

## § 583.350

agreement. BOEM is under no obligation to extend or modify an agreement and cannot be held liable for the consequences of the expiration of an agreement. With the exception of paragraph (b) of this section, any such requests must be made at least 180 days before the term of the agreement expires. BOEM will respond to the request for modification within 30 days of receipt and request any necessary information and evaluations to comply with § 583.305. BOEM may approve the request, disapprove it, or approve it with modifications subject to the requirements of § 583.305.

(1) If BOEM approves a request to extend or modify an agreement, BOEM will draft an agreement modification for review by the parties to the agreement in the form of an amendment to the original agreement. The amendment will include:

- (i) The agreement number, as assigned by BOEM;
- (ii) The modification(s) agreed to;
- (iii) Any additional mitigation required; and
- (iv) The signatures of the parties to the agreement and BOEM.

(2) If BOEM disapproves a request to extend or modify an agreement, BOEM will inform the parties to the agreement of the reasons in writing. Parties to the agreement may ask the BOEM Director for reconsideration in accordance with § 583.125.

(b) By written request, for strictly minor modifications that do not change the substance of the project or the analyzed environmental effects of the project, including but not limited to, the change of a business address, the substitution of a different Federal, State or local government agency contact, or an extension of less than 30 days, parties to the agreement may memorialize the minor modification in a letter from BOEM to the parties indicating the request has been granted.

### § 583.350 When can an agreement be terminated?

(a) The Director will terminate any agreement issued under this part upon proof that it was obtained by fraud or misrepresentation, after notice and an opportunity to be heard has been afforded to the parties of the agreement.

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(b) The Director may immediately suspend and subsequently terminate any agreement issued under this part when:

(1) There is noncompliance with the agreement, pursuant to § 583.330 (a); or

(2) It is necessary for reasons of national security or defense; or

(3) The Director determines that:

(i) Continued activity under the agreement would cause serious harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

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

(iii) The advantages of termination outweigh the advantages of continuing the agreement.

(c) The Director will immediately notify the parties to the agreement of the suspension or termination. The Director will also mail a letter to the parties to the agreement at their record post office address with notice of any suspension or termination and the cause for such action.

(d) In the event that BOEM terminates an agreement under this section, none of the parties to the agreement will be entitled to compensation as a result of expenses or lost revenues that may result from the termination.

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AUTHORITY: 43 U.S.C. 1337.

SOURCE: 88 FR 6430, Jan. 31, 2023, unless otherwise noted.

## Subpart A—General Provisions

### § 585.100 Authority.

The authority for this part derives from section 8 of the Outer Continental Shelf Lands Act (OCS Lands Act) (43 U.S.C. 1337). The Secretary of the Interior delegated to the Bureau of Ocean Energy Management (BOEM) the authority to manage the development of energy on the Outer Continental Shelf (OCS) from sources other than oil and gas, including renewable energy, through the issuance of leases, easements, and rights-of-way for activities that produce or support the production, transportation, or transmission of energy.

### § 585.101 What is the purpose of this part?

The purpose of this part is to:

(a) Establish procedures for issuance and administration of leases, right-of-way (ROW) grants, and right-of-use and easement (RUE) grants for renewable energy production on the OCS; and

(b) Inform you and third parties of your obligations when you undertake activities authorized in this part.

(c) Ensure that renewable energy activities on the OCS are conducted in a safe and environmentally sound manner, in conformance with the requirements of subsection 8(p) of the OCS Lands Act, other applicable laws and regulations, and the terms of your lease, ROW grant, or RUE grant.

(d) This part will not convey access rights for oil, gas, or other minerals.

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

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

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- (1) Safety;
  - (2) Protection of the environment;
  - (3) Prevention of waste;
  - (4) Conservation of the natural resources of the OCS;
  - (5) