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Georgeann Smale
Office of Regulations
Bureau of Ocean Energy Management
45600 Woodland Road, Mailstop: DIR-BOEM
Sterling, VA 20166

Comments of the American Clean Power Association, the National Offshore Industries Association (NOIA), and the Business Network for Offshore Wind (BNOW) on the Bureau of Ocean Energy Management's Renewable Energy Modernization Rule, Docket No. BOEM-2023-0005

Submitted via www.regulations.gov

Dear Ms. Smale:

The American Clean Power Association (ACP), the National Offshore Industries Association (NOIA), and the Business Network for Offshore Wind (BNOW) (collectively, "the Associations") submit these comments on the Bureau of Ocean Energy Management's (BOEM) Renewable Energy Modernization Rule ("Mod Rule")¹ on behalf of their offshore wind developer members, representing the capacity to deliver over 51 GW gigawatts (GW) of offshore wind energy necessary to achieve the Administration's ambitious offshore wind and climate goals.

On January 30, 2023 BOEM published the Mod Rule in order to "modernize its regulations to facilitate the development of offshore wind energy resources to meet U.S. climate and renewable energy objectives."² The rule includes proposals for incremental funding of decommissioning accounts; more flexible geophysical and geotechnical survey submission requirements; streamlined approval of meteorological (met) buoys; revised project verification procedures; reform of BOEM's renewable energy auction process; and greater clarity regarding safety requirements. Through these changes and other changes, BOEM hopes to "reduce administrative burdens for both developers and the Department's staff, reduce developer costs and uncertainty, and introduce greater regulatory flexibility in a rapidly changing industry to foster the supply of OCS renewable energy to meet increasing demand, while maintaining environmental safeguards."³

The Associations support BOEM's overall goals and agree with the urgent need to reduce administrative burdens, costs, and uncertainty and to allow more flexibility in offshore wind

¹ Bureau of Ocean Energy Management, Renewable Energy Modernization Rule, 88 Fed. Reg. 5968, Dkt. No. BOEM-2023-0005 (Jan. 30, 2023) ("Mod Rule").

² *Id.*

³ *Id.* at 5969.



development. Our comments below respond to BOEM’s proposals and amplify key elements for emphasis or clarification. In addition, we propose further refinements and logical outgrowths of BOEM’s proposal to better achieve the goals set for the Mod Rule. If adopted, the Associations are confident that offshore wind can continue to thrive in the United States through the orderly and expeditious development of the Outer Continental Shelf, with appropriate environmental safeguards.

We urge BOEM to bring the Mod Rule to finality as soon as possible. The road to the proposal was long. A great deal of experience is already reflected in the proposal. After a dozen years of near-constant evolution, scientific advances, and technological improvement, the opportunities and benefits of offshore wind are here now, and we need a modernized regulatory structure to reap the benefits of responsible development.



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1. THE ASSOCIATIONS SUPPORT THE PROPOSED MOD RULE

1.1. The proposed Mod Rule makes important updates to BOEM’s current renewable energy regulations.

As stated in the preamble to the proposal, existing OCS renewable energy regulations were drafted in 2009 when the domestic offshore wind industry was in its infancy.⁴ Much has changed since BOEM’s Part 585 regulations were first adopted, including numerous auctions, billions of dollars paid in auction bids, 27 leases issued, two COPs approved, and numerous projects in various stages of development before the agency. Alongside offshore development, a host of important onshore investments have been made or committed to build out the physical infrastructure, the supply chain, and the skilled labor force—helping to fulfill the wider promise of offshore renewable energy.

New regulations are needed not only to reflect industry growth and technological improvements, but also to reduce burden and cost to developers while at the same time creating regulatory certainty. To that end, the Associations support the overall goals of the Mod Rule to “reduce the administrative burdens for both developers and the Department’s staff, reduce developer costs and uncertainty, and introduce greater regulatory flexibility in a rapidly changing industry.”⁵ If the offshore wind industry is to expand successfully and responsibly to meet growing demands, and to contribute to the Administration’s goal of 30 gigawatts of offshore wind deployed by 2030, durable updates that provide a flexible, performance-based approach are vital. The Associations believe that the proposed rule goes a long way towards reaching these goals. As discussed herein, much of the flexibility proposed in this rule would play a key role in accelerating permitting timelines and reducing developer cost while maintaining a rigorous approach to public engagement and scientific study.

1.2. Proceeding through informal rulemaking is the best—and required—approach

The Associations also strongly support BOEM’s proposal to use *regulatory amendment* to update and modernize the existing regulatory regime for offshore wind. In OCSLA, Congress provided a strong framework for pursuing renewable energy development on the OCS in an orderly fashion, while leaving to the Department of the Interior the details of administering this charge. The initial regulatory program that BOEM devised was conceived *in anticipation of* future development but naturally could not reflect any practical experience with such development in the United States. As BOEM and stakeholders gained experience, BOEM developed policies to interpret and elaborate the regulatory regime. But after more than a dozen years, extensive public engagement, and billions of dollars of investments and

⁴ Mod Rule at 5968.

⁵ *Id.* at 5969.



commitments, it is no longer practical to proceed by policy development or regulatory departure alone. As BOEM’s proposal makes manifest, experience has pointed to significant changes that are needed and that require regulatory amendments to achieve.

Proceeding through continued policy development (other than through rulemakings)—or in some cases, departures permitted under existing regulations—is not an effective solution. Administrative law supports—indeed requires—changes to be made through notice-and-comment rulemaking when the proposal would affect binding, substantive changes in legal requirements of general applicability.⁶ That is precisely the circumstance here. Recasting BOEM’s proposals in policy documents would be legally deficient and would not achieve the reliability and transparency that BOEM seeks and that developers and stakeholders need. And while we support BOEM’s use of departures under Section 585.103 to ensure its regulations function efficiently and accord with the offshore wind development process, regulatory amendments are more efficient and predictable. Policy, guidance, and departures should continue to be used judiciously to aid the application of the revised regulations, but cannot usurp the role of regulations.

A third option—abandoning the modernization effort altogether—should not be seriously considered any further. An important responsibility under OCSLA is the “expeditious and orderly development [of the OCS], subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs.”⁷ The continued development of the OCS *requires* more streamlined, flexible, and up-to-date regulatory approaches that reflect the realities of development, changing national needs, and the competitive marketplace. Offshore wind is a global resource, attracting capital across numerous countries around the globe. The United States is in competition with other nations and regions to secure the investment, technology, and expertise that can drive a larger, environmentally sustainable U.S. economy. Failure to keep pace with experience would put at risk decades of effort to build a flourishing, environmentally sound, and competitive U.S. offshore wind industry.

1.3. BOEM must move expeditiously to codify the economic and other benefits of the proposed rule and its logical outgrowths

The Associations urge BOEM to proceed as soon as possible to finalize and apply the proposed changes, as refined and strengthened through comments received from the Associations and others. These modernizations are a long time coming, reflecting more than a dozen years of experience gained by the agency, developers, states, tribes, fisheries, and others with a significant stake in the success of offshore wind and the resources that it touches. The net benefits of the proposed rule are clear. Greater clarity and efficiency in the regulatory process translates to reduced administrative burdens on BOEM and everyone else. The proposed rule also adds flexibility to accommodate rapidly improving commercial and technological foundations for the sector. It provides space for BOEM to apply the statutory balancing

⁶ 5 U.S.C. § 553; see e.g. *Chrysler Corp. v. Brown*, 441 U.S. 281, 315 (1979).

⁷ 43 U.S.C. § 1332(3).



factors that Congress set forth in OCSLA to guide development of the OCS for renewable energy. And it contributes to better project design, more transparency, and improved public engagement.

The positive economic effects are hard to overstate. First, there are the cost savings—for the public fisc and for developers—that accrue from better planning and streamlined reviews. Currently, the permitting timeline for utility-scale offshore wind projects can stretch to six or eight years, or even longer. Given the hundreds of millions of dollars needed to develop scientific surveys and analyses to support permitting and given the early investment commitments needed to support commercial contracting and the supply chain, saving time in permitting results in material savings at almost any discount rate.

Second, there are the economic gains of earlier investment in construction and supply chain, if projects that meet the statutory requirements can get under way earlier. These investments are a major focus of BOEM and the states, and they are part of the promise of offshore wind. BOEM has direct insight into the scale of these commitments just in relation to bid credits, and of course many other investments may be required as a result of state solicitations for power or renewable energy credits. The sooner these investments are put into play, the sooner the economic benefits of offshore wind may be experienced.

Third, the benefits of early cost savings and earlier investment are not just immediate benefits—they are compounded over the lifetime of the project. Modern offshore wind projects are anticipated to operate for decades, well past the 20-year time horizon conservatively assumed in BOEM’s economic analyses. The improvements gained by modernizing the regulatory regime aggregate quickly and impressively when viewed over the lifespan of a project.

In short, the Associations strongly support BOEM’s positive conclusions about the economic benefits of proceeding with the rulemaking, and urge BOEM to move quickly to finalize the rule.

1.4. The proposed rule should be categorically excluded from NEPA review

The Associations agree that the proposed rule can be categorically excluded from NEPA review because it does not constitute a major Federal action “significantly affecting the quality of the environment.”⁸ NEPA regulations require agencies to identify “categories of actions that normally do not have a significant effect on the human environment and therefore do not require preparation of an environmental assessment or environmental impact statement.”⁹ As noted in the proposed rule, the DOI and BOEM have identified categorical exclusions that apply here. First, DOI categorically excludes from NEPA review “[p]olicies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad,

⁸ 42 U.S.C. §§ 4332(C).

⁹ 40 C.F.R. §1501.4(a).



speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.”¹⁰ The proposed rule fits within this category: it is an administrative, financial, legal and technical action. The environmental effects of the rule are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Rather, environmental effects will be analyzed before the activities outlined in this rule—primarily lease sales and plan approvals—are subject to final authorizing agency actions.

In addition, BOEM has published a categorical exclusion for “[i]ssuance and modification of regulations, Orders, Standards, Notices to Lessees and Operators. Guidelines and field rules for which the impacts are limited to administrative, economic, or technological effects and the environmental impacts are minimal.”¹¹ This exclusion also applies to this rule as it is a “modification of regulations . . . for which the impacts are limited to administrative, economic, or technological effects.”

NEPA regulations also require agencies to evaluate categorically excluded actions “for extraordinary circumstances in which a normally excluded action may have a significant effect.”¹² DOI has defined “extraordinary circumstances” in its regulations at 43 C.F.R. § 46.215. These include: actions that have significant impacts on public health or safety; have significant impacts on certain unique geographic characteristics, such as national monuments; have controversial environmental effects; have highly uncertain and potentially significant environmental effects; or involve unique or unknown environmental risks.¹³ As stated above, this proposed rulemaking is entirely an administrative action that does not itself create significant impacts, so undertaking a NEPA review would not be meaningful. As such, none of these extraordinary circumstances applies. The Associations agree that the rule should be categorically excluded from NEPA review.

1.5. The Associations support and recommend emphasizing key tenets of the proposed Mod Rule

The Associations broadly and strongly support the proposed Mod Rule. Certain tenets of the proposal merit emphasis in the final rulemaking, to ensure that the goals of the proposal are fulfilled. We detail these points below.

1.5.1. Regulatory flexibility

In the proposed rule, BOEM frequently highlights the need for “greater regulatory flexibility” in a rapidly changing industry to foster the supply of renewable energy on the OCS.¹⁴ Indeed, the concept of flexibility appears in various revisions BOEM proposed. For instance, BOEM

¹⁰ 43 C.F.R. § 26.210(i).

¹¹ Dep’t of the Interior, Departmental Manual Part 516 § 15.4C(1) (2004).

¹² 40 C.F.R. § 1501.4(b).

¹³ 43 C.F.R. § 46.21.

¹⁴ Mod Rule at 5969 (emphasis added).



proposed to codify the Project Design Envelope (PDE), which BOEM described as a “proven approach to provide lessees and grant holders with *flexibility* throughout the permitting process while still complying with NEPA and other statutory and regulatory obligations.”¹⁵

Similarly, BOEM appropriately realized that the existing regulations for COP data submittal lack “sufficient flexibility” to accommodate the needs of lessees and BOEM’s various obligations and that this lack of flexibility is “also at odds with the development and use of PDE.”¹⁶ To remedy this issue, BOEM proposed to increase survey flexibility by allowing lessees to delay submission of site-specific surveying to “provide greater flexibility in designing projects.”¹⁷ BOEM explained that the change in survey and data collection requirements would shift from “largely prescriptive standards in the existing regulation to performance-based standards.”¹⁸ Further, these performance-based standards would give lessees the leeway to demonstrate that their surveys provide BOEM the data that it needs at the appropriate stage of COP review to determine whether the project as designed can be constructed safely.

BOEM also proposed to add flexibility to the CVA nomination process by decoupling the CVA nomination and approval process from the submittal and approval of a given plan.¹⁹ Similarly, BOEM proposed to add flexibility to the FDR/FIR processes by clarifying that the regulations do not prohibit fabrication prior to the submittal of these reports.²⁰ Moreover, BOEM acknowledged that its current financial assurance regulations lack flexibility, and to address this, BOEM proposed to allow lessees to use letters of credit or third-party guarantees for certain obligations.²¹

The Associations strongly support BOEM’s efforts to implement the key concepts of flexibility, pragmatism, durability, and performance-based standards. The Associations encourage BOEM to make these concepts explicit in the revisions to Part 585 and to include a supporting discussion in the preamble to the final rule explaining the agency’s approach to these concepts. These concepts are important for developers and BOEM. The offshore wind industry is maturing rapidly, and technology, best practices, and regulatory regimes are constantly changing over the development and permitting timespans of large and complicated offshore wind projects. To address these circumstances, while minimizing delays and cost increases, BOEM should include reasonable flexibility in the permitting process that will aid both lessees and BOEM in the expeditious and responsible development of renewable energy on the OCS.

¹⁵ Mod Rule at 5979.

¹⁶ *Id.* at 5980.

¹⁷ *Id.* at 5970.

¹⁸ *Id.* at 5981.

¹⁹ *Id.* at 5983.

²⁰ *Id.*

²¹ *Id.* at 5988.



1.5.2. The Associations support BOEM’s clarifications for implementing the OCSLA 8(p)(4) factors

OCSLA and BOEM’s implementing regulations require the agency to ensure that any authorized activities are carried out pursuant to OCSLA subsection 8(p)(4), as enumerated in 43 C.F.R. § 525.102(a)(1) through (12). The Associations support the proposed amendment clarifying that “none of the enumerated requirements is intended to outweigh or supplant any other.”²² The amendment will ensure that none of the twelve factors has legal precedence over the other factors and that instead BOEM will take “all relevant factors into consideration in planning its renewable energy program.”²³

1.5.3. The Associations support BOEM’s proposal to remove site assessment plan (SAP) requirements for deploying met buoys

The Associations strongly support BOEM’s proposal to eliminate the SAP requirements for met buoys. As noted in the preamble, SAP requirements were formulated in 2009 when the offshore wind industry gathered meteorological data primarily from towers fixed in place by pile-foundations pile driven in the sea floor.²⁴ Over a decade later, the offshore wind industry now relies on buoys, rather than towers, to gather this data. As compared to towers, the environmental impact from these buoys is negligible: as noted in the rule, “after 10 years of analyzing the environmental impacts of deployment, operation, and removal of met buoys, BOEM has concluded that, when properly sited, these buoys cause minimal harm to the marine, coastal, and human environment.”²⁵ Moreover, developers are still required to apply for permits for met buoys from the U.S. Army Corps of Engineers (USACE). When issuing these permits the USACE is subject to, and conducts, the same Federal environmental laws and reviews as BOEM, thereby subjecting developers to duplicative regulatory regimes. The Associations agree with BOEM that current SAP requirements for met buoys are outdated, overly burdensome, and unnecessarily duplicative. Removing these requirements would help reduce the burden and costs to both developers and agency personnel.

1.5.4. The Associations support more flexible geophysical and geotechnical survey submissions

The Associations support BOEM’s proposal to increase survey flexibility by deferring certain geotechnical survey requirements until after COP approval. Current regulations require lessees and grant holders to conduct geotechnical surveys (along with geophysical and archaeological surveys) for each proposed wind turbine location, and to include that information in the COP submitted prior to project authorization. However, the exact location of each turbine may be uncertain at the COP submittal stage and may change after the COP is submitted and approved. Moreover, data from geotechnical surveys is more relevant to

²² Mod Rule at 5991.

²³ *Id.*

²⁴ *Id.* at 5969.

²⁵ *Id.* at 5976.



BOEM's review after COP approval. Therefore, requiring early submittal of these surveys, which are extremely costly, constrains the ability to change project design to better reflect on-site project realities and updated technologies, and to respond to other OCS stakeholder concerns that may be raised later in the process. The proposed changes will provide developers with greater flexibility when designing projects and will provide the agency and interested stakeholders with more accurate information about the project.

1.5.5. The Associations support codification of project design envelopes (PDE)

Broadly, the Associations support the proposal to codify the use of PDE in COP submissions. Below, the Associations provide recommendations to address complexities that PDEs can create for Endangered Species Act (ESA) consultations and take permits. However, the Associations support the clarification in the proposed rule that lessees and grant holders will be able to submit plans using a PDE. By allowing a project proponent to submit a PDE with a reasonable range of design parameters, BOEM can analyze the maximum impacts that could occur from the range of design parameters for the purposes of NEPA review at this stage. As a result, a grantee or lessee will have the flexibility to make site-specific design and engineering decisions after plan approval without requiring additional NEPA review. As such, the PDE provides important flexibilities to lessees and grant holders throughout the permitting process, without creating uncertainties as to whether additional review, which could delay a project, will be necessary. Codification of these guidelines provides regulatory certainty that such flexibility will be available for the long term.

1.5.6. The Associations support changes to the FDR/FIR and CVA nomination process

Current regulations require lessees to use a CVA to provide independent third-party review of a project's FDR and FIR, and to monitor fabrication and installation activities. The Associations support BOEM's proposal to expand this role "to include verification of the design and commissioning of the critical safety systems."²⁶

The Associations also support BOEM's proposal to add flexibility in the CVA nomination and engineering report submittal process to allow for: (1) approval of CVAs prior to COP submittal, allowing CVAs to provide third-party review of design concepts in the COPs; (2) the ability to nominate new CVAs as the projects progress; and, (3) the ability of a lessee or grant holder to nominate separate CVAs to review different components of a project. Creating these flexibilities will allow CVAs to engage in the earliest stages of, and to be engaged throughout, the project design process.

The Associations support other key changes to the FDR/FIR and CVA review processes that will reduce burdens and create important flexibilities in the review and approval process for both lessees and BOEM staff. Specifically, the Associations support the rule's proposal to:

²⁶ Mod Rule at 5970.



- Allow for staged data submittal. This change will reduce unnecessary inefficiencies and delays in current regulations, which fail to account for the fact that procurement and installation of components depend on a wide range of project-specific factors that are unpredictable and that change over time.
- Remove current requirements that a lessee or grant holder begin to fabricate and install *only* after BOEM has notified the lessee or grant holder that it has received the FDR and FIR and that it has no objections. This change will help prevent delays by providing the important clarification that developers can begin fabrication and installation of components that do not take place on the OCS.
- Define “fabrication” as “cutting, fitting, welding or other assembly or project elements of custom design conforming to project specific requirements” and excluding from the definition the procurement of discrete parts of the project that are commercially available in standardized form.²⁷ As with the proposed change above, such a clarification will help prevent delays and reduce developer burdens, but will not hinder BOEM’s ability to conduct robust reviews of the planning and approval process.

1.5.7. The Associations support clarification of safety management system regulations

The Associations support the proposal to clarify the information requirements for safety management systems (SMS). The proposed changes will provide lessees and grantees with clarity as to the types of information that DOI considers necessary in a satisfactory SMS and will clarify what is expected of the grant holder in terms of design, implementation, and maintenance of the SMS. This transparency as to DOI expectations is important for planning on the part of lessees and grantees.

1.5.8. The Associations support creating a five-year leasing schedule

Existing regulations do not require BOEM to prepare a renewable energy leasing schedule. As a result, a lack of certainty and transparency makes it difficult for developers, as well as States and other stakeholders to make long term plans related to offshore wind development. Therefore, the Associations support the rules proposal to “introduce a new commitment by the Secretary . . . to publish a schedule of anticipated lease sales that BOEM intends to hold in the subsequent five years.”

