greater than the amount of your lease-specific financial assurance; and</p> <p>(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</p> <p>(ii) At any time when:</p> <p>(A) BOEM determines, in its discretion, that you no longer need to provide the supplemental financial assurance;</p> <p>(B) The operations for which the supplemental financial assurance was provided were cancelled before accrual of any decommissioning obligation; or</p> <p>(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.</p>

- (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:

Formula 1 to paragraph (c)

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

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

(2) State B's share = $[(1/4) \div (1/12 + 1/4)] = 3/4$.
- (b) Therefore, State B would receive a share of revenues that is three times as large as that awarded to State A, based on the finding that State B's nearest coastline is one-third the distance to the geographic center of the qualified project area as compared to State A's nearest coastline. Eligible States share the 27 percent of the total revenues from the qualified project as mandated under the OCS Lands Act. Hence, if the qualified project generates \$1,000,000 of Federal revenues in a given year, the Federal Government would distribute the States' 27-percent share as follows:

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

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

§§ 585.544-585.599 [Reserved]

Subpart G—Plans and Information Requirements

Source: 89 FR 42748, May 15, 2024, unless otherwise noted.

§ 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:	You must submit and obtain approval for your:
(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	SAP under §§ 585.605 through 585.613.
(2) Conduct any activities pertaining to construction of facilities for commercial operations on your commercial lease	COP under §§ 585.620 through 585.628.
(3) Conduct any activities on your limited lease or grant in any OCS area	GAP under §§ 585.640

Before you:	You must submit and obtain approval for your:
	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	A discussion of the objectives; description of the proposed

Project information:	Including:
technology testing concept	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	Contact information and issues discussed.

Project information:	Including:
communicated, or with whom you will communicate, regarding potential impacts associated with your proposed activities	
(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	<p>(i) Desktop studies to collect available data from published sources and nearby sites.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>
(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

Topic:	Purpose of report:	Including:
(3) Archaeological resources and other historic properties	To provide BOEM with required information to conduct review of your SAP under NHPA	marine birds; invertebrate animals; plants; algae; and other organisms; also including the presence of live bottoms, hard bottoms, topographic features, and other marine resources. 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.

Type of information:	Including:
(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.
(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.
(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.

Project information:	Including:
(10) A general description of the operating procedures and systems	(i) Under normal conditions. (ii) In the case of accidents or emergencies, including those that are natural or manmade.
(11) Decommissioning and site clearance procedures	A discussion of general concepts and methodologies.
(12) A listing of all Federal, State, and local authorizations or approvals required to conduct the proposed activities, including commercial operations	A statement indicating whether you have applied for or obtained such authorization or approval from the U.S. Coast Guard, U.S. Army Corps of Engineers, and any other applicable Federal, State, or local authorizers pertaining to energy gathering, transmission, or distribution (e.g., interconnection authorizations).
(13) Your proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts	A description of the measures you will use to avoid or minimize adverse effects and any potential incidental take before you conduct activities on your lease, and how you will mitigate environmental impacts from your proposed activities, including a description of the measures you will use as required by §§ 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.

Project information:	Including:
(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	<p>(i) Desktop studies to collect available data from published sources and nearby sites.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>
(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	To provide an overall understanding of the meteorological and	Desktop studies to collect available data from hindcast or re-analysis models and field measurements in sufficient detail to support

Topic:	Purpose of report:	Including:
oceanographic (metocean)	oceanographic conditions at the site of the proposed facility, and to identify conditions that may pose a significant risk to the facility	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,

Type of information:	Including:
	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	Preliminary design information for each facility associated with your project.

Project information:	Including:
installation	
(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.
(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 §§

Project information:	Including:
(18) Project verification strategy	585.520 and 585.521. 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	(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, 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 development; and provide geotechnical data for preliminary design of the facility, including type and approximate dimensions of the foundation. (iv) An overall site characterization report for your facility that integrates the findings of your studies, surveys, and investigations; describes the geological model; contains supporting data and findings; and states your recommendations.
(2) Biological	To determine the presence of biological features and marine resources	A description of the results of biological surveys used to determine the presence of live bottoms, hard bottoms, topographic features, and other marine resources, including migratory populations, such as fish, marine mammals, sea turtles, and sea birds.
(3) Archaeological	To provide BOEM with required information to	Archaeological resource and other historic property identification surveys with supporting data.

Topic:	Purpose of report:	Including:
resources and other historic properties	conduct review of the GAP under NHPA	
(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	(i) Under normal conditions. (ii) In the case of accidents or emergencies, including those that are natural or manmade.
(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,

Type of information:	Including:
(8) Coastal and marine uses	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. 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

Source: 89 FR 42728, May 15, 2024, unless otherwise noted.

§ 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 America west of 87.5° west longitude (western Gulf of America) 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 America (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.

[89 FR 42728, May 15, 2024, as amended at 90 FR 24072, June 6, 2025]

§ 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; and
- (2) We will consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, you may proceed.
- (d) If there is reason to believe that designated critical habitat of a threatened or endangered species may be affected by the direct or indirect effects of your 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.