1.5.9. The Associations support reforming BOEM’s renewable energy auction regulations

The Associations support BOEM’s proposal to continue to implement multiple factor auctions through the use of bidding credits, and to expand bidding credits to take into consideration a wide range of policy priorities, including “advancing a domestic supply chain or requiring

²⁷ Mod Rule at 5984.



workforce development agreements, relating to orderly development of OCS renewable energy resources.”²⁸ The proposed changes would explicitly allow bidders to be eligible for bidding credits based on a bidder’s commitments to future actions, recognizing that credit may also reflect actions already undertaken. The Associations also support:

- Changes to 30 CFR § 585.116 that combine and clarify processes related to request for information. Existing regulations are unclear and duplicative, and as such this change provides important clarity;
- Simplification and clarity added to the lease process regulations that make them both more readable and easier to follow;
- Changes to Call and Area Identification procedures at 30 CFR §§ 515.211, 585.212 that clarify factors BOEM considers in determining whether specific OCS areas are suitable for further consideration for renewable energy development, including the area’s feasibility for development;²⁹
- Consideration as to whether an area is technically and economically viable for industry is critical to determining if an auction should move forward;
- Clarity provided related to the auction format that provides BOEM with the flexibility to adjust its format as industry evolves; and
- Clarity regarding post auction procedures at 30 CFR § 515.224.

1.5.10. The Associations support revising financial assurance requirements to provide flexibility

The Associations support BOEM’s proposed revisions to financial assurance requirements. Current regulations require lessees and grant holders to provide financial assurance, via bond or other instrument, in an amount guaranteeing compliance with lease terms and conditions, including the entire cost of decommissioning.³⁰ These existing requirements are overly burdensome to developers and do not accurately reflect actual risk to the U.S. taxpayers. To address this issue, the Associations support BOEM’s proposals to: (1) eliminate the supplemental financial assurance required before COP approval; (2) revise lease-specific financial assurance amounts from \$100,000 to the amount of 12 months’ rent under the lease, due before execution; (3) expand the acceptable categories of financial assurance instruments to include letters of credit and other instruments not listed pursuant to BOEM review and approval; and (4) allow incremental funding of decommissioning accounts in accordance with a BOEM-approved schedule during the lease term, rather than requiring full funding of decommissioning expenses before installation of a project on the OCS, which requires significant up-front capital from developers. The proposed changes will help expand

²⁸ Mod Rule at 5985.

²⁹ *Id.* at 5994.

³⁰ 43 C.F.R. § 585(e).



offshore wind operations by reducing overly burdensome financial assurance requirements, while at the same time continuing to protect the American taxpayer.

1.5.11. The Associations support revision of the Lease Term

As a general matter, the Associations strongly support BOEM's proposal to "restructure commercial lease terms into four periods tied to activities required to develop the lease."³¹ Although we have suggestions for modifying the definitions and durations of the periods and creating more flexibility for lessees, in principle we agree with merging the preliminary and site assessment terms into one preliminary period that commences at the lease effective date and ends either with COP submittal or a certain number of years after lease effective date. This proposal is consistent with the proposal discussed above to eliminate the SAP requirement for met buoys.

The Associations also support creating two new lease periods between the submission of the COP and the commencement of operations. This proposal provides important flexibility to developers by ensuring that the time required for COP approval and construction does not take away from the operations period. Finally, we agree that the operations period should commence after the completion of construction.

1.5.12. The Associations support numerous other proposed changes

The Associations support other changes within the proposed rule, including:

- Clarifications at 30 C.F.R. § 585.103(a)(1) that departures may be granted when necessary to facilitate programmatic activities before, during and after lease termination. The proposed change will allow BOEM to issue departures not just on a lease or grant, but also for activities that occur before lease issuance;
- Changes to 30 C.F.R. § 585.110 that would eliminate paper copy requirements and rely primarily on electronic submissions. The current requirement to submit paper copies is outdated and overly burdensome;
- Clarifications at 30 § CFR 585.231 regarding the non-competitive lease process, including clarification as to when and how noncompetitive leases will be issued;
- Changes at 30 CFR § 585.301 and § 585.628(g) related to right of way (ROW grants). The Associations support the removal of the prescribed width of ROWs as this aligns with the proposal to codify the PDE approach. Similarly, the Associations support the proposed language at Section 585.628(g) that removes the limitation of 200 feet for off-lease areas and replaces this with the phrase "sufficient off-lease area to accommodate potential changes at the design and installation phases."³² This aligns

³¹ Mod Rule at 5970.

³² *Id.* at 6009.



with changes through the rule recognizing that site-specific information about a project, including the exact location for cables routes, may change after COP approval;

- Changes at 30 CFR § 585.410 clarifying the process for segregation of leases and changes at 30 CFR § 585.413 codifying BOEM’s existing practices related to consolidation of leases. Such changes will add durability by codifying existing BOEM practices;
- Changes at 30 CFR § 585.420 granting BOEM the authority to “waive or defer” payment while a lease or grant is suspended. Such changes allow BOEM flexibility in its response to suspension- for which there are wide range of potential justifications, some of which may not merit a fee;
- Changes at 30 CFR § 585.435 that clarify the process for relinquishing a lease or grant, removing the requirement that BOEM approve lease relinquishment, but instead clarifying that a lease or grant relinquishment is effective as soon as the lessee or grant holder files the necessary information with BOEM. This change streamlines the relinquishment process and reduces the burden on the agency.

2. ADDITIONAL COMMENTS AND LOGICAL OUTGROWTHS: BOEM SHOULD STRENGTHEN ITS PROPOSAL BY INCORPORATING THE FOLLOWING POINTS IN THE FINAL RULE

While broadly supporting the proposed Mod Rule, the Associations believe that the Mod Rule can be refined to improve the resulting efficiencies and create reasonable and practical flexibility for developers and the regulatory agencies while furthering BOEM’s statutory objectives. The Associations have proposed several refinements that BOEM should consider adopting as modifications or its proposed approach or as logical outgrowths of the proposed Mod Rule.³³ The proposed text for these refinements is set forth in Attachment 1 of these comments.³⁴

³³ A final rule qualifies as a logical outgrowth if interested parties should have anticipated that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period. By contrast, a final rule fails the logical outgrowth test and thus violates the APA’s notice requirement where interested parties would have had to divine the agency’s unspoken thoughts because the final rule was surprisingly distant from the proposed rule. *CSX Transp., Inc. v. Surface Transp. Bd.*, 584 F.3d 1076, 1080 (D.C. Cir. 2009) (citing *Ne. Md. Waste Disposal Auth. v. EPA*, 358 F.3d 936, 952 (D.C. Cir. 2004); *Int’l Union, United Mine Workers of Am. v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259–60 (D.C. Cir. 2005); see also *Shell Oil Co. v. E.P.A.*, 950 F.2d 741, 751 (D.C. Cir. 1991)). Stated differently, the final rule should be “reasonably foreseeable,” based on the information provided in the notice. “The object, in short, is one of fair notice.” *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007).

³⁴ For ease of reading, Attachment 1 utilizes the section numbering of the proposed Mod Rule rather than the recodification resulting from the BOEM-BSEE authority split described in Section 2.1 below.



2.1. Division of authority between BSEE and BOEM

DOI recently promulgated a final rule re-organizing various responsibilities between BOEM and the Bureau of Safety and Environmental Enforcement (BSEE), referred to herein as the “Split Rule.”³⁵ The Split Rule did not include substantive changes to the existing regulations. In particular, the Split Rule assigned to BSEE the portions of the Part 585 regulations pertaining to safety and environmental oversight of OCS renewable energy activities, moving those regulations to Part 285. The Split Rule also recodified in Part 285 and a new Part 586 regulations governing right-of-use easements for the alternate use of existing OCS facilities.

Notably, the Split Rule does not strictly separate all the functions of BOEM and BSEE: the recodifications reflect continuing overlapping responsibility, as acknowledged in the agencies’ related notice to lessees.³⁶ For instance, BOEM can issue a notice of violation for non-compliance with its Part 585 regulations and can impose civil penalties, and BSEE can issue a notice of violation for non-compliance with any provision of a lease or approval (such as a COP approval) issued under Part 585 and can impose civil penalties.³⁷ Despite this overlapping authority, BOEM and BSEE have stated that “[e]ither BOEM or BSEE may assess a civil penalty for any one specific failure to comply, i.e., you will not be assessed a civil penalty from both Bureaus for the same violation.”³⁸

The Associations appreciate the agencies’ commitment to avoid duplicative penalties. The challenge lies in ensuring that BSEE and BOEM do not take different views of when specific conduct or circumstances constitute a violation. Simply put, the same conduct or circumstance should not be subject to duplicative enforcement (not just penalties) from both BOEM and BSEE; and neither agency should initiate enforcement where there is not agreement by both that the conduct or circumstance at issue constitutes a violation. To achieve this, the agencies should commit to developing and applying consistent precedent and interpretations in all areas of shared responsibility. For example, BOEM and BSEE have explicitly retained their respective authorities to initiate enforcement with respect to any violation of any provision of a lease (or other authorization) issued under Part 585. It is essential that both agencies take the same view of what constitutes a violation of the lease.

In the same vein, the Associations agree that, while BOEM’s regulations should adequately identify various obligations of the lessee to submit plans and reports, such as the FDR and

³⁵ Reorganization of Title 30-Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf, 88 Fed Reg 6376 (Jan. 31, 2023) (“Split Rule”).

³⁶ See BOEM, BSEE, Notice to Lessees, Grantees, and Operators of Federal Renewable Energy Leases, Right-of-Way Grants, Right-of-Use and Easement Grants, and Alternative Use Right-of-Use and Easement Grants on the Outer-Continental Shelf, Joint NTL No. 2023-N01 at 4-5 (Jan. 17, 2023), <https://www.bsee.gov/sites/bsee.gov/files/notices-to-lessees-ntl/ntl-2023-n01-2-3-23.pdf> (“Joint NTL”).

³⁷ See *id.*

³⁸ *Id.* at 5. The same NTL also explains that it is merely a guidance document and that the enforceable legal requirements are set forth in applicable regulations. *Id.* at 8.



FIR, it is BSEE that should conduct the substantive review and enforcement of such reports or plans. This will promote consistency and will aid BSEE in maintaining the needed expertise, regulatory approach, and enforcement perspective.

2.2. Implementation of the 8(p)(4) factors

The Associations generally support BOEM’s revisions to clarify the application of the Section 8(p)(4) factors in Section 585.102 to ensure that there is a clear and consistent process for applying the factors. However, the Associations suggest several refinements in the approach.

First, BOEM should undertake a “rational balance” among the factors specified, similar to BOEM’s proposed changes. The approach and its justification were clearly detailed in the 2021 M Opinion.³⁹ This is a logical outgrowth of the proposed rule because BOEM proposed a similar revision in the same Section 585.102 and because such revisions are consistent with the 2021 M Opinion.

Second, BOEM should clarify that the “prevention of waste” factor pertains to economic waste of the energy potential of the resources and is not a reference to literal waste or refuse.⁴⁰ This clarification is consistent with other references to “waste” in Part 585.⁴¹ This clarification also would be consistent with the 2021 M Opinion⁴² and would be consistent with the

³⁹ SOL Opinion M-37067, Secretary’s Duties under Subsection 8(p)(4) of the Outer Continental Shelf Lands Act When Authorizing Activities on the Outer Continental Shelf (Apr. 9, 2021). *See Ctr. for Sustainable Econ. v. Jewell*, 779 F.3d 588, 592 (D.C. Cir. 2015) (“In light of the potential benefits and costs of OCS development, the Secretary’s program must balance competing economic, social, and environmental values in determining when and where to make leases available. Those obligations are set forth in Section 18 of OCSLA, 43 U.S.C. § 1344.”); *Ctr. for Biological Diversity v. U.S. Dep’t of Interior*, 563 F.3d 466, 488 (D.C. Cir. 2009) (finding DOI’s decision under OCSLA, 43 USC 1344(a)(2)(G), was not based on a consideration of the relevant factors – it examined and relied only on one factor).

⁴⁰ In a recently proposed rule by the Bureau of Land Management, DOI stated that “the goal of waste prevention is maximizing the overall recovery of energy resources.” Bureau of Land Management, Waste Prevention, Production Subject to Royalties, and Resource Conservation, 87 Fed. Reg. 73588, 73602 (Nov. 30, 2022).

⁴¹ In Part 585, the agency references “solid and liquid wastes”, “onshore wastes”, “waste disposal”, “[o]nshore waste receiving treatment or disposal facilities”, and “waste of . . . any natural resource”. Similarly, BOEM guidance documents make similar references to “solid and liquid wastes”, waste management plans and discharge information, etc. *See* SAP and COP guidelines. These references support a clarification that “waste” in the 8(p)(4) factor is not literally refuse or garbage but economic waste of the resource.

⁴² 2021 M Opinion: “As used in subsection 8(p)(a)(C), it requires the Secretary to ensure that any activity under subsection 8(p) is carried out in a manner that provides for “prevention of waste.” 43 U.S.C. § 1337(p)(4)(C). In the context of wind energy development, the concept of waste is evolving, since, unlike oil and gas resources, wind is a renewable resource. Nevertheless, waste in the wind energy context could be described as the failure to capture efficiently an available energy resource, by,



interpretation of past Administrations in related contexts.⁴³ Further, courts refer to “waste” in the OCSLA context as the waste of a resource. For instance, in *State of La. ex rel. Guste v. United States*, 832 F.2d 935, 943 (5th Cir. 1987), Louisiana alleged that an oil producer’s offshore well spacing and production practices constituted “waste” under OCSLA, 43 U.S.C. 1334(a). The court looked to the MMS regulations, 30 CFR 250.1 (1986), which defined “waste” to be the physical waste of oil and gas or the inefficient, excessive, or improper use of, or the unnecessary dissipation of, reservoir energy, or the drilling or production of oil or gas that tends to cause reduction in the quantity of oil or gas ultimately recoverable, or the inefficient storage of oil. The court ultimately found no evidence of waste.⁴⁴ Clarifying the definition of “prevention of waste” is a logical outgrowth because BOEM proposed revisions to Section 585.102, which explains how the factors are to be implemented and because such explanation is consistent with BOEM’s regulations and other precedent.

Third, BOEM should clarify that it will require compliance with laws, regulations, and approved plans “to enforce the responsibilities” assigned to BOEM and implemented by balancing the Section 8(p)(4) factors. This clarification should help ensure focus the application of the factors on the activities that BOEM authorizes.⁴⁵ This clarification also is a logical outgrowth because BOEM proposed revisions to Section 585.102, which explains how the factors are to be implemented and because this change affects such implementation.

Fourth, BOEM should add an explanation of the “Protection of the environment” factor to include consideration of the environmental benefits of offshore wind development. Capturing and delivering the OCS wind resource helps the environment by providing renewable, low-carbon power.⁴⁶ This explanation also is a logical outgrowth of the proposed

for example, failing to capture the reasonable resource potential of an offshore wind area by inefficient placement of WTGs or in efficient transmission of power generated on the OCS. This factor also could arguably disincentivize BOEM from removing WTGs from a proposed lease (i.e., creating waste by forgoing otherwise available renewable energy), but subject to the balancing of all the (p)(4) factors (and where no one factor is weighted more heavily).”

⁴³ See 2023–2028 National OCS Oil and Gas Leasing Proposed Program at 2-8, n. 3: “Social value can be negatively impacted (a social welfare loss) when OCS resources are not developed in accordance with the principles of conservation or when oil and gas activities result in adverse consequences to society, such as a highly damaging event like a large oil spill . . . In this context, conservation refers to the responsible development of oil and gas resources by preventing waste and maximizing recovery of economically producible reservoirs (MMS 2007).”

⁴⁴ Prevention of waste and conservation of the natural resources should not be conflated. In EPO Act 05, Congress added these elements as two separate and distinct factors in Section 8(p)(4) of OCSLA.

⁴⁵ While BOEM is obligated to consult with Federal agencies pursuant to 43 USC § 1337(p)(4)(E), its balancing of the factors should be focused on the activities authorized by BOEM rather than other Federal agencies.

⁴⁶ See, e.g., U.S. Dep’t of Energy, *How Wind Energy Can Help Us Breathe Easier* (Aug. 16, 2022), <https://www.energy.gov/eere/wind/articles/how-wind-energy-can-help-us-breathe-easier> (providing carbon lifecycle comparison of OSW and non-renewable energy sources).



rule because BOEM proposed revisions in the same Section 585.102 addressing how the factors would be implemented.

Finally, the Associations urge BOEM to discuss its approach of rationally balancing the Section 8(p)(4) factors in the preamble to the final rule. BOEM's preamble should articulate that implementing the factors requires striking a rational balance, based on BOEM's expert judgment, and without pre-determined weighting of any single factor (i.e., that no single factor has de jure preeminence).

The Associations have provided suggested changes to Section 585.102 in Attachment 1.

2.3. Tribal lessees

Section 585.107 specifies who may acquire or hold a lease or grant under Part 585, and this section includes a list of the specific entities that may hold a lease or grant. Missing from this list are Tribal governments, and this omission is inequitable as it effectively requires Tribal governments to form corporate entities to be eligible to hold a lease or grant whereas BOEM already recognizes on the list a State or any political subdivision of a state. The Associations suggest that Section 585.107 be revised to explicitly include Tribal nations as one of the types of entities that may be authorized to hold leases and grants.

The Associations have provided suggested revisions to Section 585.107(a) in Attachment 1.

2.4. Credit Mechanisms

The Associations support BOEM using bidding credits in its auctions as a mechanism for achieving public policy goals, including as incentives for economically beneficial activities and mechanisms for mitigating potential adverse, project-specific effects on ocean users, underserved communities, and Tribal Nations. The proposed rule represents a positive step that strikes a reasonable balance between ensuring that BOEM may elect to apply bidding credits for a lease sale and flexibility for BOEM to tailor any such credits to the needs of the affected region and its communities and stakeholders. The Associations have several suggestions for optimizing the proposed rule.

2.4.1. Bidding credit for funds committed to mitigation for lease area users

The Associations recommend that BOEM explicitly add a credit to its non-exclusive list in proposed Section 585.216(b) for funding commitments for affected ocean users of a lease area. The Associations propose regulatory language that largely mirrors the bidding credits that BOEM adopted in its recent California lease sale, although we believe the final rule need not specify the mechanism that BOEM would require for such funding commitments. Nonetheless, a major impetus for the Associations' proposal is that it would like for future BOEM lease sales to routinely incorporate bidding credits for payments into a third-party regional fisheries compensation fund. The Associations are engaged in discussions with states and fisheries groups regarding the establishment of a regional fisheries fund on the



East Coast,⁴⁷ and support BOEM’s recent proposal in its Gulf of Mexico Proposed Sale Notice for a bidding credit that would incentivize the establishment of a similar fund in that region.

The Associations have provided suggested changes to Section 585.216(b) in Attachment 1.

2.4.2. Bidding credit for funds committed to tribal nations and coastal communities

The Associations also recommend that BOEM explicitly add to its non-exclusive list in proposed Section 585.216(b) a credit for funding commitments for affected coastal communities, including Tribal Nations and communities. The Associations propose regulatory language that largely mirrors the bidding credits that BOEM adopted in its recent California lease sale, although the Associations believe the final rule need not specify the mechanism that BOEM would require for such funding commitments. Nonetheless, a major impetus for the Associations’ proposal is that they would like for future BOEM lease sales to routinely incorporate bidding credits for payments into a third-party Tribal Nations fund. The inclusion of a credit for Tribal Nations could support the buildout of socioeconomic benefits including workforce development opportunities. A credit could also assist Tribal Nations in fully participating in the federal permitting process by building internal capacity to understand offshore wind project development, review project documents and engage with leaseholders throughout the lifetime of a project.

The Associations have likewise provided suggested changes to Section 585.216(b) in Attachment 1.

2.4.3. Operations fee credit

The Associations recommend that BOEM make additional amendments to its proposed Section 585.506 to clarify that BOEM also may award credit against a lessee’s operating fee payment as an analogous mechanism for achieving public policy goals. The current regulations already allow operating fee credits by granting BOEM wide latitude to “specify operating fee parameters in the Final Sale Notice.” The Associations propose regulatory text that would make this authority more explicit, and it would make clear that such a credit (a) would happen through a reduction in the fee rate and (b) could be granted in exchange for payments into third party funds. These changes would facilitate the potential use of operating fee credits as another tool to incentivize the same types of funding commitments associated with the Associations’ bidding credit proposal described above.

In order to fully utilize this tool, BOEM should clarify that it has the authority not only to incorporate operating fee credits in future lease sales, but also to amend existing leases to include this mechanism. As with any lease modifications, such amendments should only be allowed with the lessee’s consent. This change would also facilitate the objective of uniformity across leases, which is particularly important when considering operating fee

⁴⁷ See <https://offshorewindpower.org/fisheries-mitigation-project>.



credits that may be used in conjunction with regional compensation funds that cover large geographic areas with multiple offshore wind projects.

The proposed credit against the operating fee is a logical outgrowth of the Mod Rule for several reasons. First, Section 585.506 already broadly affords BOEM discretion to specify specific operating fee parameters in a final sale notice – the proposed modification would only make this authority explicit. Second, a credit against the operating fee is an extension of the larger bidding credit regime that BOEM has made more explicit through revisions to Section 585.216(b), in which BOEM provides a non-exhaustive list of the activities or commitments that may qualify for credits. The Associations’ operating fee proposal applies BOEM’s bid credit concept more broadly.

The Associations have provided suggested changes to Section 585.506 in Attachment 1.

2.4.4. BOEM should not cap bidding credits.

The Associations strongly urge BOEM not to impose upon itself a cap on the value of either bidding or operating fee credits. Such a cap would unduly constrain BOEM’s ability to fully use such credits as a policy tool, and would be at odds with BOEM’s own stated goal of ensuring flexibility in designing lease auctions and structuring its own leases. The Associations also believe the interests of BOEM’s offshore renewable energy program are not served by artificially narrowing the definition of the OCSLA term “fair return,” which does not impose or imply any cap on credits.

2.5. **Competitive Issuance of Leases**

Section 8 of OCSLA (43 U.S.C. § 1337) requires BOEM to issue leases competitively. Where BOEM has determined competition exists for a given area proposed for leasing, it has held an auction to identify the lessee. However, the Associations suggest that a BOEM-run auction is not the only competitive process available that would meet the requirements of OCSLA. The Associations have included proposed regulatory text in Attachment 1 to afford BOEM the *option* of selecting a non-auction approach at some future juncture. For instance, we note that European countries have experimented with innovative approaches to awarding leasing competitively in recent years.⁴⁸ While the Associations do not endorse any particular

⁴⁸ For instance, Scotland’s ScotWind granted options for developing opportunities then leasing the seabed. See <https://www.crown-estatescotland.com/resources/documents/scotwind-briefing-november-2022>. The process was designed to focus on quality and the ability of applicants to deliver projects, rather than being focused solely on option fee. Instead of an auction, applicants apply for an option to develop, Scotland reviews the applications and announces the results. Applications are assessed in line with published criteria. This includes project information such as concept, budget and delivery, and developer information such as capability, experience, and financial resources. The projects offered option agreements are those that best demonstrated their ability to deliver. Among other qualifications, applicants are required to provide a Supply Chain Development Statement (SCDS)



alternative to BOEM’s current auction process at this time, it would be prudent for BOEM to retain the flexibility to test other approaches at a future date.

The Associations have proposed suggested revisions to Section 585.220 in Attachment 1.

2.6. Approving COPs with “modifications” or Adding Terms and Conditions

There is currently inconsistency between Sections 585.102(b) and 585.628(f) of BOEM’s renewable energy regulations. Specifically, Section 585.102(b) provides that “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” (emphasis added). In contrast, Section 585.628(f) states: “. . . BOEM may approve, disapprove, or approve with *modifications* your COP” (emphasis added). Reading both sections, it is unclear whether BOEM may approve a COP with conditions or modify a project’s proposal when granting an approval. The Associations recommend reconciling these two inconsistent sections by revising Section 585.628(f) to state that “BOEM may approve, disapprove, or approve with *conditions* your COP.” This revision would be a logical outgrowth of BOEM’s current proposal, as BOEM has proposed to revise Section 585.628 to reflect its modern practices, remedy inconsistencies, and create a more efficient process for COP review.

The Associations have proposed suggested revisions to Section 585.628 in Attachment 1.

2.7. Scope of COP Requirements

BOEM’s current regulations require that a COP describe all planned support facilities, but the regulations do not clarify what qualifies as a support facility. Moreover, the current regulations and the proposed revisions also are unclear as to whether the COP may provide less detailed information for support facilities primarily regulated by agencies other than BOEM. Where BOEM is not the primary agency for siting or operations of a supporting facility, BOEM should require a lower level of detail than it does for facilities on the OCS. The Associations urge BOEM to provide in the final rule greater clarification on the COP information requirements for non-jurisdictional facilities. This suggested revision is a logical outgrowth of BOEM’s other revisions to Section 585.626, which include a substantial revision and clarification of the information that must be provided in a COP.

Outlook outlining the nature and location of supply chain activity across the four different stages of their project. In another example from the Netherlands, after years of continuous cost reductions, “power companies bidding in an offshore wind auction in the Netherlands will be judged mainly on nonprice criteria, reflecting an ongoing shift in the procurement of renewable energy in Europe.” Moreover, Netherlands “is tendering two new wind farms in the Hollandse Kust West zone, known as sites VI and VII, with planned capacity of at least 700 MW each. It will rank bidders chiefly on their contribution to the ecology of the North Sea and their plans to integrate their project into the Dutch energy system.” See <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/offshore-wind-tenders-sideline-price-criteria-led-by-the-dutch-70347190>.



The Associations have proposed revisions to Section 585.626, found in Attachment 1.

The Associations support BOEM’s focus on environmental protection and safety and on proper environmental and safety planning. BOEM has proposed regulatory language addressing the requirements for oil spill response plans (OSRPs) and safety management systems (SMSs), and the Associations appreciate this effort. However, The Associations recommend that BOEM further refine its proposal (and its explanation in the preamble) to recognize that the requirements for OSRPs and SMSs should be tailored to the phase of development activity and the attendant risks. For example, Section 585.627 should be modified to call for the developmentally appropriate amount of detail in OSRPs and SMSs, with the expectation that fully developed OSRPs and SMSs covering commercial operations will not be required until the FDR/FIR are due. Section 585.810 already recognizes this practicality by requiring only a “detailed description” of an SMS at the time of COP submission, and the Associations have mirrored this requirement in Section 585.627(c) and (d).

The Associations have proposed revisions to Section 585.627, found in Attachment 1.

2.8. Pre-COP Filing Interagency Meeting

BOEM has proposed important and useful updates to Subpart F premised on adding clarity and flexibility concerning the required content of a COP and how BOEM will process the COP. In furtherance of these same goals, and to aid in creating an orderly and efficient process for preparing and review COPs, the Associations recommend that BOEM institute an interagency meeting with the applicant prior to the applicant’s submission of a COP. In the pre-filing meeting, the applicant would present a detailed overview of your project and PDE to BOEM and relevant cooperating agencies, creating a basis for focused discussion on the readiness of both the applicant to submit and the agencies to receive and respond to the COP as required in these regulations. The pre-filing meeting would ideally be preceded by separate formal and informal meetings with BOEM and other agencies, and could serve as a defined point in time to focus on the impending submission, validate feedback from BOEM and its cooperating and consulting agencies, and foster sound planning, including allocation of resources.

In Attachment 1, the Associations have proposed regulatory text for a new Section 585.623.

2.9. COP Completeness and Sufficiency

BOEM’s current regulations and the revisions proposed by the Mod Rule do not provide clarity on what a lessee must include in a COP for BOEM to determine that a COP is complete and sufficient to initiate its review under OCSLA. Following an applicant’s submission of a COP, many months could pass before BOEM contacts the applicant to inform the applicant that information necessary for BOEM to initiate its review under OCSLA is missing from the submission, delaying the COP review process.

The Associations suggest that BOEM revise Sections 585.626 and 585.628 relating to submission of a COP to mirror BOEM’s revisions to Section 585.704 relating to submission of



the FDR/FIR. The final rule should require that a COP include the information necessary for BOEM to understand and define the main aspects of the project proposal, allocate the appropriate amount of agency resources towards the review of the project, and determine a schedule for supplemental submissions of information relevant to BOEM's review under OCSLA. This revision would be a logical outgrowth of BOEM's current proposal, which proposes to amend Section 585.626 to clarify what project information must be included in a COP and require certain geophysical and geotechnical surveys. The Associations' proposed revision would clarify that BOEM does not require all information in Section 585.626(b) to determine that a COP is complete and sufficient to initiate review, and would create a reasonable standard by which BOEM would make such a completeness and sufficiency determination.

Also under this framework, the Associations propose that BOEM would have a set time period (20 days) to conduct a preliminary review of the COP to determine if it contains the information necessary to initiate our technical and environmental reviews. If BOEM determines the COP is not ready to initiate review under OCSLA, it should notify the applicant and state with particularity the deficiency or deficiencies whose cure will allow review to commence. Once BOEM has initiated its technical and environmental reviews, it would provide a matrix of subject matter expert (SME) comments to the lessee within 45 days. Providing such clarity on the timing of initial COP review helps to ensure efficient application of both BOEM's and the applicant's resources and assists other agencies and stakeholders in their planning.

The Associations' proposed revisions would be a logical outgrowth of BOEM's current proposal, which proposes to amend Section 585.626 to clarify what project information must be included in a COP and to require certain geophysical and geotechnical surveys. The Associations' proposed revisions would clarify that BOEM does not require all information in Section 585.626(b) to determine that a COP is complete and sufficient to initiate review, so long as a schedule for supplemental submissions is created and adhered to.

The Associations have proposed suggested revisions to Sections 585.626(c) and 585.628 in Attachment 1.

In addition, BOEM's current regulations and the revisions proposed by the Mod Rule do not clarify which information requirements relate to BOEM's completeness and sufficiency determination under OCSLA, as distinct from BOEM's initiating its review under NEPA. This results in confusion regarding whether the requirements set out in Sections 585.626 and 585.627 of BOEM's regulations fulfill BOEM's obligations under OCSLA or NEPA. There also is a separate process for when projects become "covered projects" under FAST-41, which starts the time for development of a permitting timetable and which cannot be changed by BOEM through OCSLA or NEPA and the information requirements under those two statutes. To provide this clarification, the Associations suggest that BOEM revise Section 585.627 to clarify that the requirements set out by this Section are necessary to ensure BOEM analyzes activities expected to significantly affect the environment, as required by NEPA, including actions that are not within its primary siting authority or jurisdiction. This suggested



revision is a logical outgrowth of BOEM’s other revisions to Section 585.627, which clarify the information needed to assist BOEM in complying with NEPA and is a logical outgrowth of BOEM’s revisions in Section 585.627 where it defined the information requirements for a complete COP.

The Associations have proposed revisions to Section 585.627, found in Attachment 1.

2.10. Submitting Supplemental Data

BOEM’s proposed modifications to Section 585.627 of its regulations seek to acknowledge that certain geotechnical, geophysical, archaeological data is not necessary to initiate BOEM’s review under NEPA, but the agency’s regulations do not explicitly reflect the acceptability of supplemental submissions of data following BOEM’s issuance of an NOI. Making this explicit will provide greater clarity and predictability to the agency and the applicant, and the Associations endorse this clarification.

In the final rule, the Associations recommend that BOEM revise Section 585.628(b) to allow for submissions of supplemental data as may be agreed. Establishing a mechanism for providing supplemental data improves planning and increases efficient use of personnel and resources in conducting an efficient NEPA review process pursuant to 43 C.F.R. § 46.240. This revision would be a logical outgrowth of the Mod Rule, which proposes to revise Sections 585.627 and 585.628 to clarify what project information must be provided to facilitate BOEM’s NEPA analysis and streamline BOEM’s processing of a COP.

The Associations have proposed suggested revisions to Section 585.628 in Attachment 1.

2.11. NEPA Requirements

BOEM proposes to clarify the language of Section 585.627 concerning the information to be submitted alongside the COP, not to satisfy OCSLA but to assist BOEM in complying with other statutory responsibilities, including NEPA. Notably, BOEM also states, “[t]he non-geotechnical survey data included in the COP submittal are more than adequate to assess impacts to the human, marine, and coastal environment, to conduct necessary statutory consultations, and to show technical feasibility of all proposed foundation types.”⁴⁹ The Associations support the proposed clarifications and further recommend revising the regulation to focus the requirement on information regarding the potential for significant impacts. Doing so would be consistent with NEPA and the National Historic Preservation Act, as well as various species-protection statutes that require interagency consultation. Tailoring the information to the statutory need would assist both BOEM and the COP applicant to manage their shared responsibilities for developing data and analyses. Fundamentally, the requirement is not to provide information in a vacuum, but rather for a

⁴⁹ Mod Rule at 5981.



specific purpose: the identification and consideration of significant impacts associated with the federal government's decisions.

In Attachment 1, the Associations have proposed revisions to Section 585.627.

2.12. Deadline to Finalize NEPA Alternatives

BOEM's current regulations do not provide a deadline for the finalization of a range of NEPA alternatives following BOEM's issuance of an NOI. This limits the amount of time BOEM has to socialize the proposed set of alternatives with cooperating agencies prior to issuance of the DEIS. Creating a deadline for finalizing a range of NEPA alternatives would ensure that cooperating agencies have adequate time to consult with BOEM on a defined set of reasonable alternatives, incentivize the early identification of alternatives, and reduce the likelihood of late-breaking proposed alternatives that can seriously delay the COP review process. It would also encourage applicants to provide BOEM with the project-specific information needed to inform BOEM's range of alternatives in a timely manner.

To accomplish this, the Associations recommend that BOEM revise Section 585.628(b) of BOEM's regulations to establish a deadline of six months post-NOI to finalize the range of NEPA alternatives to be considered by cooperating agencies. This revision would be a logical outgrowth of the proposed rule, as BOEM has already proposed to revise Section 585.628(b) to create a more efficient process for reviewing the COP and conducting its NEPA review.

The Associations have proposed suggested revisions to Section 585.628 in Attachment 1.

2.13. Revisions to an Approved COP

BOEM proposed various modifications to Section 585.634 to incorporate the PDE concept and to conform this section with revisions to other sections in Part 585. BOEM noted that by incorporating the PDE, "BOEM believes it can be less prescriptive regarding the threshold that would trigger a COP revision and can allow that threshold to be proportionate to the magnitude of the proposed change."⁵⁰ BOEM also sought comments on what threshold should trigger COP revision regarding changes in position or layout of bottom disturbances.⁵¹

The Associations support BOEM's proposed revision to Section 585.634 to enumerate the circumstances in which BOEM may require a revision to an approved COP. The common and essential thread among the triggers for revision is that the lessee's activities or facilities are not already encompassed by BOEM's authorization (including structural failure of a facility, which is also not authorized). The justification is straightforward: OCSLA extends BOEM's leasing authority to "all installations and other devices permanently or temporarily attached to the seabed" for purposes allowed under the act.⁵² Thus, where jurisdictional facilities and

⁵⁰ Mod Rule at 6009.

⁵¹ *Id.*

⁵² 43 U.S.C. 1333(a)(1).



related activities are not authorized in the COP, a revision to the COP would generally be necessary. In all events, a COP revision requires agreement between the lessor and lessee(s).

By the same token, a COP revision should not be required where the COP *does* encompass the jurisdictional facilities and related activities, even if BOEM or others later believe additional COP conditions are desirable. The reliability of the COP approval would be severely undermined if the COP were subject to revision for matters of hindsight. The COP is prepared and reviewed extensively—building upon thousands of pages of analysis and years of effort, including extensive public engagement and scrutiny—to ensure that an approval, if granted, is appropriate and well supported in the record. For a commercial lease being developed as a utility-scale project, the COP approval is the basis for billions of dollars of investments whose return on investment is recovered over decades. Moreover, the development authorized by the COP fulfills important goals of many states and the federal government relating to sustainable development, renewable power, and climate change. Accordingly, the terms of a COP should not be unsettled after it is issued, save for the most urgent and significant issues, notably national security or defense.

The Associations recognize, and support, the lease requirement that a lessee must prevent the effects of its authorized actions from “caus[ing] any undue harm or damage to the environment.”⁵³ Where new data and analysis clearly demonstrate that authorized activities are creating “a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), or to the marine, coastal, or human environment,”⁵⁴ additional avoidance, minimization, or mitigation measures may be appropriate. Such circumstances of high risk should rarely arise, if ever. If they do, and the record basis is clear about both the effect and the cause, then before BOEM seeks a suspension or cancellation, the lessee(s) should be afforded the opportunity to propose practicable, economically reasonable avoidance, minimization, or mitigation measures to address the threat in balance with the other factors enumerated by Congress in OCSLA 8(p)(4) and in light of investments already made or committed.

The Associations also support the proportionality concept articulated by BOEM as a trigger for COP revisions as it is consistent with BOEM goals set forth in the Mod Rule of (1) cost savings (e.g., it would require fewer resources devoted to revising the COP for minor changes); and (2) flexibility.

The Associations have proposed a suggested “materiality” modification in Section 585.634 in Attachment 1.

⁵³ See, e.g., Lease OCS-P 0561, Section 7.

⁵⁴ 43 U.S.C. § 1334(a).



2.14. COPs for Multiple or Phased Projects

In the proposed Mod Rule, BOEM has sought to create additional clarity and flexibility by updating provisions concerning the required content of a COP and how the COP will be processed. A logical outgrowth of this purpose would be to clarify (among the same regulatory provisions) how BOEM may engage the circumstance of the phased development of a lease. BOEM's existing regulations permit development of a lease in phases.⁵⁵ Maintaining regulatory flexibility concerning phased development is a critical element in building a successful offshore wind program, as it allows developers to modify the schedule of their development of large leases according to market conditions. Phased development can take various shapes, including a lease-wide COP that includes a phased construction schedule, a lease-wide COP that includes a later phase of development for which planning is not as mature as an earlier phase, and the separate development of different lease parcels after segregation of a lease that has been the subject of a single lease-wide COP.

To account for these and other circumstances, it is helpful to reflect in the regulations that BOEM may approve the mature phases of development set forth in a COP and conditionally approve subsequent phases of development in the COP, based on further refinement of project details (and related reviews, if any are required). Likewise, where a lease will be segregated after a lease-wide COP has been submitted, the regulations should reflect that BOEM may bifurcate its further review of the COP to align its review with the segregation.

In Attachment 1, the Associations have proposed revisions to Section 585.629 to specify the actions that BOEM may take in responding to a proposed phased development.

2.15. Qualification Updates

For each auction, BOEM includes in the PSN an initial list of entities qualified to participate in the anticipated auction, and it publishes the final list in the FSN. While the regulations establish the requirements for legal qualification pursuant to Section 585.107 and for technical and financial qualification pursuant to Section 585.108, BOEM's current regulations and the Mod Rule are silent about the appropriate process to update qualification materials during BOEM's review or after BOEM's confirmation of qualification by issuance of a qualification card.⁵⁶ While the regulations establish the requirements for legal qualification pursuant to Section 585.107 and for technical and financial qualification pursuant to Section 585.108, BOEM's current regulations and the Mod Rule are silent about the appropriate process to update qualification materials during BOEM's review or after BOEM's confirmation of qualification by issuance of a qualification card. The final Mod Rule should address this

⁵⁵ 30 C.F.R. § 585.628.

⁵⁶ See, e.g., Bureau of Ocean Energy Management, Pacific Wind Lease Sale 1 (PACW-1) for Commercial Leasing for Wind Power on the Outer Continental Shelf in California-Final Sale Notice, 87 Fed. Reg. 64093, 64094 (Oct. 21, 2022) ("CA FSN"); Bureau of Ocean Energy Management, Pacific Wind Lease Sale 1 (PACW-1) for Commercial Leasing for Wind Power on the Outer Continental Shelf in California—Proposed Sale Notice, 87 Fed. Reg. 32443, 32444 (May 31, 2022) ("CA PSN"); Mod Rule at 5996.



point as a logical outgrowth of BOEM’s significant proposed revisions to Section 585.222, and because doing so would clarify an area of uncertainty.

The changes that should merit a notice to BOEM are only those that alter the corporate form or identity of the bidder (or its members, if it is a partnership or limited liability company), or that materially reduce the technical or financial capabilities of the bidder. Such changes are pertinent to BOEM’s established criteria for qualification.

Accordingly, the Associations request that BOEM include provisions in Section 585.222 (What auction rules must bidders follow?) describing when an obligation to update BOEM arises and describing how and when an eligible bidder must notify BOEM of relevant changes. Addressing this point in simple terms would resolve uncertainty over whether and when such updates must be provided.

The Associations have proposed suggested revisions to Section 585.222 in Attachment 1.

2.16. Affiliation, Joint Bidding, and Joint Ownership

In recent lease auctions, BOEM has imposed restrictions on the number of leases an eligible bidder may win and prohibited affiliated eligible entities from competing against each other in the auction. For instance, in the December 6, 2022 auction for areas offshore California, BOEM allowed each eligible bidder to win only one of the five lease areas auctioned and prohibited affiliated eligible bidders from competing against each other.⁵⁷ These restrictions have elevated the importance of BOEM’s definition of “affiliate.”

BOEM’s affiliate definition has consistently focused on a control test, where an affiliate relationship is created where two entities have common ownership. However, BOEM’s definition has fluctuated from auction to auction, and BOEM’s most recent Proposed Sale Notice included a further elaboration on the definition.⁵⁸ The Associations suggest that BOEM consider adding an “affiliate” definition to its regulations, while still allowing some auction-by-auction flexibility. The Associations also suggest that BOEM’s perceived concerns about alleged “circumvent[ion]”⁵⁹ of the one-lease-per-bidder rule are misplaced, and it offers specific suggestions to Part 585 to address this and other concerns. Specifically, the Associations suggest that Part 585 state that:

- A person may not participate in a lease sale if an affiliate is participating in the same sale;
- “Affiliate” is defined to be an entity that controls, is controlled by, or is under common control with another bidding entity;

⁵⁷ CA FSN at 32451.

⁵⁸ Bureau of Ocean Energy Management, Proposed Sale Notice for Commercial Leasing for Wind Power Development on the Outer Continental Shelf in the Gulf of Mexico (GOMW-1), 88 Fed. Reg. 11939, 11946 (February 24, 2023) (“Gulf PSN”).

⁵⁹ *Id.*



- An agreement between two persons for future shared investment in a lease to be sold by BOEM does not itself create an affiliation but must be disclosed to BOEM (subject to appropriate business confidentiality protections) by a date specified in the final sale notice;
- Where a final sale notice imposes a one-lease-per-bidder rule (or similar restriction), BOEM may exclude from the auction any person who has entered into a joint bidding agreement(s) or future share investment agreement(s) that would cause the person to be affiliated with the initial owner(s) of more than the specified number of leases offered for sale.

The Associations have proposed specific provisions in Sections 585.222 in Attachment 1.

The Associations also suggest that BOEM modify its regulations to specifically allow for joint bidding in lease sales. Acquiring leases and developing offshore wind projects requires significant sums of capital deployed over a long-time horizon while being subject to numerous development risks. These large-scale projects frequently require joint development to share project risks. Joint bidding would facilitate the sharing of this development risk through a transparent and simple mechanism. The Associations suggest that BOEM add provisions to Part 585 that allow an eligible bidder to participate on its behalf and that of one or more other eligible bidders, so long as BOEM is notified in writing before the lease sale by a date specified in the final sale notice and the other bidders do not otherwise participate in the lease sale.

The Associations have proposed specific text in Section 585.222 in Attachment 1.

As a corollary to joint bidding and in response to the need to develop jointly large-scale offshore wind projects, the Associations also suggest that BOEM clearly provide for joint ownership of leases in its regulations.

The Associations have proposed specific text in Section 585.107 in Attachment 1.

These proposed changes are logical outgrowths of BOEM's proposed revisions to Section 585.222, which seek to clarify who may participate in a lease sale, including via a representative acting on another's behalf, and how communications among eligible bidders are regulated in relation to the auction. These matters necessarily affect important commercial arrangements that need to be acknowledged in the regulation, as the Associations propose.

2.17. Consideration of Offshore Wind Goals During Pre-Leasing Process

In the process to identify areas of renewable energy leasing, BOEM does not explicitly include any goals relating to the energy potential of those areas and therefore does not explicitly consider the current and future renewable energy goals of the states proximate to the offshore areas under consideration.



The Associations suggest that BOEM add a new factor in the list set forth in Section 585.211(a) to indicate that the Call might include an indicative power (MW) capacity of the given area(s) and that such MW goal should be informed by federal, state, and local clean energy goals, supply chain considerations, and commercial interest.

In addition, BOEM's current area identification process does not adequately reflect commercial viability and should better reflect prevention of economic waste. BOEM should consider adequate acreage and water depth needed to achieve utility scale energy capacity that makes a project commercially viable. The regulatory text should be explicit about considering commercial viability and prevention of waste during the area identification process. Further, the area identification process should consider the environmental benefits provided by offshore wind development, clean energy goals, supply chain considerations, and commercial interest, rather than considering only negative environmental impacts. Finally, BOEM should "front load" its deconfliction efforts and consult with all relevant agencies to reduce uncertainty and the possibility of No-Surface-Occupancy restrictions or similar restrictions in the post-leasing period.

The Associations have proposed suggested revisions to Sections 585.211 and 585.212 in Attachment 1.

2.18. Departures

As noted in the Mod Rule, "BOEM has discretion to issue departures from its regulations" and may issue departures if they are (1) documented in writing; (2) are consistent with the requirements of OCSLA; (3) protect the environment, public health, and safety; (4) protect the rights of third parties; and (5) are necessary for facilities activities on a lease or grant, conserve natural resources, or protect life, property, the environment, or archaeological resources.⁶⁰ BOEM also explained that the departure regime was established "to allow BOEM to maintain programmatic flexibility while adapting to a new and changing industry by approving departures from regulatory requirements under certain limited circumstances."⁶¹

BOEM proposes in the Mod Rule to clarify that under Section 585.103 it may grant departures when the applicable provisions, as applied to a specific circumstance, "are impractical or unduly burdensome and the departure is necessary to achieve the intended objectives of the renewable energy program."⁶² BOEM explained this change was needed to maintain flexibility to adapt the regulations to the unique circumstances of this new and evolving industry.

The Associations support this proposed change because it provides the flexibility that BOEM seeks and the industry needs. Such a provision allows BOEM to recognize that specific facts

⁶⁰ Mod Rule at 5972.

⁶¹ *Id.* at 5991.

⁶² *Id.* at 6022.



and circumstances may result in an unreasonable outcome that retards the fulfillment of the renewable energy program and OCSLA's goals of expeditious development.

The Associations also request that BOEM establish a nominal timeline by which it will act on departure requests. Lessees make departure requests in specific circumstances, and timely review and action by BOEM on these requests are important to allow continued development of a project. For instance, complex arrangements are made to prepare and conduct an in-situ survey campaign, so a timely and predictable decision on a departure request is critical for efficient planning and staying on schedule. Further, understanding BOEM's timeline for responding to departure requests allows lessees to plan better for the timely submission of requests, reducing the need for expedited or rushed requests.

Adding a timeline for action on departure requests is a logical outgrowth of the Mod Rule as it aligns with BOEM's proposed other revisions to Section 585.103 and because the proposed timeline subsection would add clarity to existing departure procedures.

The Associations have proposed suggested revisions to Section 585.103 in Attachment 1.

2.19. Project Easements

In the Mod Rule, BOEM proposes several changes to the project easement requirements. First, as proposed, Section 585.628(g) would allow greater flexibility in defining the width of a project easement over off-lease areas that contain the sites on which cable, pipeline, or associated facilities are located. BOEM correctly explains that at the COP stage when the easement is issued, flexibility is needed so that detailed information that is developed after COP approval (e.g., UXO surveys) can be accommodated. Doing so supports the renewable energy program by allowing easements "of sufficient off-lease area to accommodate potential changes at the design and installation phases of the project for locating cables, pipelines, and other appurtenances necessary for the project."⁶³

The Associations support BOEM's revisions to Section 585.626(g). First, they are practical and efficient. Eliminating the 200-ft width gives BOEM and lessees more flexibility to route export cables to avoid subsea hazards and obstacles. Second, continuing to apply a default width by regulation could result in time-consuming amendments to the project easements and/or departure requests to allow for proper cable installation. This sows confusion and wastes time after a project has already been approved.

In addition to supporting BOEM's proposed revisions in Section 585.626(g), the Associations also ask BOEM to confirm explicitly that project easements are available for a broad range of facilities and activities necessary to support the full enjoyment of the lease. The definition of "project easement" currently refers only to installation, whereas maintenance and repair activities in relation to installed facilities are also important and should be covered by the easement to the extent the activities require being attached to the OCS. Similarly, the

⁶³ Mod Rule at 6009.



definition refers only to “gathering, transmission, and distribution cables, pipelines, and appurtenances,” whereas easements also cover inter-array cables and any approved facility (e.g., a wind turbine generator) that is located within the lease area but whose installation, maintenance or repair requires activity outside the lease area (e.g., from a temporarily fixed maintenance vessel).

In Section 585.628(g)(3)(ii), the Associations also propose to modify “interfere” with “unreasonably” so as to provide flexibility to BOEM to grant projects easements and mirror similar language in Section 585.628(g)(3)(i). In addition, the Associations suggest that the interference not unreasonably impede existing *and proposed* operations because BOEM should consider not only the existing uses but the planned uses as well.

The Associations note that the Section 585.628(g) presently in effect already addresses project easements in the context of power stations, pumping stations, and other “accessory facilities” beyond cables and pipelines, so the intention for project easements to cover myriad facilities is longstanding. Clarifying the definition on this point serves to alleviate potential misunderstanding and aids sound project planning, and it is a logical outgrowth of the proposed Mod Rule’s changes to Section 585.628(g), which are focused on clarity and flexibility to ensure lessees are able to achieve full enjoyment of the lease.

The Associations have proposed suggested revisions to Section 585.113 (Definitions) and Section 585.628(g) in Attachment 1.

The Associations also provide comments in Section 2.2.1.4 of these comments on the proposed language in Section 585.702(c) allowing lessees to request an easement as part of a Facility Installation Report.

2.20. Lease Assignments

In the Mod Rule, BOEM explained that lessees and grant holders may assign all or part of their lease or grant interests using procedures set forth in Part 585.⁶⁴ BOEM proposed to modify Section 585.408 by eliminating information requirements that are already described in BOEM’s standard forms used to request an assignment. BOEM also included revisions to clarify that subsection (e) refers to business mergers and not lease consolidations.⁶⁵ Moreover, BOEM also included new provisions in Section 585.410 describing the process to “segregate” a portion of an existing lease.

The Associations suggest that BOEM should provide additional flexibility—one of the key goals of the Mod Rule—by allowing a lessee to assign all or a part of the lease area to *one or more* entities in the same assignment application. Providing this flexibility through a single

⁶⁴ Mod Rule at 5973.

⁶⁵ *Id.* at 6000.



assignment application would avoid sequential assignments and would work in tandem with the Associations' proposal herein to explicitly allow joint ownership of leases.

The Associations also suggest that the assignment provisions be modified to provide BOEM flexibility to ensure the correct terms and conditions of a given lease follow the relevant lease areas assigned, if applicable. For instance, a lease might include stipulations about layout alignment or setbacks along a boundary of a lease area that abuts another lease area. If the lessee assigned or segregated a portion of the lease area that did *not* include the relevant boundary, then it would not make sense for boundary/alignment stipulations to apply to the assignee and create a new boundary/alignment obligation *internal* to the originally defined lease area, which would not be necessary or appropriate. Similarly, the Associations recommend tailoring the financial obligations of the assignee(s) (and the remaining obligations of the assignor(s)) to track the scope of the interests being transferred. BOEM, assignors, and assignees would benefit from the regulatory flexibility to ensure that the appropriate terms and conditions or stipulations remain attached to the correct portions of the lease area, where relevant.

In Section 585.235, BOEM proposed new periods (e.g., Preliminary Period, COP Review Period, Design and Construction Period, and Operations Period). BOEM proposed to add a new paragraph (d) that would allow the assignee to propose new lease periods in the assignment application. The Associations recommend that Section 585.408 echo this concept for consistency.

Finally, the Associations propose a new subsection (f) in Section 585.408 describing BOEM's cooperation for the transfer of relevant permits or authorizations that may be applicable to the assigned or segregated lease area because such assignments could occur after the issuance of such permits or authorizations and would be needed for the assignee's project development.

The Associations' proposed revisions are a logical outgrowth of the Mod Rule as BOEM is proposing entirely new provisions on lease segregation and is modifying the lease assignment provisions, which is the same section in which the Associations propose modifications.

The Associations have proposed textual revisions to BOEM's proposed language in Section 408 in Attachment 1.

2.21. CVA, FDR, and FIR Revisions

The Associations strongly support many aspects of BOEM and BSEE's proposed rule changes relating to the FDR, FIR, and CVA that will make the engineering phase of the regulatory process more efficient and flexible while not sacrificing safety and technical rigor. In general, we approve of the following changes and rationales offered by BOEM and BSEE:



- Separating the CVA nomination submittal/approval process from the COP submittal/approval process;
- Allowing the FDR and FIR to be submitted piecemeal;
- Removing the prohibition on “fabrication” prior to non-objection to the FDR and FIR;
- Defining “fabrication” to include only the fabrication and assembly of custom components and exclude off-the-shelf components;
- Flexibility in meeting quality system requirements;
- Adding flexibility to the COP requirement for information on project verification; and
- Adding additional clarity and certainty to the content of the safety management system.

The Associations also offer the comments on the following topics.

2.21.1. Timing of fabrication and installation

As BOEM and BSEE have recognized,⁶⁶ a major flaw in BOEM's application of the existing regulation was the restriction on the timing of fabrication activities until after non-objection to the FDR and FIR. This restriction not only runs counter to the infrastructure development process (in which procurement and manufacturing activities routinely happen while the regulatory review is ongoing), but is also likely outside of BOEM and BSEE's jurisdiction. The Associations therefore appreciate BOEM's and BSEE's efforts provide more flexibility in the proposed rule than the current regulations afford. However, Section 585.700(e) of the proposed rule errs in attempting to draw distinctions among procurement and fabrication based on commercial availability and type certification. This approach unnecessarily complicates the regulatory process and creates potential confusion regarding which activities are (and are not) permitted prior to FDR and FIR non-objection. The Associations propose that BSEE simplify its approach and state that the regulations impose no restrictions on fabrication or procurement that does not take place on the OCS, so long as such activities are verified by the CVA under Section 585.705.

The Associations have proposed revisions to Section 585.700(e) in Attachment 1.

2.21.2. Commercial operations and operations period

Both the current regulations and the proposed rule impose unnecessary limitations on the generation of electricity during wind farm construction. Wind turbines typically become operational as they are built, and they can generate electricity for the grid while the remainder of the wind farm is being constructed. This activity is standard practice in U.S. onshore wind, and it should be incentivized under BSEE's regulations because it makes use

⁶⁶ Mod Rule at 6010.



of clean, sustainably generated power. Conversely, preventing early generation of electricity can cause unnecessary wear and tear on offshore wind turbines due to loss of aerodynamic damping of the support structures typically provided by the operating rotor.

The Associations propose to solve this problem by modifying the definition of “commercial operations” so that the phrase applies to any commercial generation of electricity from a generating facility (e.g., a turbine) once it begins generating electricity supplied to the grid.

The Associations also propose separating the concepts of “commercial operations” and the “operations period” introduced in Section 585.235 by establishing that the operations period of a lease not start until: (a) the final fully constructed project for production of electricity or other energy product has completed installation, and (b) BSEE has not objected to the Project Verification Report (PVR). This would be consistent with the practice in onshore renewables of deeming facilities to be in operations once the final regulatory gate is crossed prior to construction, so as to avoid delay in bringing power into the grid. The Associations also suggest a provision allowing BOEM to determine that the operations period has started if it finds that the submittal of the PVR has been unduly delayed, so as to ensure a lessee does not artificially extend the operations period by leaving a small part of its project uninstalled.

To make the final regulations consistent in this regard, the switch from rent to operating fees should not occur until the beginning of the operations period of the lease. However, as portions of the project may generate energy during the design and construction phase, the Associations suggest that operating fees accrue during this period for such energy, as measured by deliveries at the point of interconnection. The Associations also suggests a revision to the COP requirements in Section 585.626(a)(19) to reflect that “commencement of commercial operations” would no longer be the final milestone, but instead would be followed by other significant milestones.

It is important to note that the Associations’ foregoing recommended changes all work in tandem, and should not be adopted piecemeal.

In addition, the Associations propose more flexibility in the length of the operations period, as well as extending the default period to 35 years. Although the specific data are protected confidential business information, the Associations and their members have seen a long-term trend toward extended engineered lifespans for wind turbine generators and other components, as well as improvements in operations and maintenance. These trends are anticipated to continue into the future, which counsels in favor of allowing BOEM to extend the operations term in the lease or at COP approval—in addition to later in the operations period at the request of the lessee. The Associations appreciate BOEM’s proposal to convert the existing 25-year operations period that commences at COP approval into a 30-year operations period commencing at the commercial operations date.⁶⁷ However, for the

⁶⁷ Mod Rule at 5991.



reasons stated above, the Associations remain concerned that even a 30-year operations period may be too short.

Accordingly, to account for the likelihood of further technological advancement and increasing facility lifespans, BOEM should revise Sections 585.235(a-b) to create a 35-year default operations period, with the express option to extend the operations period by five years built into the terms of the lease.

In sum, the Associations have proposed revisions to the regulatory text in Attachment 1, as follows:

- Amend the definition of “commercial operations” in Section 585.112 to mean generation of electricity or other energy product for commercial use, sale, or distribution on a commercial lease;
- Amend Section 585.235(a)(4) and (b) to revise the definition of “operations period”;
- Amend Section 585.503(b) to modify the operating fee requirement;
- Amend Sections 585.626(a)(5) and (a)(19) to reflect the revised commercial operations requirements; and
- Amend proposed Section 585.637 to state that each facility is deemed to be in commercial operations immediately upon commencement of first electricity or other energy product production, but that BSEE may rescind this designation for good cause based on Project Verification Report (PVR).

2.21.3. FDR/FIR completeness review period

The Associations believe it is unnecessary to add a 20-day completeness review for the FDR, FIR, and PVR because BSEE already reserves the right to pause the review period if a report is incomplete. We therefore recommend striking Section 585.704. Alternatively, the 20 days should be part of the larger time period and not additive, in the event BOEM elects to keep a completeness review.

In addition, we recommend amending Section 585.700(c) to more explicitly incentivize submittal for early review prior to COP approval. This early review of the FDR and FIR for completeness would create efficiencies in the BSEE engineering review and facilitate BSEE’s ability to complete its review within the 60-day period. This is critical for facilitating development post-COP approval, as every day counts where developers are rapidly mobilizing toward the commencement of offshore construction while making major capital expenditures. This also represents an improvement over the status quo, where lessees are allowed to submit FDRs and FIRs early, but the documents are often not reviewed until following COP approval.

The Associations have proposed revisions to Section 585.700(c) in Attachment 1.



2.21.4. FDR/FIR contents

The Associations have several suggestions for clarifying or simplifying regulations setting forth the contents of the FDR and FIR:

- *Catch-All Provisions* – The Associations recommend deleting the “catch-all” provisions in the list of FDR/FIR content requirements (Sections 585.701(a)(14) and 585.702(a)(10)). These categories are not clear requirements that can be met with submission of the FDR or FIR in compliance with this regulation. The FDR/FIR formal review process already functions as a *de facto* catch-all by allowing commenting and requesting of additional information that is not supplied with the formal submission, but with guardrails to prevent regulatory abuse. These suggested changes are reflected in Attachment 1.
- *Design Standards* – The required materials to be submitted under *Design Standards and Fabrication Information* in these parts can be interpreted as a compilation of *all* standards used. It would be a significant burden to provide this compilation, as many standards make internal references to other lower-tier standards, and so forth, resulting in hundreds of individual standards. The Associations also note that actual standards are lengthy documents and are often available only on restricted licenses. The Associations therefore recommend that Sections 585.701(a)(12) and 585.702(a)(3) require only a “listing” of the “most relevant” standards used. The Associations have proposed revisions in Sections 585.701(a)(12) and 585.702(a)(3), in Attachment 1.
- *Project Easements* – It is unclear why BSEE indicates that requests for project easements would be submitted as part of the FIR (585.702(c)). Project easements are granted as part of COP approval pursuant to 585.628(g), so there would be no need to request one at the FIR phase. The Associations recommend striking this provision, or seeking clarity on the intent of this proposed revision. The Associations have proposed revisions in Section 585.702(c) in Attachment 1.

2.21.5. FDR/FIR Modifications

It is in the nature of major infrastructure projects for minor changes to be made to designs and installation procedures in order to respond to unanticipated on-the-ground conditions. At this phase of development, lessees are sometimes obligated to spend valuable time updating their FDRs and FIRs and notifying BSEE for de minimis changes to the project design or installation procedures. To ensure that lessees and regulators are able to focus their resources on only material changes, we recommend adding the term “material” to modify certain CVA requirements in 585.708(b).

The Associations also recommend that Section 585.703 be revised to clarify that “major repairs and major modifications” refer only to project modifications and repairs performed post-installation. The Associations have proposed revisions to Section 585.703(a) to clarify this.



2.21.6. Streamlining CVA process

It is both standard practice and encouraged by BOEM and BSEE⁶⁸ to seek type certification or type approval of components which are serial produced and intended for use at multiple projects. This primarily involves the Rotor-Nacelle Assembly (RNA) and tower internals of offshore wind turbines. By defining a range of environmental conditions within the type certificate the burden placed upon the CVA to evaluate the suitability of the component for a specific project is substantially reduced. For these components, the CVA is responsible for verifying that the type certificate is appropriate for the project specific site conditions. should be revised to reflect this existing practice.

The Associations have proposed changes to Section 585.705(c)(1) in Attachment 1.

The Associations also propose that BOEM revise Section 585.710(c) to contemplate “proper or type approved “procedures”. If already type approved, then the procedures in use should already be deemed “*proper*.”

2.21.7. CVA scope

The Associations recommend that CVA approval, along with the Statement of Qualifications and Scope of Work be considered complete once approval is received by BOEM (Section 585.706(e)). Future modifications shall only be required in the event of major changes to the verification strategy or nominated CVA and shall not be subject to further approval cycles.

The Associations recommend avoiding regulatory text that states or implies that the CVA needs to be present for every aspect of fabrication and installation. Rather, the Associations suggest modifying text to ensure the CVA’s duty is fulfilled through periodic inspections. The offshore wind industry differs from offshore oil and gas in that WTGs are serial produced (as opposed to a one-off installation). Offshore wind projects typically involve repetition of similar or identical activities, such as wind turbine installation and commissioning. It is therefore not necessary for a CVA to observe every single install.

The Associations also note that new CVA nomination requirements have accrued over time and recommends regulatory text to provide more certainty in the CVA nomination process. The objective here is to encourage IECRE-OD-502 (or other project verification schemes) to better define the expectations for the scope of work up front, understanding that BOEM/BSEE are unlikely to refer to IECRE-OD-502 explicitly in the reg text. The Associations’ proposed language for Section 585.706(b)(7) is meant to mirror Section 585.701(d).

⁶⁸ See BOEM Information Guidelines for a Renewable Energy Construction and Operations Plan (COP) Version 4.0 (May 27, 2020), available at <https://www.boem.gov/COP-Guidelines/>.



The Associations have proposed changes to Sections 585.706(b) and 585.708 in Attachment 1.

2.21.8. Project Verification Report

A new report, the Project Verification Report (PVR), is introduced in Sections 585.704 and 585.708(a)(5), and the Associations seek clarification in the final rule regarding what must be included in the report. Similar to the requirements for the FDR (Section 585.701) and FIR (Section 585.702), this could be accomplished by creating a new section setting forth the contents of the PVR and clarifying that submittal of the PVR is a CVA obligation. There are also inconsistencies in how the PVR is referenced in the proposed rule, discussed below.

The Associations also suggest that the CVA will also provide a Project Certification Close-out Report (PCCR) which includes an account of the verification of fabrication, transportation, installation, and commissioning surveillance to be delivered to DOI within 18 months of commercial operations, in accordance with Section 585.712.

The Associations have proposed changes to Section 585.708 and proposed a new section entitled “What must the CVA include in my Project Verification Report?” in Attachment 1.

2.21.9. Conflicting requirements for submitting Project Verification Report

The Mod Rule contains two instances defining when a lessee may commence commercial operations. First, Section 585.637(a)(1) states that the lessee may commence commercial operations within 30 calendar days after the PVR “is deemed submitted by BOEM.” Section 585.704(a) states that the FDR, FIR, or PVR is “deemed submitted” within 20 calendar days after receipt, provided that the submission is sufficiently complete and accurate to fulfil the applicable requirements of §§ 585.701, 585.702, or 585.712. Second, Section 585.708(a)(5)(ii) states the lessee may commence commercial operations 30 days after BOEM receives the [project] verification report.” The two separately stated requirements to commence commercial operations are in conflict as Section 585.637 requires “deemed” submission (as defined in Section 585.704), whereas Section 585.798 requires BOEM to just have “received” the PVR. The Associations has remedied this conflict with other proposed revisions to Section 585.635(a), but nonetheless suggest striking Section 708(a)(5)(ii) so that BOEM’s regulations do not contain two separate provisions determining when commercial operations may commence.

The Associations have proposed suggested revisions to this Section 585.708(a)(5) in Attachment 1.

2.21.10. “As-Built” requirements

The two approved COPs include as-builts conditions, specifically (1) South Fork Wind 01 COP Approval Condition Section 2.16, and (2) Vineyard Wind COP Approval Condition Section 2.13. These conditions require the submission of “as-built” drawings and other documents after the completion of construction. To provide regulatory certainty for future projects, the



Associations recommend that the final rule include requirements for submittal of these materials as regulations.

The Associations have proposed a new section entitled “What must I include in my as-built submissions?” in Attachment 1.

2.21.11. Met tower engineering definition

The Associations recommend deleting the definition of “engineered foundation” from Section 585.600(a)(1) to avoid confusion, given that it only applies to met towers and not other structures. Section 585.600(a)(1) could then be modified as proposed in Attachment 1.

2.22. Safety Revisions

2.22.1. Critical Safety Systems

The Associations are concerned that the proposed definition of “critical safety system” is too vague and subject to overbroad application. The Associations suggest that the definition be made more specific and recommend other changes to the proposed rule that would align regulations relating to critical safety systems with industry practices and create efficiencies. The Associations also note that detailed critical safety systems procedures may not yet be available at the time the FIRs are submitted. We therefore recommend that the FIR requirements be scaled back to submittal of a “commissioning plan” for critical safety systems. This change would not compromise project safety, as all such procedures will be reviewed by the CVA before they are executed as part of the CVA’s commissioning surveillance duties. The Associations have proposed changes to Sections 585.112, 585.702(a)(8), and 705(b)(2) in Attachment 1. For the sake of clarity, it would be helpful for the final rule to formalize Critical Safety Systems Commissioning Records (CSSCR) to be consistently used in the regulations, as this term refers to a set of documents that are required by Sections 585.637(a)(2) and 585.708(a)(6), verified per Section 585.710, and maintained per Section 585.714. The Associations have proposed changes to 585.701(a)(13) in Attachment 1.

2.22.2. Safety Management System

The Associations propose several changes to the SMS regulations. First, the Associations propose BOEM revise Section 585.810 to remove 585.810(b) entirely. Procedures for remote monitoring of turbines, as well as procedures for turbine shutdown, are not included in a safety management system. These items are described and included as operating procedures. The Associations also propose to revise Section 585.810(e) to remove the requirement that a lessee submit plans and schedules for the SMS testing of “remote shutdown capabilities” as these are generally considered to be operating procedures, rather than part of the SMS. Moreover, the Associations recommend SMS testing requirements be focused on operator responsiveness in relation to safety. The Associations have proposed conforming changes to Section 585.810 in Attachment 1.



2.22.3. Self-Inspections

The Associations believe there should be an option for lessees to provide justification for a period of self-inspection greater than once a year. For example, if a facility and its safety equipment is designed for bi-annual (every two years) inspections, making additional annual self-inspections only for regulatory purposes would be excessive. We also note that for offshore wind turbines, self-inspections are expected to be bundled with scheduled maintenance visits. These visits can include bolt inspections, filter replacements, grease exchanges, and other regular maintenance activity. If the wind turbine is designed such that scheduled maintenance only needs to be performed bi-annually, a visit to the wind turbine solely for the purpose of statutory self-inspections is both a financial and logistics burden on the project. These visits would also involve exposing the workforce to unnecessary health and safety risk.

The Associations have proposed changes to Section 585.824 in Attachment 1.

3. RESPONSES TO BOEM'S SOLICITATIONS FOR COMMENT

In various sections throughout the proposed rule, BOEM requested comments in response to specific topics. The Associations provide the following responses to these topic areas.

3.1. Alternatives to Rulemaking

In the context of the lease issuance procedures, BOEM explained that the lease issuance process requires added flexibility, transparency, and clarity.⁶⁹ In furtherance of these goals, BOEM solicited comments on the use of bidding credits and multiple factor auctions as a means of advancing policy goals and whether there are alternative means of achieving these goals, such as through lease stipulations. The Associations discuss this issue in Section 1.2 above.

3.2. Permit for Survey Activities

BOEM has solicited comments about whether to institute a new regulatory requirement under OCSLA to obtain a permit for geological and geophysical surveys to support renewable energy activities on the OCS.⁷⁰ BOEM has not proposed such a permit as part of the Modernization Rule, so the Associations' comments at this point are limited.

Overall, the Associations do not see evidence that survey activities are causing significant, unexpected, or overlooked impacts on the OCS, associated flora and fauna, tribal activities, fishing activities, or fisheries equipment. For this reason alone, it is not apparent why a survey permit is needed. To date, surveys in support of renewable energy activities have

⁶⁹ Mod Rule at 5985.

⁷⁰ Mod Rule at 5982



proceeded with few if any issues under OCSLA, and of course they must be conducted in compliance with all other applicable laws governing, for example, harm to marine species.

Existing measures help to ensure that geological and geophysical surveys continue to be conducted effectively and with a minimum of impact. Prior to the lease auction, BOEM conducts an environmental assessment under NEPA to evaluate the potential impacts of geological and geophysical surveys, among other activities. Since inception of the offshore wind regulations, these studies have always confirmed that impacts from surveying would not be significant if conducted properly. To that end, BOEM's leases include specific provisions governing surveys, including for example:⁷¹

- Required submission to BOEM, at least 90 days in advance of conducting survey activities, of a detailed plan that includes survey areas, survey equipment, survey methods, timelines, and other details [Section 2.1];
- Required demonstration of a survey plan's compliance with a variety of lease stipulations concerning, for example, communication plans for engaging tribes, fisheries, and the U.S. Coast Guard and other agencies [Section 2.1];
- Compliance with protective measures relating to the Endangered Species Act and the Marine Mammal Protection Act [Section 5.11.1];
- Use of low-energy equipment to complete geophysical surveys [Section 5.11.2].

In addition to the above, lessees are required to obtain numerous other permits for certain survey activities, including an Incidental Harassment Authorization from NMFS, USACE Nationwide No. 6 authorizations, and state permits. In short, existing requirements and practices already provide for impact analysis, prior agency review of survey plans, compliance with law in executing surveys, use of sound survey methods and technologies, and public transparency about planned survey activities.

Moreover, a new permitting requirement would cause unnecessary delays to the start of surveys, which would be particularly disruptive given the challenges to charter survey vessels and to gather data efficiently to maintain permitting timelines.

Under these circumstances, the Associations do not support introducing a new permit requirement for surveys.

3.3. Leasing Schedule

The Associations support BOEM's efforts to publish and regularly update a leasing schedule with a five-year horizon for offshore wind lease sales. Publishing such a schedule does not commit BOEM to issuing any particular lease or approving any particular wind project, yet it greatly enhances the opportunity for the offshore wind industry—including the entire supply

⁷¹ These examples are taken from the most recent BOEM lease, for the PACW-1 lease auction.



chain—to plan ahead. Such planning is not merely beneficial; it is vital. Developers must undertake significant advance planning if there is to be an orderly development process on the OCS, given the capital intensity of offshore wind development, coupled with challenges regarding supply chain complexities, the availability of skilled labor, the sufficiency of onshore transmission capacity and access, and the significant scientific work needed to understand the wind resource, technologies, and environmental conditions. Understanding when and where leases are projected to become available enables and encourages developers to focus their planning efficiently. This in turn fosters both reliability and transparency in OCS development, helping to ensure fairness, competition, and thoughtful consideration of potential stakeholder interests.

BOEM's proposed regulatory text at Section 585.150 would be improved by identifying specific considerations to be reflected in the leasing schedule, notably federal and state renewable energy goals and mandates, the needs of the nascent supply chain for renewable energy, the comparative needs of regional and national energy markets for power and specifically renewably generated power, and of course the intersection of energy generation potential and commercial development interest. These considerations would help ensure that the leasing schedule is focused on relevant objectives, is realistically achievable, and fosters transparency for all stakeholders.

The leasing schedule should identify not only the locations under consideration for leasing but also the target year and quarter for each lease sale and the key planning milestones that precede each lease sale. These details help BOEM and stakeholders to understand the planning process and to synchronize their own efforts. Readiness, in turn, enables more effective public engagement with BOEM at key points in the planning process.

We also support BOEM's proposal to publish the leasing schedule at least every two years. The five-year horizon merits biennial review to ensure that planning is keeping pace. Revisions to the leasing schedule should be transparently explained at the time of publication and, where a revision would be significant, should be subject to public comment before publication. Where a revision to the leasing schedule would reduce the number of lease sales in any year of the five-year period, BOEM should explain how the revision aligns with the considerations, noted above, that are to be reflected in the leasing schedule.

The foregoing recommendations are reflected in edits to Section 585.150 in Attachment 1.

3.4. Auctions and Bidding Credits

BOEM seeks comments on the use of bidding credits and multiple factor auctions as a method of advancing important priorities, such as promoting workforce development or supply chain enhancement, consistent with the goals of the OCS Lands Act. Specifically, BOEM is interested in obtaining comments on how bidding credits or factors might be tailored to mitigate possible adverse, project-related impacts. BOEM also solicited comments on whether the regulations should codify its past practice of imposing a cap on the value of bidding credits that any bidder can earn, measured as either an absolute dollar amount or as a percentage of the bid amount. BOEM also requested comment on what factors in proposed § 585.216(b)



should qualify for credits, particularly the policy-based factors described in § 585.216(b)(5), and how such factors could best be quantified for the purpose of calculating their value as part of the auction process. Finally, BOEM solicited comments on the various alternatives that could be used to incorporate incentives and preferences into the competitive leasing process.

The Associations generally endorse the use of bidding credits and multiple factor auctions as a means of advancing important policies. The Associations have also proposed that BOEM add to its list of possible bidding credits certain credits for commitments to compensate (1) users of the lease area, and (2) affected coastal communities, including Tribal Nations and communities. In Section 2.4 above, the Associations also urge BOEM to reject caps on the value of bidding credits that any bidder may earn.

In addition, BOEM proposes to address the enforcement of bid credit commitments through proposed changes to Section 585.225(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.”⁷² The Associations support the availability of enforcement in the event a lessee fails to comply with an applicable requirement in the lease or regulations. However, the Associations are concerned that the proposed Section 585.225(g) adds a new and unsuited basis for enforcement, namely the conceptual strategy that BOEM has used as the basis for bid credit awards. Consistent with BOEM’s instructions, these conceptual strategies are indicative and are not in themselves fully-fledged, specific, and documented contractual commitments with precisely defined legal terms. Enforcing on the basis of conceptual strategy is neither sensible nor necessary, since BOEM can incorporate the commitment in appropriately enforceable terms in the lease itself. Moreover, concerns over the enforcement of any or every sentence in a conceptual strategy for bid credits will significantly undermine BOEM’s intentions, effectively encouraging only bidders with existing contractual agreements in place to seek bid credits and discouraging broader competitive participation of others. In addition, bidders are less likely to consider or offer innovative ideas that are not yet proven. Accordingly, we recommend striking the proposed new language.

3.5. Idle Iron and Decommissioning

BOEM solicited comments on the meaning of the term “no longer useful for operations” and whether this is the best or most appropriate standard for BOEM to use to describe facilities that should be required to be decommissioned.⁷³

The Associations appreciate BOEM’s intentions with the proposed revisions that would essentially allow BOEM to “condemn” OCS facilities prior to the termination of a lease or grant.⁷⁴ The Associations are concerned that “no longer useful for operations” is overly broad

⁷² Mod Rule at 6028.

⁷³ *Id.* at 6015.

⁷⁴ 30 C.F.R. § 585.902(a).



and fails to account for a variety of factors that might impact the current (or planned) utility of the facilities at issue.

The Associations have proposed suggested revisions to Sections 585.902 and 585.905 in Attachment 1.

3.6. Leasing for Research

BOEM requests public comments on whether the lease process for research activities in existing § 585.238 warrants amendment. Specifically, BOEM is interested in receiving comments on the following:

- whether it should create a specific regulatory framework for research leases and planning; whether it should expand the criteria for who can hold research leases;
- whether the DNCI requirement can or should be relaxed for research activities (BOEM also seeks comment on the reasonableness of its proposed schedule and timeframes for a DNCI); and
- whether any other aspects of this section deter OCS renewable energy research. Note that for one of the two leases issued under this section to date, BOEM used its discretion to require the submittal of a Research Activities Plan containing information substantially the same as what is required to be included in a COP.⁷⁵

The Associations are concerned that the lack of research activity on the OCS to date is attributable in part to the difficulty in obtaining a research lease. A major source of such difficulty lies in BOEM's rigid application of OCSLA's competitiveness requirement in 43 U.S.C. § 1337(p)(3) in the research context. In the original 2009 rule, BOEM opined that when determining competitive interest in a request for a research lease, preference should be given to expressions of commercial interest.⁷⁶ This has had a chilling effect on interest in research leases because of the concern that any unsolicited request for a research lease could turn into a competitive lease sale if one entity has commercial interest in the requested area. In response to BOEM's solicitation of comments on whether the Determination of No Competitive Interest (DNCI) requirement should be relaxed, the Associations recommend that Section 585.238 be amended to state that for potential research leases, BOEM will solicit competitive interest in *conducting research* in the relevant area. This revision would comply with OCSLA while narrowing the range of bases under which a research lease would need to be auctioned. The Associations also recommend language stating that the size of research leases must be tailored to the purpose of the research activity, so as to avoid using 585.238

⁷⁵ Mod Rule at 5991.

⁷⁶ Minerals Management Service, Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf, 74 Fed. Reg. 19638, 19671 (April 29, 2009) ("We believe that such research areas should not preempt potential commercial development and should be only offered to a Federal agency or a State if there is no competitive interest.").



to circumvent the standard competitive process and fair return obligations for commercial leases.

The Associations also recommend clarifying that activities on a research lease must be subject to a proposed Research Activities Plan, which shall mirror the requirements for a COP in sections 585.620 et seq. This change would bring the regulations into conformance with BOEM's process for approving activities on the one existent research lease.⁷⁷

Finally, the Associations are concerned that the current definition of "site assessment activities" has inadvertently constrained developers' ability to test innovative technologies on their commercial leases as part of their COPs. BOEM has cautioned that because this term includes not just wind resource assessment but also "technology testing, involving the installation of bottom-founded facilities," such activities could only be limited to the site assessment term of a lease. While this problem is remedied in large part through BOEM's proposed amendments to sections 585.104 and 585.235, the Associations recommend that BOEM also remove the above-quoted language from the definition of "site assessment activities in Section 585.112. This change would be a logical outgrowth of the proposed rule both as a response to BOEM's solicitation of changes that would encourage research activities and to maintain consistency with BOEM's elimination of the site assessment term of the lease.

3.7. Transmission Policy

The Associations appreciate BOEM's consideration of revisions to its regulations regarding transmission and interconnection facilities for offshore wind, including "efforts to explore a coordinated approach to transmission, which could include the shared use of cable corridors or other shared transmission solutions, such as regional transmission systems, meshed systems, and the development of an offshore grid."⁷⁸ The ability to sustain a long-term project pipeline (and with it, a broader offshore wind industry) depends in no small part upon the ability to reliably and affordably connect those projects to the electrical grid. BOEM's current regulations have enabled the first round of offshore wind projects to move forward exclusively using project-specific radial interconnections, for reasons described below. Although the certainty afforded by the radial approach has been vital for these initial projects, the simple realities of the electrical grid – and the potentially enormous benefits of a shift to a coordinated approach – mean that BOEM must ensure that its regulations can accommodate a range of coordinated transmission approaches.

The Brattle Group, working with ACP and other clean energy organizations, recently identified a range of transmission and interconnection policy reforms for offshore wind. If adopted, these reforms could deliver \$20 billion in customer savings, reduce shore crossings and necessary onshore transmission upgrades by 60-70%, reduce marine cable installations by as much as half, and accelerate offshore wind deployment by reducing delays and

⁷⁷ See <https://www.boem.gov/sites/default/files/renewable-energy-program/State-Activities/VA/OCS-A-0497-RAP-Approval-Combined-Documents-Final-Signed-03.23.16.pdf>.

⁷⁸ Mod Rule at 5991.



facilitating greater local benefits.⁷⁹ The Brattle report identified 12 recommendations for a range of federal and state actors, and BOEM’s Modernization Rule directly pertains to one of them: “Clarify and streamline BOEM permitting for third-party transmission and, if possible, better coordinate lease processes with state procurement and transmission planning.”⁸⁰ Thus, the Associations urge BOEM to adopt several reforms that would implement this recommendation and realize the potential benefits of coordinated transmission, without upsetting the interconnection plans of initial offshore wind projects.

3.7.1. Offshore transmission planning process

The Associations recommend that BOEM amend its regulations to provide additional clarity regarding its process for issuing rights of way (ROWs) for offshore “backbone” transmission and permitting cables along the OCS. We believe a lack of certainty regarding BOEM’s role in the offshore transmission siting process has hindered the industry’s transition from the current paradigm, in which every project has its own radial line, to the long-term need for coordinated offshore transmission facilities to provide efficient and durable interconnection solutions.

First, BOEM should address is the lack of a clear mechanism for a BOEM-driven process for planning backbone or mesh transmission ROWs. Under its current regulations, the only explicit mechanism for the commencement of the ROW issuance process is the submittal of an unsolicited ROW request.⁸¹ BOEM then puts the request out for competitive interest, before determining whether to issue the ROW non-competitively or proceed under the competitive leasing process in Sections 585.211-.225. This process has no specific timetable or formal linkage to the designation of offshore wind lease areas. BOEM’s competitive leasing regulations are also geared toward leases and not transmission ROWs, which involve distinct planning concerns. Put simply, the status quo is a recipe for regulatory passivity in an area where proactivity is badly needed.

While the Associations believe BOEM is not currently constrained from commencing an offshore transmission permitting process on its own accord, this process would be facilitated by the creation of a bespoke regulatory path. Accordingly, we recommend that BOEM create a new Section 585.304 and add modifications to Sections 585.307 and 585.308 to the following effect:

- At any time, BOEM may commence a permitting process for the issuance of one or more ROWs for offshore transmission or facilities that any of the entities noted above

⁷⁹ The Benefit and Urgency of Planned Offshore Transmission: Reducing the Costs of and Barriers to Achieving U.S. Clean Energy Goals, the Brattle Group, at 6 (2023), <https://www.brattle.com/wp-content/uploads/2023/01/Brattle-OSW-Transmission-Report-Jan-24-2023.pdf>.

⁸⁰ *Id.* at 66.

⁸¹ 30 C.F.R. § 585.305.



are planning to construct. BOEM would have the discretion to merge this process with related lease planning processes if it so chooses.

- BOEM may, at its own option, start the process with an RFI seeking general information on potential ROW locations within a specified region.
- Regardless of whether it elects to issue an RFI, BOEM must issue a Call for ROW Information seeking public comment and solicitations of commercial interest in one or more proposed ROWs.
- In determining whether there is competitive interest in the ROWs set forth in the Call Area, BOEM may consider whether the developer has an exclusive agreement to interconnect a transmission project that could be sited within the ROW. (This should also be a consideration in section 585.307 relating to unsolicited ROW requests). This provision would allow BOEM to efficiently issue ROWs to entities who have already won a competitive state procurement process.
- If BOEM determines that there is no competitive interest in one or more ROWs as a result of the Call for ROW Information, BOEM will discontinue the competitive process and issue the ROW grant in accordance with section 585.309 after conducting the appropriate environmental analysis.
- If BOEM determines that there is competitive interest in one or more ROWs, BOEM will conduct the appropriate environmental analysis and issue the ROW competitively. BOEM should reserve for itself two options for competitive issuance: (1) an auction in accordance with the competitive leasing process in the revised 30 CFR 585.213-.226 (but substituting “ROW” for “lease”); or (2) an alternative competitive process that allows the ROW to be issued to the future winner of a state procurement process. (Section 585.307 should also be amended to provide for similar options.)

The Associations believe this new section would provide a clear pathway to better aligning BOEM’s ROW authority with planning efforts for offshore transmission, as well as integration with state procurement processes for such transmission. This clarity would greatly benefit BOEM, cooperating and consulting agencies, states, regional transmission operators, transmission developers, offshore wind lessees, and other key stakeholders with a vested interest in the long-term success of offshore wind transmission.

BOEM should also consider and clarify the NEPA permitting requirements with respect to a GAP review for transmission only facilities. Specifically, BOEM should specify that an independent transmission project (i.e., where the wind farm or wind generation area is not included in the project description) will be subject to a NEPA analysis specific only to the transmission project itself. This can be accomplished by providing that the definition of “project” for transmission-only facilities is limited to the transmission facilities themselves, and does not include any existing or proposed wind farm or power generation area. BOEM can further clarify that when evaluating potential impacts (including cumulative impacts) under the NEPA GAP review, the impacts considered are limited to those specifically related



to the “project” and do not include those associated with the wind farm area. Impacts related to the wind energy projects that may connect to the transmission line would be evaluated under a separate NEPA review process under the appropriate COP submission.

3.7.2. Incentivizing coordinated transmission at the leasing stage

BOEM has indicated its interest in considering coordinated transmission at the leasing stage through a multiple factor auction – specifically, “development agreements by a potential lessee that facilitate shared transmission solutions and grid interconnection.”⁸² The use of shared transmission and interconnection solutions may be a viable option for some projects. The Associations encourage BOEM to consider several key issues before and after multiple factor auctions.

Prior to auctions and issuance of leases, BOEM should coordinate with regional transmission organization/independent system operator and obtain information necessary to determine the availability of transmission or interconnection facilities and “headroom” capacity. BOEM can and should conduct auctions with awareness of relevant state policies – such as New Jersey’s planned Larrabee Interconnection to integrate multiple projects at a shared point of interconnection,⁸³ New York’s “meshed ready” requirements (which could require offshore wind substations to use compatible standards to require future linkage),⁸⁴ and coastal New England states’ plans for a multi-terminal high-voltage direct current transmission system to facilitate integration of offshore wind.⁸⁵ Additionally, relevant plans from coastal grid operators and utilities should be fully integrated into lease plans.

BOEM should consider identifying indicative (but not binding) cable corridor routes adjacent to pending lease areas; these would reflect proximate transmission and interconnection facilities and likely routes to connect offshore wind generators to the grid. Although these routes would not be binding at this early stage, their presence would provide valuable information to potential lessees as well as states.

BOEM could also use pre-lease transmission and interconnection information to require appropriate lease stipulations, under which lessees would need to utilize “best efforts” to connect to coordinated transmission or interconnection facilities. This would be consistent with BOEM’s standard for lessees to pursue Project Labor Agreements, and could appropriately include midpoint requirements (for example, at the GAP or COP issuance phase) for the lessee to demonstrate efforts to satisfy this stipulation.

The Associations also agree with the inclusion of agreements facilitating shared transmission solutions and grid interconnections as potential bidding credits in proposed Section 216(b)(3). Such a bidding credit may be infeasible in the short to medium term when shared

⁸² Mod Rule at 5986.

⁸³ See https://publicaccess.bpu.state.nj.us/DocumentHandler.ashx?document_id=1279919.

⁸⁴ See <https://portal.nyserda.ny.gov/servlet/servlet.FileDownload?file=00P8z000000gjB1EAl>.

⁸⁵ See <https://newenglandenergyvision.com/new-england-states-transmission-initiative/>.



transmission may not be available in time to serve the first tranche of projects; however, there may come a time and region where such a credit may be effective in incentivizing the eventual utilization of backbone or mesh transmission.

The Associations are also cognizant that lessees would be wary of “project-on-project” risk, in which offshore wind development is delayed due to delays with another party’s development of transmission or interconnection facilities. Failure to address this risk would result in continued reliance on individual radial lines. Thus, as a post-lease element, BOEM should specify that any development agreement for shared transmission (considered as an auction factor, bid credit, or otherwise) includes a *conditional* radial export right for the lessee. This right would become actionable if a planned shared transmission or interconnection fails to meet key milestones for planning, construction, or energization – which could be specified at the GAP phase - enabling the lessee to ensure individual connection to the grid as a “backstop” to the coordination transmission. This would appropriately balance the need to support shared transmission with the need to minimize “project-on-project” risk to offshore wind projects reliant upon a third-party transmission provider. BOEM could also provide developers flexibility to pay for the value of the credit if coordinated transmission options ultimately become non-viable and jeopardize project timelines, significantly increase costs, or create other otherwise put a project at risk for reasons outside of the developer’s control.

3.7.3. Changes to easement rights

Second, BOEM is also considering changes to its easement regulations. Specifically, the proposed rule states:

BOEM seeks comment on the types of regulatory changes that would be appropriate to better accommodate these options and to minimize impacts to environmental, natural, and cultural resources. For example, should 30 CFR 585.200(b) be modified to allow BOEM to encourage or require use of such options where they are available and allow for full enjoyment of the lease? What approaches or options should BOEM consider advancing in 30 CFR 585.200(b) to facilitate interconnection for lessees, while minimize impacts to important resources?⁸⁶

At a minimum, the Associations recommend that BOEM make clear through revisions to 30 C.F.R. § 585.200(b) that the “right to one or more project easements” expressly includes both the right to an individual radial line to shore, *as well as* connections to other transmission or interconnection facilities located on the OCS. Although the current text appears to allow more than one project easement, BOEM should act now to ensure that offshore wind projects can take advantage of future transmission developments. For example, a “meshed ready” project might initially connect to shore, but subsequently would connect to another offshore substation or offshore backbone transmission line. The Associations also recommend that

⁸⁶ Mod Rule at 5991.



BOEM specify that offshore wind projects with existing easement rights (to date, all radial) would also have the ability to connect to other offshore transmission or interconnection facilities.

BOEM should also consider whether regulations analogous to those used for connecting gathering pipelines to a transportation pipeline in the oil and gas context should be implemented for offshore wind as well. 30 CFR § 250.1000(c) provides for clarity on the “transfer points” where responsibility shifts from a producing operator to a transporting operator.⁸⁷ The Associations submit that comparable provisions would help to provide certainty for owners and operators of offshore wind facilities and offshore transmission facilities regarding jurisdictional boundaries.

3.8. SAP – Engineered Foundations

BOEM proposed adding a definition for the term “engineered foundation”. BOEM sought comments on the appropriateness of the definition of this term (and, if not, what that definition should be) or whether a different term should be used.⁸⁸ The Associations recommend striking this definition from the regulations, as discussed in Section 2.21.11 above.

3.9. Anti-Competitive Behavior

BOEM sought comment on whether the proposed language in Section 585.222 constitutes an appropriate and effective means of preventing anti-competitive bidder behavior and on whether there are alternative means of achieving this goal. Most notably, BOEM added in this section a requirement in sub-section (f) that “Bidders may not disclose their auction strategies or economic valuations of a lease area to other bidders listed in the FSN.” BOEM explains that this prohibition “is aimed at deterring pre-auction communications among bidders regarding their preferred lease areas or the maximum amount they are willing to bid, which could constitute an explicit or tacit agreement that has the effect of reducing competition for a particular lease.”⁸⁹ The Associations understand this to be the first instance of BOEM proposing such language, as it was not included in BOEM’s previous proposed or final sale notices.

The Associations have significant concerns with this proposed subsection because it would frustrate the ability of developers to form joint ventures and pursue joint development of offshore wind projects, which has been vital to the industry to date.

To explain, subsection (f) is over-broad as it would preclude discussion of economic valuations of a lease area or auction strategy between “bidders listed in the FSN,” even if one of those bidders does not participate in the auction. For instance, two entities may be

⁸⁷ 30 C.F.R. § 250.1000(c).

⁸⁸ Mod Rule at 6005.

⁸⁹ *Id.* at 5996.



qualified to participate in the auction (and are listed in the FSN) but decide to pursue a joint venture, which ordinarily entails discussions of lease valuation and auction strategy. One of the eligible bidders would then participate in the auction (or both would jointly bid, as the Associations have proposed herein). These are normal commercial activities that greatly expand the potential participation in lease auctions by allowing companies to pool resources, and the Associations have proposed a joint bidding approach in Section 2.16 to transparently facilitate this need. Yet, subsection (f) would have prohibited the discussions necessary to form the joint venture in the first instance. This restriction prohibiting the joint pursuit of leases and offshore wind projects would be significantly detrimental to BOEM's renewable energy program and the industry.

The Associations strongly agree with BOEM's intent to maintain the integrity of the auction and to ensure it is conducted in a fair and transparent manner. The Associations believe that BOEM's specific intent is to forestall illicit collusion among qualified bidders *who then participate separately in the auction*. Such behavior would undermine confidence in the competitive integrity of the auction process and would be subject to existing antitrust laws and DOJ's review of the auction process post-sale. However, BOEM's proposed language goes unnecessarily far by prohibiting commercial discussions among entities that, while they may all be qualified for an auction, intend to participate in the auction only jointly.

In these comments, the Associations propose revisions to Part 585 to accommodate joint bidding and joint ownership of leases. The Associations suggest that this transparent approach furthers BOEM's goals of auction integrity while allowing existing anti-trust laws, which have evolved over multiple statutes and may decades, to govern the specifics of anti-competitive behavior. Accordingly, the Associations recommend that this sub-section be removed from the Mod Rule.

3.10. Regulatory Timelines

BOEM sought comment on the need and means to set specific regulatory timelines while preserving sufficient flexibility within the COP review period and the design and construction period.⁹⁰ BOEM has proposed to define the phases of lease development as specific periods corresponding to the expected activities of the lessee. Namely, BOEM proposed a "preliminary term" running from the effective date of the lease until COP submission (or five years) and a "COP review period" encompassing the review the COP and lasting until BOEM's action on the COP.⁹¹ BOEM declined to specify a fixed time period for the COP review period to "preserve regulatory flexibility and allow for harmonization with recent government-wide permit review streamlining initiatives (e.g., FAST-41)."⁹²

The Associations agree that BOEM should maintain regulatory flexibility and that its COP review process should mesh well with other statutory requirements, like FAST-41, or other

⁹⁰ Mod Rule at 5998.

⁹¹ Mod Rule at 5998.

⁹² *Id.* (footnote omitted).



legislative permitting reform that may be forthcoming. However, as proposed herein, the Associations suggest that adding several milestones to the COP review process would benefit BOEM, other participating agencies, lessees, and stakeholders by providing basic timing expectations surrounding the process. For instance, in Section 2.8, the Associations propose that BOEM hold a pre-COP filing meeting to review the proposed project and ensure a coordinated review and approach between BOEM and the cooperating agencies. In Section 2.9, the Associations also propose a nominal timeline for BOEM to make a complete and sufficient determination on a submitted COP. In addition, in Section 2.12, the Associations propose a timeline by which BOEM would have consulted with the cooperating agencies and prepared a set of alternatives to be analyzed in a NEPA document. The Associations believe that these are important milestones and should be added to BOEM’s regulations for the reasons discussed in the relevant sections herein.

3.11. Lease Amendments

BOEM sought comment on whether the final rule should contain a provision setting forth a process by which existing lessees can request lease amendments to conform their leases to the structure proposed in the amended § 585.235 and, potentially, to other regulatory changes in this proposed rule. The Associations agree that such a provision would provide predictability to lessees, and would streamline BOEM’s process of “truing up” existing leases by avoiding having to field separate and disparate requests from each lessee. We recommend that BOEM include a provision in the final rule committing to offer lessees conforming amendments to their leases within 90 days of publication of the final rule. As with any lease amendment, lessees should retain the discretion to opt out of some or all proposed changes. The Associations propose regulatory text in Attachment 1 to effectuate this change.

4. CONCLUSION

The Mod Rule is a generational opportunity for BOEM and BSEE to strengthen their offshore wind regulations in a comprehensive and durable manner as the industry ramps up commercial construction and operations. The proposed rule is a strong step in the right direction, and the final rule can optimize its potential through the Associations’ suggested modifications.

Sincerely,

Josh Kaplowitz
Vice President, Offshore Wind
American Clean Power Association



ikaplowitz@cleanpower.org

A handwritten signature in black ink, appearing to read "Erik Milito".

Erik Milito
President
National Ocean Industries Association
milito@noia.org

A handwritten signature in black ink, appearing to read "John Begala".

John Begala
Vice President for State and Federal Policy
Business Network for Offshore Wind
john@offshorewindus.org



ATTACHMENT 1 - PROPOSED REVISIONS TO PART 585

The following proposed regulatory text reflects the issues and topics raised by the Associations in its comments above. Each section with proposed revisions is presented sequentially, reflecting the organization of the Part 585. In addition, the relevant topic(s) is provided for each revised section so as to refer the reader to the relevant narrative explanation in the Associations' comments.

Please note that the **red text** shows the Associations' proposed revisions to BOEM's Mod Rule proposal (which are rendered in black text). Further, the proposed revisions below reflect the numbering and organization of Part 585 in the Mod Rule, not as currently in effect following implementation of the Split Rule on January 31, 2023.⁹³

⁹³ Reorganization of Title 30-Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf, 88 Fed. Reg. 6376 (Jan. 31, 2023).



TOPIC: Implementation of the 8(p)(4) factors

§ 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 ~~balances the following goals, none of which inherently outweighs or supplants any other:~~

- (1) Safety;
- (2) Protection of the environment, **including the avoidance and mitigation of environmental damage and the safeguarding of environmental benefits accruing through activities authorized in this part;**
- (3) Prevention of waste, **including economic waste and physical waste of energy resources from sources other than oil and gas, the unnecessary reduction in the amount of such energy that can be produced from the OCS, and the reduction in value of offshore energy resources;**
- (4) Conservation of the natural resources of the OCS;
- (5) Coordination with relevant Federal agencies (including, in particular, those agencies involved in planning activities that are undertaken to avoid conflicts among users and maximize the economic and ecological benefits of the OCS, including multifaceted spatial planning efforts);
- (6) Protection of National security interests of the United States;
- (7) Protection of the rights of other authorized users of the OCS;
- (8) A fair return to the United States;
- (9) **As determined by the Secretary or Director,** prevention of interference with reasonable uses ~~(as determined by the Secretary or Director)~~ of the exclusive economic zone, the high seas, and the territorial seas;
- (10) Consideration of the location of and any schedule relating to a lease or grant under this part for an area of the OCS, and any other use of the sea or seabed;
- (11) Public notice and comment on any proposal submitted for a lease or grant under this part; and
- (12) Oversight, inspection, research, monitoring, and enforcement of activities authorized by a lease or grant under this part.



(b) **To enforce the responsibilities in paragraph (a)**, BOEM will require compliance with all applicable laws, regulations, other requirements, and the terms of your lease or grant under this part and approved plans. 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.



TOPIC: Departures

§ 585.103 When may BOEM prescribe or approve departures from these regulations?

(a) BOEM may prescribe or approve ~~departures~~ a departure from these regulations when ~~departures are~~ BOEM deems the departure necessary to because the applicable provision(s) as applied to a specific circumstance:

(1) ~~Facilitate the appropriate activities on a lease or grant under this part~~ Are impractical or unduly burdensome and the departure is necessary to achieve the intended objectives of the renewable energy program;

(2) ~~Conserve~~ Fail to conserve the natural resources of the OCS;

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

(4) ~~Protect~~ 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 the regulations;

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

(4) Be documented in writing.

(c) BOEM will respond to a request for a departure within 90 calendar days of receiving the request, though such response time may be extended upon BOEM providing notification to the requester and upon BOEM providing a reasonable explanation for the delay.



TOPIC: Affiliation, Joint Bidding, and Joint Ownership and Tribal Ownership

§ 585.107 Who can 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 section 105 of Title 5 of the U.S. Code;
- (6) State of the United States; ~~and~~or
- (7) Political subdivision of States of the United States; ~~or~~
- (8) A Tribal government.

(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 or has previously determined after notice and opportunity for a hearing that you:~~

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



(i) You no longer meet the qualification requirements for acquiring or holding a lease or grant in paragraph (a) of this section and § 585.107; or

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

(A) Violated an applicable law, regulation, order, lease or grant provision, approved plan, or the prohibitions prescribed in a final sale notice; or otherwise engaged in illegal activity, anti-competitive or collusive behavior, fraud, or misrepresentation; and

(B) Failed to take timely remedial action as specified in the notice of the proposed disqualification to re-establish eligibility to participate in any BOEM lease or grant sale and eligibility to acquire or hold an interest in a lease or grant under this part.

(c) So long as a party is ineligible to acquire or hold a lease or grant under this part, it is also ineligible to participate in BOEM's competitive and noncompetitive lease or grant issuance processes, including auctions, conducted under this part, even as an agent for another entity. A party can restore its eligibility by completing the remedial action specified in the notice of the proposed disqualification.

(d) You may share ownership interests in a lease with one or more other persons, provided all interest holders in the lease are eligible to hold a lease pursuant to Section 585.107 and Section 585.108.



TOPIC – Commercial Operations

§ 585.112 Definitions.

...

Commercial operations ~~mean~~means the generation of electricity or other energy product for commercial use, sale, ~~or~~and distribution on a commercial lease, ~~but does not mean either generation needed to prepare a final FIR or generation for testing purposes, provided the electricity generated for such testing is not sold on a commercial basis.~~

...

Critical Safety System ~~means~~means safety systems and equipment related to fall protection, emergency egress, emergency shutdown systems, main electrical equipment protection, and fire detection and suppression ~~designed to prevent or ameliorate major accidents that could result in harm to health, safety, or the environment in the area of your facilities.~~

...

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, or replacing~~; gathering, transmission, ~~and~~ distribution, and inter-array cables;; power and pumping stations; pipelines;~~and~~ associated facilities; and other appurtenances on the OCS as necessary for the full enjoyment of the lease.

...

Site Assessment Activities ~~mean~~means those initial activities conducted to ~~characterize a site~~ 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.~~



TOPIC: Lease Amendments

New Section: How Will Leases Be Amended To Conform With Regulatory Changes?

Within 90 days of the publication of any final rule amending the regulations in this Part, BOEM will offer lessees amendments to their leases to the extent appropriate to conform such leases to the revised regulations. Lessees may accept any or all of these proposed amendments.



TOPIC: Renewable Energy Leasing Schedule

§ 585.150 What is the renewable energy leasing schedule?

(a) At least once every 2 years, the Secretary will publish a 5-year leasing schedule setting forth the projected dates and areas for leasing. In setting the schedule, the Secretary shall consider:

- (1) Federal and state renewable energy goals and mandates;
- (2) the needs of the domestic renewable energy supply chain;
- (3) the relative needs of regional and national energy markets;
- (4) the interest of potential offshore wind developers, as may be indicated by nomination, public comment, or otherwise; and
- (5) energy generation potential, in consideration of current and future technologies.

(b) The 5-year leasing schedule required in subparagraph (a) must include:

- (1) a list of locations under consideration for leasing and a description of each area under consideration;
- (2) the target year and quarter for planning and conducting lease sales for the 5-year period following the schedule's publication; and
- (3) an explanation of any changes made to the previous schedule.

~~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.~~

(c) The Secretary will solicit and consider public comment before including a significant revision to the schedule as part of its publication pursuant to subparagraph (a). To the extent the revision is an overall reduction in lease sales or zero lease sales in a given year, the Secretary must explain how such revision aligns with the factors set forth in subparagraph (a). 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.



TOPICS: Calls and Area Identification

§ 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) Request comments on areas which should receive special consideration and analysis~~The areas that BOEM has preliminarily identified for leasing;

~~(2) Request~~A request for comments concerning geological conditions ~~(including bottom hazards);~~ 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; ~~and~~

~~(3) Suggest areas to be considered by the respondents for leasing.~~Request for comments regarding feasibility for development, including the energy resource and opportunity for grid connection;

~~---~~

~~(a4) The area of interest for a possible lease.~~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;

~~(bii)~~ A general description of ~~your~~the respondent's objectives and ~~the~~ facilities that ~~you would use~~how respondent proposes to achieve those objectives.;

~~(ciii)~~ A generalpreliminary 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;

~~(dvi) Available and pertinent data and information concerning renewable energy and environmental conditions in the area of interest, nominated areas, 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 § 585.113, areas; and~~

~~(e) Documentation showing that you are qualified to hold a lease, as specified in § 585.107.~~

~~(fvii) Any other additional information requested by BOEM in the Federal Register notice. Call;~~

(6) An indicative goal of the acreage or the power to be generated from offshore wind facilities located in the areas under evaluation in light of current and expected federal, state, and local clean energy goals, anticipated energy demand, supply chain needs, and commercial interest.

...



TOPIC: Call and Area Identification

§ 585.215 What areas will BOEM offer in a lease sale§ 585.212 What is area identification?

BOEM will offer the areas for leasing determined through the process set forth in § 585.211 of this part. We will not accept nominations after the Call for Information and Nominations closes.

(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 commercial development, and other relevant information, and considers the potential environmental benefits from energy generated by offshore wind and current and expected federal, state, and local clean energy goals, anticipated energy demand, supply chain needs, and commercial interest. 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, as well as potential environmental benefits from energy generated by offshore wind; BOEM may develop measures, including lease stipulations, to mitigate potential adverse impacts; and

(2) the feasibility of commercial development; and

(3) potential conflicts with offshore wind development identified through consultation with relevant agencies and stakeholders; BOEM may develop measures, including lease stipulations, to avoid or mitigate potential conflicts,

(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.



TOPIC: Fisheries Compensation Funding Mechanisms

§ 585.216 How are bidding credits awarded and used?

(a) BOEM will determine the highest bid, taking into account the combined value of the monetary (cash) component and the non-monetary component(s), represented by bidding credits. The PSN and FSN will explain the following details, if bidding credit(s) are available for that auction:

- (1) Eligibility and application requirements;
- (2) The value of each available bidding credit, which will be either a sum certain or a percentage of the cash bid; and
- (3) Procedures for applying each available bidding credit to bids submitted during the auction.

(b) Eligibility for bidding credits must be established in advance of any lease auction, in accordance with the specifications of the FSN. Such eligibility may be based on actions that the bidder has already undertaken or actions that it has committed to undertake in the future, provided that BOEM has agreed to the terms by which such a commitment will be made. BOEM may offer bidding credits for any of the following:

- (1) Power purchase agreements;
- (2) Eligibility for, or applicability of, renewable energy credits or subsidies;
- (3) Development agreements by a potential lessee that facilitate shared transmission solutions and grid interconnection;
- (4) Technical merit, timeliness, or financing and economic considerations;
- (5) Environmental considerations, public benefits, or compatibility with State and local needs;
- (6) Agreements or commitments by the developer that would facilitate OCS renewable energy development or other OCSLA goals;
- (7) Funding or other beneficial commitments to communities, stakeholder groups, or Tribes whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, is expected to be impacted by lease development;
- (8) Funding or other beneficial commitments to communities, Tribes, or stakeholder groups that are expected to be affected by potential impacts on



the marine, coastal, and/or human environment from activities resulting from lease development that are not otherwise addressed by subparagraph (7); 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.



TOPIC: Competitive Leasing

§ 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 PSN, leases will be awarded to the highest bidder will describe the method for selecting the provisional winner and winner of any leases awarded.

(b) If the sale will proceed by auction, 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.

(c) BOEM may sell leases using a competitive process other than auction, so long as it is objective, fair, reasonable, complies with 43 U.S.C. § 1337(p)(3), is described in detail in the PSN, and is finalized in the FSN.



TOPICS: Affiliation, Joint Bidding, and Joint Ownership, and Qualification Updates

~~§ 585.220~~**§ 585.222 What other auction format may BOEM use in a lease sale**~~rules must bidders follow? (a) Except as provided in § 585.231, we will hold competitive auctions to award renewable energy leases and will use one of the following auction formats, as determined through the lease sale process and specified in the Proposed Sale Notice and in the Final Sale Notice:~~

[deleted table omitted]

~~(b) You~~**Bidders** must submit ~~your bid and a deposit as specified in §§ 585.500 and 585.501 to cover the bid for each lease area, according to the terms specified in the Final Sale Notice to participate in an auction under § 585.501, unless otherwise specified in the FSN. A provisional winner's bid deposit will be credited toward the balance due on its bid.~~

~~§ 585.221 What bidding systems may BOEM use for commercial leases and limited leases?~~

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

[deleted table omitted]

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

~~(b) Only bidders qualified by BOEM under §§ 585.106 and 585.107 are permitted to bid during an auction.~~

~~(c) Bidders qualified by BOEM under §§ 585.106 and 585.107 must notify BOEM no later than the due date of the Bidder's Financial Form of (1) any change to the corporate form or identity of the qualified bidder (or its members if the qualified entity is a partnership or limited liability company); or (2) a material reduction in the technical or financial capabilities of the qualified bidder.~~

~~(de) 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.~~

~~(ed) 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.~~

~~(fe) A bidder is responsible for immediately contacting BOEM if it is unable to submit its bid for any reason during an auction. If a bidder fails to timely notify BOEM of its inability to bid, it may not dispute the auction or lease award on that basis. If a bidder timely notifies BOEM~~



of its inability to submit a bid, BOEM, in its discretion, may suspend the auction, continue the auction using an alternative method, or continue the auction without the participation of the affected bidder.

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

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

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

~~(i) An agreement between two persons for future shared investment in a lease to be sold by us pursuant to Section 585.220 or Section 585.231 does not itself create affiliation but must be disclosed to BOEM in writing by the date specified in the final sale.~~

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

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



TOPICS: Lease Periods and Commercial Operations

§ 585.235 If I have What are the lease periods for a commercial lease, how long will my lease remain in effect?

(a) ~~For~~ The lease periods within the term of your commercial leases, the lease terms and applicable automatic extensions are as shown in the following table are defined as follows:

...

(4) Operations period: A commercial lease shall have an operations period of 30~~5~~ years, unless otherwise specified in your lease or in our approval of your COP. The operations period begins when (i) the final constructed facility necessary for production of electricity or other energy product has completed installation and commissioning activities, and (ii) BSEE has received and non-objected to documentation of critical system safety commissioning and your Project Verification Report (PVR). The operations period will be deemed to have started if BOEM reasonably determines that the facilities are substantially complete and the PVR is unduly delayed. ~~at the start of commercial operations.~~ Additional time may be added to the operations period through a lease suspension under § 585.415 issued during this period; a lease extension requested pursuant to paragraph (b) of this section; or a lease renewal under § 585.425.

(b) You may request an extension of any of the lease periods outlined in paragraph (a) of this section for good cause, including if the project is designed and verified for a longer duration. In its discretion, BOEM may approve your request.



TOPIC: Research Leases

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

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

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

(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 to conduct research exists. In making this determination, BOEM will limit its inquiry to whether there is competitive interest in conducting renewable energy research activities in the relevant area(s).

(d) The size of the research lease area must be tailored to the purpose of the research activity.

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

(f) 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 these regulations, except as otherwise provided in the lease or grant.

(g) BOEM will issue a public notice of any lease, RUE, ROW issued to a Federal agency or to a State, or an approved MOA for such research activities.



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



TOPIC: Planning for Regional Transmission

§ 585.304 What are the steps in BOEM's competitive ROW award process?

(a) At any time, BOEM may commence a permitting process for the issuance of one or more ROWs for offshore transmission or facilities that any of the entities noted above are planning to construct. BOEM may, at its discretion, combine its competitive ROW planning process with one or more competitive lease planning processes.

(b) BOEM may, at its own option, start the process with an RFI seeking general information on potential ROW locations within a specified region.

(c) Regardless of whether it elects to issue an RFI, BOEM must issue a Call for ROW Information seeking public comment and solicitations of commercial interest in one or more proposed ROWs.

(d) BOEM will determine competitive interest in accordance with 585.307.

§ 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, 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) In determining whether there is competitive interest in the ROWs, BOEM may consider whether any of the requesting entities has an exclusive agreement to interconnect a transmission project that could be sited within the ROW.

§ 585.308 How will BOEM conduct an auction for ROW grants and RUE grants?

(a) If BOEM determines that there is competitive interest **under 585.307**, 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 the appropriate environmental analysis; and**



(23) Conduct a competitive auction for issuing the ROW grant or RUE grant. The auction process for ROW grants and RUE grants will be **either:**

(i) conducted following the same process for leases set forth in §§ 585.~~211-213~~ through 585.~~225~~ 226 (but substituting “ROW” or “RUE” for “lease”); or

(ii) **conduct an alternative competitive process that complies with OCSLA Section 8(p)(3).**

(b) If you are the successful bidder in an auction, you must pay the first year's rent, as provided in § 585.316.



TOPIC: Lease Assignment

§ 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 at any time after lease award**, 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.

(b) You may assign a lease or grant interest by submitting **to BOEM** one paper copy and one electronic copy of an assignment application **to BOEM on Form BOEM-0003 for leases and Form BOEM-0002 for grants. The assignment application must include:**

(1) BOEM-assigned lease or grant number;

(2) A description of the geographic area or undivided interest you are assigning;

(3) The names of ~~both~~ the assignor(s) and the assignee(s), if applicable;

(4) The names and telephone numbers of the contacts for ~~both~~ the assignor(s) and the assignee(s);

(5) The names, titles, and signatures of the authorizing officials for ~~both~~ the assignor(s) and the assignee(s);

(6) A statement that the assignee(s) ~~agrees~~ to comply with and to be bound by the terms and conditions of the lease or grant **as applicable to the transferred interest**;

(7) The qualifications of the assignee(s) to hold a lease or grant under § 585.107; and

(8) A statement on how the assignee(s) will comply with the financial assurance requirements of §§ 585.515 through 585.537 **as applicable to the transferred interest**. **No assignment will be approved until the assignee(s) provides the required financial assurance.**

(9) Any request to modify the default lease schedule as a result of the assignment.

NOTE: BOEM proposed to add a reference to Forms BOEM-0003 and BOEM-0002 in (b) above and to delete (1) – (8). The Associations suggest that BOEM retain (1) – (8) to facilitate the revisions described in the Associations' comments.

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



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

(e) 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 § 585.109.

(f) BOEM will support other federal agencies as appropriate in processing requests to transfer or segregate authorizations applicable to the segregated or transferred interests.



TOPIC: Commercial Operations

§ 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 ~~Final Sale Notice~~ FSN or lease.

...

(b) Within 90 days of commencement of the operations period, you must pay 2 percent of the revenues received for any sale of power or capacity at or beyond the point of interconnection during the design and construction period.

(~~cb~~) After your lease begins ~~the operations period~~ ~~commercial~~ generation of electricity operations or on the date ~~specified by BOEM~~ specified in the lease, you must pay operating fees in the amount specified in § 585.506: 585.506. Regardless of whether the lease is awarded competitively or (1) For leases issued competitively, BOEM will specify in the ~~Final Sale Notice and lease~~ the date when operating fees commence; and

(2) For leases issued noncompetitively, BOEM will specify in the lease the date when operating fee ~~commences~~ fees commence.



TOPICS: Fisheries Compensation Funding Mechanisms and Commercial Operations

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

~~If~~Once you are generating electricity begin commercial operations, you must pay ONRR, ~~under the regulations at 30 CFR part 1218,~~ as provided in § 1218.51 of this title operating fees on your commercial lease ~~when you begin commercial generation,~~ 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 following formula,

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

Where:

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

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

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

(c) 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 **or subject to subparagraph (2)**, ~~the~~ operating fee rate, “r” is 0.02 for each year the operating fee applies when you begin commercial generation of electricity.



(2) We may apply a ~~different~~ reduced 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, **or for other reasons consistent with the encouragement of continued or additional activities. The reduced fee rate may take the form of a credit in consideration for payments to or agreements with third parties.** Also, we may agree to reduce or waive the fee rate under § 585.510.

(3) 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.

(43) 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 commercial operations on the 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.

(54) Ten days after the anniversary date of when you began to commercially generate electricity, you must submit to BOEM documentation of the gross annual generation of electricity produced by the generating facility on the lease. You must use the same information collection form as authorized by the EIA for this information.



(65) For the nameplate capacity “M,” BOEM will use the total installed capacity of the equipment you install, as specified in your approved COP.

(d) BOEM may at any time amend the operating fee rate in an existing lease, subject to the approval of the lessee and consistent with § 585.506(c)(2).

(de) You must submit all operating fee payments to ~~BOEM~~ONRR in accordance with the provisions under 30 CFR 1218.51.

(ef) 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.



TOPIC: Met Tower Engineering Definition

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

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

Before you:	you must:
(a ₁) conduct any site assessment activities on your commercial lease, involving an engineered foundation, such as meteorological towers or other facilities that are installed <u>on the seabed</u> using a fixed-bottom foundation requiring professional engineering design and assessment of sediment, meteorological, and oceanographic condition <u>as part of the design.</u>	submit, and obtain approval for of your SAP according to <u>under §§ 585.605 through 585.613.</u>



TOPIC: Timeline for COP Completeness and Sufficiency Review

§ 585.622 How do I submit my COP?

(a) You must submit ~~one paper copy and one electronic version of your COP to BOEM at the address listed in~~pursuant to § 585.110(a).

(b) You may submit information and a request for any project easement as part of your original COP submission or as a revision to your COP.

...



TOPIC: Pre-COP Interagency Meeting

§ 585.623 What meetings will be held prior to submitting my COP?

(a) Prior to submitting your COP to BOEM for the purpose of determining the completeness and sufficiency of the COP pursuant to § 585.626(c), you may request that BOEM schedule a pre-filing interagency meeting.

(b) You must coordinate with BOEM prior to the meeting to advise BOEM as to which federal, state, and/or local cooperating agencies should attend the meeting. BOEM will extend invitations to the agencies BOEM deems appropriate. BOEM must schedule the meeting to occur within sixty (60) days of receiving notification of an applicant's readiness to participate in a pre-filing interagency meeting.

(c) At or before the pre-filing interagency meeting, you must present a detailed overview of your project and PDE to BOEM and the other agencies in attendance. At the pre-filing interagency meeting, the participants shall review and discuss:

- (1) Your compliance with the requirements set forth in §§ 585.626-627;
- (2) The information needed by each agency to initiate the agency's review of the COP consistent with its requisite statutory obligations;
- (3) The information needed by BOEM to initiate its environmental review under NEPA via a Notice of Intent;
- (4) The information needed by BOEM to prepare a draft environmental impact statement;
- (5) The timing of the applicant's:
 - (i) initial submission of its COP and subsequent filings for the purposes of NEPA or other statutory obligations; and
 - (ii) submittal of supplemental information not necessary to initiate each agency's review



TOPIC: COP Requirements and Commercial Operations

§ 585.626 What must I include in my COP?

(a) Project information may be provided using a PDE. When you provide information using a PDE, BOEM reserves the right to determine what range of values for any given parameter are acceptable. Your COP must include the following project-specific information, as applicable:

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

[Table omitted except (a)(5) and (a)(19)].

(65) General structural and project design, fabrication, and installation	<u>Information Preliminary design information</u> for each type of structure/facility associated with your project, including information needed to justify any request for an operations period exceeding the length provided in these regulations or the lease and, unless BOEM provides otherwise, how you will use a CVA to review and verify each stage of the project.
...	...
(2119) Construction schedule	A reasonable schedule of construction activity showing significant milestones, including the commencement of commercial operations <u>consistent with the requirements of subpart H of this part.</u>

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

(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:

[Table omitted].

(c) BOEM shall consider the COP complete and sufficient for initiating its review under OCSLA if the COP includes information that enables BOEM to understand the project's preliminary design, the indicative impacts of the proposed project, the agency resources needed to begin review, and the schedule for subsequent supplementation of information during BOEM's review.



TOPIC: NEPA Requirements and SMS/OSRP Submissions

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

(a) ~~You~~Your COP must ~~submit with your COP~~contain detailed information and analysis necessary to assist BOEM in complying with NEPA and other ~~relevant~~applicable laws. Your COP must ~~describe~~contain information about those resources, conditions, and activities listed in the following table that ~~your proposed activities may significantly affect~~could be affected by your proposed activities, or that ~~may have a significant effect on~~could affect the your proposed activities ~~proposed in your COP, including:~~

[Table omitted].

(b) ~~Where BOEM is not the agency with primary authority over siting or operations of a particular project facility or activity, you need only include information about the facility or activity in your COP sufficient for BOEM to evaluate connected actions in its role as lead agency for NEPA review of the proposed project.~~

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

(1) One copy of your consistency certification under either subsection 307(c)(3)(B) of the CZMA (16 U.S.C. 1456(c)(3)(B)) and 15 CFR 930.76 or subsection 307(c)(3)(A) of the CZMA (16 U.S.C. 1456(c)(3)(A)) and 15 CFR 930.57, stating that the proposed activities described in detail in your plans comply with the State(s) enforceable policies of the applicable States' approved coastal management ~~program(s)~~programs and will be conducted in a manner that is consistent with such ~~program(s)~~programs; and

(2) "Necessary data and information," as required by 15 CFR 930.58.

(d) You must submit ~~your~~a ~~detailed description of an~~ oil spill response plan, ~~as required by, in compliance with 33 U.S.C. 1321, including information identified in 30 CFR part 254 that is applicable to your activities.~~

(e) You must submit a detailed description of your Safety Management System as required by § 585.810.



TOPICS: COP “modifications”, COP completeness and sufficiency

§ 585.628 How will BOEM process my COP?

(a) ~~Within 20 days of receiving the COP, BOEM (i) will review your submitted COP, and including the information provided pursuant to under §§ 585.626-627, (ii) to will determine if it contains all the required information necessary to conduct initiate our technical and environmental reviews according to § 585.626(c), and (iii) : if we determine it is not complete, will inform you with particularity why it is not and what is required to initiate our reviews. Within 45 days of the determination that it contains the information necessary to initiate our technical and environmental reviews per 585.626(c), BOEM will provide the SME matrix of comments on the submission.~~

(b) BOEM will prepare an appropriate NEPA analysis. Within six (6) months after BOEM’s issuance of an NOI, BOEM will identify a range of alternative actions, including a no-action alternative, to be considered under NEPA by BOEM and cooperating agencies prior to issuance of a DEIS. In identifying alternatives, BOEM will consider:

- (1) consistency with § 585.102 and the decision-making responsibilities of cooperating agencies;
- (2) the purpose and need for agency action(s);
- (3) the goals of the applicant;
- (4) the proposed project’s contractual offtake obligations, market competitiveness, and economic feasibility;
- (5) relevant federal and state policy goals;
- (6) technical and economic practicality and feasibility;
- (7) the proposed project design envelope; and
- (8) significant issues that would be caused by the proposed or alternative action, lie within the scope of agency authority, are subject to agency discretion, and are amenable to scientific analysis.

BOEM will consider dismissing alternatives from further study if they are unreasonable, duplicative, speculative, vague, or inconsistent with the applicant’s primary goals, or if they increase environmental harm or lack evidence supporting relevance or efficacy.

(c) If your COP is submitted after lease issuance, BOEM will forward one copy of and if your COP is subject to Federal consistency review under the CZMA regulations at 15 CFR part 930,



subpart E, you must submit your COP, consistency certification, and associated data and information under the CZMA to the applicable State CZMA agency or agencies 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 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 may ~~approve~~, disapprove ~~your COP~~, or approve ~~your COP~~ **subject to terms and conditions consistent with Section 585.102 with modifications your COP.**

(1) If we approve your COP, we will specify terms and conditions to be incorporated into your COP. You must certify compliance with certain of those terms and conditions, as required under § 585.633(b); and

(2) If we disapprove your COP, we will inform you of the reasons and allow you an opportunity to ~~resubmit~~ submit a revised plan addressing ~~the our~~ concerns identified, and we may suspend the ~~term~~ COP review period of your lease, as appropriate, to ~~allow this to occur~~ 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. ~~A project easement may include off-lease areas that:~~

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

~~(2) Do not exceed 200 feet (61 meters) in width, unless safety and environmental factors during construction and maintenance of the associated cables or pipelines require a greater width; and~~

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

(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 **and proposed** operations under the project easement; and

(ii) If the project easement is granted in an area where a lease or ROW or RUE grant has previously been issued, the project easement holder must agree that its activities will not **unreasonably** interfere with or impede existing **and proposed** operations under the lease or ROW or RUE grant.



TOPIC: COPs for Multi-Phase Projects

§ 585.629 May I develop my lease in phases?

In your COP, you may request development of your commercial lease in phases. In support of your request, you must provide details as to what portions of the lease will be initially developed for commercial operations and what portions of the lease will be reserved for subsequent phased development. **BOEM may take the following actions or other actions within its discretion related to a COP that proposes to develop a commercial lease in phases or when a lease becomes segregated:**

- (a) Condition its approval of a lease-wide COP to account for subsequent phased development;
- (b) Bifurcate its pending review of a COP where a lease is segregated; or
- (c) Issue separate COP approvals for segregated lease



TOPIC: Revisions to an approved COP

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

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

(b) 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, we will require you to submit the needed revisions. **In determining what revisions are required, BOEM will consider the factors listed in 585.628(b).**

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

(1) Activities not described in your approved **COP that could have significant environmental impacts;**

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

(3) ~~Change in the surface location of a facility or structure; offshore facilities, or onshore support bases beyond the range of possible locations described in your approved COP;~~ 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) ~~Addition of a facility or structure not described in your approved COP;~~

(5) ~~Change in the location of your onshore support base from one State to another or to a new base requiring expansion;~~

(6) ~~Changes in the location of bottom disturbances (anchors, chains, etc.) by 500 feet (152 meters) or greater from the approved locations (e.g., if a specific anchor pattern was approved as a mitigation measure to avoid contact with bottom features, any change in the proposed bottom disturbances would likely trigger the need for a revision);~~

(7) ~~Structural failure of one or more facilities~~ any facility; ~~or~~



- (5) Submission of an FDR or FIR that contains **significant and material** new information or that is **materially** inconsistent with the COP that has been previously submitted; or
- (86) 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.**



TOPIC: Commercial Operations

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

If you are conducting activities on your lease that:

~~(a) If you are conducting activities on your lease that do not require a FERC license (i.e., wind power projects), each facility may commence commercial operations after non-objection to the corresponding FDR and FIR. BSEE may rescind this designation for good cause based on objections to the Project Verification Report (PVR) described in § 585.704 and § 585.708(a)(5); or critical safety system commissioning records, as described in § 585.708(a)(6). then you may commence commercial operations 30 calendar days after the CVA or project engineer has submitted to BOEM the final Fabrication and Installation Report for the fabrication and installation review, as provided in § 585.708.;~~

~~(1) your project verification report, described in § 585.704 and § 585.708(a)(5), is deemed submitted by BOEM;~~

~~(2) BOEM has confirmed receipt of critical safety systems commissioning records, as described in § 585.708(a)(6); and~~

~~(3) BOEM has not notified you within that timeframe of any objections to the verification report or the commissioning records;~~

(b) ~~Require~~ If you are conducting activities on your lease that do require a FERC license or exemption, then you may commence commercial operations when permitted by the terms of your license or exemption.

~~(c) You must notify BOEM within 10 business days after you commence commercial operations.~~



TOPIC: FDR/FIR/CVA – Timing of Fabrication and Installation

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

(a) You must submit the following reports to BOEM before installing facilities described in your approved COP (§ 585.632(a)) and, when required by this part, your SAP (§ 585.614(b)) or GAP (§ 585.651):

(1) A Facility Design Report (FDR); and

(2) A Fabrication and Installation Report (FIR).

~~(b) You may begin to fabricate and install the approved facilities after BOEM notifies you that it has received your reports and has no objections. If BOEM receives the reports, but does not respond with objections within 60 days of receipt or 60 days after we approve your SAP, COP, or GAP, if you submitted your report with the plan, BOEM is deemed not to have objections to the reports, and you may commence fabrication and installation of your facility or facilities. submit separate FDRs and FIRs for the major components of your project as agreed to by BOEM on a case-by-case basis. If you submit separate FDRs and FIRs by major components, you must explain to BOEM how all major components detailed in the reports will function together effectively in an integrated manner in accordance with your project design, and you must demonstrate that such integration has been verified by your CVA.~~

~~(c) You are encouraged to may submit your FDRs and FIRs before or after SAP, COP, or GAP approval for BSEE completeness (or pre-) review under Section 585.704.~~

...

~~(e) BSEE imposes no restrictions on fabrication or procurement of project parts or components so long as such activities do not take place on the OCS, except that such fabrication or procurement is subject to verification by your CVA in accordance with 585.705. You may commence procurement of discrete parts of the project that are commercially available in standardized form and type-certified components, or fabrication activities that do not take place on the OCS (e.g., manufacturing), prior to the submittal of the reports required under subsection (a) above or any plans required under this part. The procurement and fabrication of facility components allowed under this subsection are subject to verification by your CVA, and BOEM may object to the installation of said components on the OCS if it considers that the components or their fabrication is inconsistent with accepted industry or engineering standards, the approved SAP, COP, or GAP, the FDR or FIR, or BOEM's regulations.~~



TOPIC: FDR, FIR, and CVA Revisions

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

(a) Your Facility Design Report provides specific details of the design of any facilities, including cables and pipelines that are outlined in your approved SAP, COP, or GAP. Your Facility Design Report must demonstrate that your design conforms to your responsibilities listed in § 585.105(a). You must include the following items in your Facility Design Report:

....

<u>(12) Design Standards</u>	<u>A listing of the most relevant The industry standards you will apply to ensure the facilities are designed to meet § 585.105.</u>
<u>(14) Other information</u>	<u>Additional information required by BOEM.</u>



TOPIC: FDR, FIR, and CVA Revisions

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

(a) Your Fabrication and Installation Report must describe how your facilities will be fabricated and installed in accordance with the design criteria identified in the Facility Design Report; your approved SAP, COP, or GAP; and generally accepted industry standards and practices. Your Fabrication and Installation Report must demonstrate how your facilities will be fabricated and installed in a manner that conforms to your responsibilities listed in § 585.105(a). You must include the following items in your Fabrication and Installation Report:

...

(3) Fabrication information	A listing of the most relevant The industry standards you will use to ensure the facilities are fabricated to the design criteria identified in your Facility Design Report	You must submit 1 paper copy and 1 electronic copy.
(8) Commissioning procedures for critical safety systems	Original equipment manufacturer procedures or other BOEM approved procedures for commissioning of Commissioning plan for critical safety systems as identified in § 585.701(a)(13).	You must submit 1 paper copy and 1 electronic copy.
...	...	
(10) Other information	Additional information required by BOEM.	

(b) You must submit your FIR to BOEM pursuant to § 585.110.

~~(c) You may submit a request for any project easement and supporting information as part of your original FIR submission or as a revision to it.~~

...



Topic: Major Repairs and Modifications to Installed Projects

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

(a) You must ~~verify and demonstrate~~ in a report to us, ~~certify~~ that major repairs and major modifications to ~~the~~ completed project **following installation** conform to accepted engineering practices.



TOPIC: FDR, FIR, and CVA Revisions

§ 585.705 When must I use a Certified Verification Agent (CVA)?

You must use a CVA to review and certify the Facility Design Report, the Fabrication and Installation Report, and the Project Modifications and Repairs Report.

(a) Unless BOEM waives this requirement under paragraph (c) of this section, you must use one or more CVAs to review and verify your FDRs, FIRs, and the Project Modification and Repair Reports.

(a) You must use The purpose of a CVA is to:

(1) Ensure that your facilities are designed, fabricated, and installed in conformance with accepted engineering practices and the Facility Design Report and Fabrication and Installation Report;

(2) Ensure critical safety systems are commissioned in accordance with the procedures plan identified in § 585.702(a)(8);

(3) Ensure that major repairs and major modifications are completed in conformance with accepted engineering practices; and

(4) Provide BOEM and you with immediate reports of all incidents that affect the facility design, fabrication, and installation of, including commissioning of critical safety systems, for the project and its components.

(b) BOEM may waive in whole or in part the requirement that you use a CVA if you can demonstrate the following:

If you demonstrate that . . .	Then BOEM may waive the requirement for a CVA for the following:
(1) The facility or component design conforms to a standard design that has been successfully used previously or has been type approved for use <u>used successfully</u> in a similar environment, and the installation design conforms to accepted engineering practices	The design of your structure(s).
(2) The manufacturer <u>relevant fabricator</u> has successfully manufactured <u>fabricated</u> similar facilities, and the facility will be fabricated in conformance with accepted engineering practices <u>and to a recognized quality assurance standard. Alternate means of</u>	The fabrication of your structure(s).



<p>If you demonstrate that . . .</p>	<p>Then BOEM may waive the requirement for a CVA for the following:</p>
<p><u>quality assurance compliance must be approved on a case-by-case basis.</u></p>	
<p>(3) The <u>relevant</u> installation company has<u>companies have</u> successfully installed similar facilities in a similar offshore environment, and your structure(s)<u>structures</u> will be installed in conformance with accepted engineering practices</p>	<p>The installation of your structure(s).</p>
<p>(4) Repairs and<u>Major repairs or</u> major modifications will be completed in conformance with accepted engineering practices <u>and to a recognized quality assurance standard. Alternate means of quality assurance compliance must be approved on a case-by-case basis.</u></p>	<p>The <u>major</u> repair or major modification of your structure(s).</p>



TOPIC: FDR, FIR, and CVA Revisions

§ 585.706 How do I nominate a CVA for BOEM approval?

~~(a) As part of your COP (as provided in § 585.626(b)(20) and, when required by this part, your SAP (§ 585.610(a)(9)) or GAP (§ 585.645(c)(5)), you must nominate a CVA for BOEM approval. You must specify whether the nomination is for the Facility Design Report, Fabrication and Installation Report, Modification and Repair Report, or for any combination of these.~~

(a) A CVA must be nominated and approved by BOEM before conducting any verification activities for which it has been nominated. If you intend to use multiple CVAs, you must nominate a general project CVA who will manage the project verification strategy and who will ensure consistency and oversight among the CVAs, especially in transition areas between different CVAs. The general project CVA must be nominated no later than COP submission.

(b) For each CVA that you nominate, you must submit to BOEM a list of documents used in your design that you will forward to the CVA and a qualification statement that includes the following:

- (1) Previous experience in third-party verification or experience in the design, fabrication, installation, or major modification of offshore energy facilities;
- (2) Technical capabilities of the individual or the primary staff for the specific project, including relevant professional licenses, certifications, and accreditations;
- (3) Size and type of organization or corporation;
- (4) In-house availability of, or access to, appropriate technology (including computer programs, hardware, and testing materials and equipment);
- (5) Ability to perform the CVA functions for the specific project considering current commitments;
- (6) Previous experience with BOEM requirements and procedures, if any; and
- (7) The scope and level of work to be performed by the CVA, including all relevant reports and facilities that the CVA will verify, which shall be in accordance with generally accepted project verification schemes.

....



TOPIC: FDR, FIR, and CVA Revisions

§ 585.708 What are the CVA's or project engineer's primary duties for fabrication and installation review?

(a) The CVA or project engineer must do all of the following:

(1) Use good engineering judgment and practice in conducting an independent assessment of the fabrication and installation activities and of the commissioning of critical safety systems;

(2) ~~Periodically monitor~~ **Monitor** the fabrication and installation of the facility and the commissioning of critical safety systems as required by paragraph (b) of this section;

(3) Make periodic onsite inspections while fabrication is in progress and verify the items required by § 585.709;

(5) ~~Certify~~ Verify in a **project verification** report that project components are fabricated and installed in accordance with accepted engineering practices; and to a recognized quality assurance standard or to an equivalent alternate means of quality assurance considered on a case-by-case basis, your approved ~~COP, SAP, COP,~~ COP or GAP (as applicable); and the Fabrication and Installation Report ~~your FIR.~~ If multiple CVAs are involved in your project, the general project CVA must submit the final report containing such verification for the project.

~~(i)~~ **(i)** The project verification report must ~~also~~ identify the location of all records pertaining to facility fabrication and installation, as required in § 585.714(c); ~~and~~

~~(ii) You may commence commercial operations or other approved activities 30 days after BOEM receives that certification~~ **(ii)** verification report, unless BOEM notifies you within that time period of its objections to the certification ~~verification~~ report.

~~(6)~~ Provide records documenting that critical safety systems are commissioned in accordance with the procedures identified in § 585.702(a)(8); and

~~(7)~~ Identify the location of all records pertaining to commissioning of critical safety systems, as required in § 585.714(c).

(b) To comply with paragraph (a)(5) of this section, the CVA or project engineer must **periodically** monitor the fabrication and installation of the facility ~~to ensure~~ and the commissioning of critical safety systems to verify that it has been built and installed according to the Facility Design Report and Fabrication and Installation Report your FDRs and FIRs.



(1) If the CVA or project engineer finds that either fabrication and installation procedures or safety system commissioning procedures, or both, have been **materially** changed or design specifications have been **materially** modified, the CVA or project engineer must inform you; and

(2) If you accept the modifications, ~~then~~ you must also inform BOEM.



TOPIC: FDR, FIR, and CVA Revisions

§ 585.710 When conducting onsite installation inspections, what must the CVA or project engineer do?

...

(b)(3) For a fixed or floating facility, the CVA or project engineer must verify that proper **or type approved** procedures were used during the following:

- (1) The loadout of the jacket, decks, piles, or structures from each fabrication site;
~~and~~
- (2) The actual installation of the facility or major modification and the related installation activities; and
- (3) Commissioning of critical safety systems.



TOPIC: FDR, FIR, and CVA Revisions

New Section: What must the CVA include in my Project Verification Report?

(a) The Project Verification Report must include an account of the verification approach during fabrication and installation (methodology, personnel), a description of the visits and document reviews conducted, reference to any interim verification reports, list of reference documents used in the verification, any deviations observed between the FDR/ FIR and the actual fabrication and installation, conclusions.

(b) The report must provide the location of verification records, as required in § 585.714(c).

(c) The Project Verification Report must include the verification statement per § 585.708(a)(5).

(d) 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 § 585.113.



TOPIC: FDR, FIR, and CVA Revisions

New Section: What must I include in my as-built submissions?

(a) Your as-fabricated drawings and documents of any facilities that are outlined in your FDR and FIR, must be made available to DOI prior to PVR non-objection and must include the following items:

Required documents	Description of required content
(1) Complete set of cable drawing(s)	Complete set of as-fabricated cable drawing(s)
(2) Electrical one-line drawing(s)	As-fabricated electrical one-line drawing(s) for the facilities
(3) Cause and Effect Chart	As-fabricated Cause and Effect Chart, as applicable, for the facilities
(4) Schematics of fire and gas-detection system(s)	As-fabricated schematics of fire and gas-detection system(s), as applicable, for the facilities

(b) Your as-installed drawings and documents of any facilities that are outlined in your FDR and FIR, must be made available to DOI within 90 days of the facility commencing commercial operations^[2] and must include the following items:

Required documents	Description of required content
(1) Complete set of cable drawing(s)	Final complete set of as-installed cable drawing(s)
(2) Piping and instrumentation diagram(s)	Final, as installed piping and instrumentation diagram(s)
(3) Safety flow diagram(s) ^[1]	Final, as installed safety flow diagram(s)
(4) Electrical one-line drawing(s)	Final, as-installed electrical one-line drawing(s) for the facilities
(5) Cause and Effect Chart	Final, as-installed Cause and Effect Chart, as applicable, for the facilities
(6) Schematics of fire and gas-detection system(s)	Final, as-installed schematics of fire and gas-detection system(s), as applicable, for the facilities

^[1] Safety flow diagrams should depict the location of critical safety systems and equipment designed to prevent or ameliorate major accidents that could result in harm to health, safety, or the environment.

^[2] "Commercial operations" is defined at 30 C.F.R. § 585.112.



(c) Your as-installed drawings and documents of any facilities that are outlined in your FDR and FIR, must be made available to DOI within one calendar year of the facility commencing commercial operations^[3] and must include the following items:

Required documents	Description of required content
(1) Complete set of structural drawing(s) including major structural components and evacuation routes	Final complete set of as-installed structural drawing(s)
(2) Front, side, and plan view drawings	Final, as-installed front, side and plan view drawings
(3) Location plat for all Project facilities	Final, as installed location plat for all Project facilities

^[3] "Commercial operations" is defined at 30 C.F.R. § 585.112.

(d) You must provide the location of records, as required in § 585.714(c). 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 § 585.113.



TOPIC: Safety Revisions

§ 585.810 ~~What~~When must I submit a Safety Management System (SMS) and what must I include in my Safety Management System SMS?

You must submit a description of the are required to use a Safety Management System you will use (SMS) for activities conducted on the OCS to develop or operate a lease, from met buoy placement and site assessment work through decommissioning, and to provide your SMS to BOEM upon request. You must also submit a detailed description of the SMS with your COP (as provided under § 585.627(d)) and, when required by this part, your SAP (as provided in § 585.614(b)) or GAP (as provided in § 585.651). You~~Your SMS must describe~~address:

...

~~(b) Remote monitoring, control, and shut down capabilities; such as:~~

- ~~(1) Aspects of operations and mechanical and structural integrity that will be monitored remotely;~~
- ~~(2) Circumstances under which remote monitoring will be activated and how it will be maintained;~~
- ~~(3) Maintenance of the security of the remote sensing and control capabilities;~~
- ~~(4) Monitoring of conditions if remote sensing equipment fails; and~~
- ~~(5) Conditions that will result in the manual shut-down of one or more facilities for the preservation of safety.~~

...

(e) How and when you will test your ~~Safety Management System;~~ and SMS, such as:

- (1) Plans, processes, and schedules for:
 - (i) Self or third-party auditing of the SMS; and
 - (ii) Regular testing of certain SMS components, including ~~remote shut-down capabilities and~~ emergency response readiness; and
- (2) Corrective action processes to improve the effectiveness of your SMS based on the results of audits, tests, investigations of incidents (including near-misses), feedback from the field, and other information sources.



TOPIC: Safety Revisions

§ 585.824 How must I conduct self-inspections?

(a) You must develop a comprehensive ~~annual~~ self-inspection plan covering all of your facilities. You must keep this self-inspection plan wherever you keep your records and make it available to BOEM ~~inspectors~~ upon request. Your self-inspection plan must specify:

(1) The type, extent, and frequency of ~~in-place~~ inspections that you will conduct for both the above-water and the below-water structures of all facilities and pertinent components of the mooring systems for any floating facilities; ~~and~~

(2) How you ~~are monitoring~~ will monitor the corrosion ~~protection~~ protections for both the above-water and below-water structures; ~~and~~

(3) How you will fulfill the requirement for ~~annual~~ on-site inspection of all safety equipment designed to prevent or ameliorate fires, spillages, or other major accidents under paragraph (b) of this section.

(b) You must conduct an onsite inspection of each of your facilities at least once a year, or on a less frequent schedule subject to BSEE non-objection. This inspection must include, but is not limited to, all safety equipment designed to prevent or ameliorate fires, spillages, or other major accidents.

(1) You must develop and retain summary reports for all such inspections for each calendar year. The summary report must note any failures of operability, required maintenance of critical safety equipment, or required replacement of the critical safety equipment identified during inspection.

(2) You must retain records of inspections and summary reports for the previous 2 calendar years and make them available to BOEM on request.

(b)(c) You must submit a report annually to us no later than November 1 that must include:

(1) A list of facilities inspected for structural condition and corrosion protection in the preceding 12 months;

(2) The type of inspection employed, (*i.e.*, visual, magnetic particle, ultrasonic testing); and

(3) A summary of the inspection indicating what repairs, if any, were needed and the overall structural condition of the facility.



TOPIC: Idle Iron and Decommissioning

§ 585.902 What are the general requirements for decommissioning for facilities authorized under my SAP, COP, or GAP?

(a) Except as otherwise authorized by BOEM under § 585.909, within 2 years following termination of a lease or grant, or earlier if a facility has ceased generating electricity for over one year, BOEM determines that the facility is no longer capable of resuming operations, and removal of the facility would not adversely affect the functioning of other facilities, BOEM determines a facility is no longer useful for operations, you must:

(1) Remove or decommission all facilities, projects, cables, pipelines, and obstructions;

(2) Clear the seafloor of all obstructions created by activities on your lease, including your project easement, or grant, as required by the BOEM.

(b) Before decommissioning the facilities under your SAP, COP, or GAP, you must submit a decommissioning application and receive approval from the BOEM.

...

§ 585.905 When must I submit my decommissioning application?

You must submit your decommissioning application upon the earliest of the following dates:

(a) 2 years before the expiration of your lease.

(b) 90 days after completion of your commercial activities on a commercial lease.

(c) 90 days after completion of your approved activities under a limited lease on a ROW grant or RUE grant.

(d) 90 days after cancellation, relinquishment, or other termination of your lease or grant.

(e) 90 days after BOEM determines a facility is no longer useful for operations under Section 585.902(a).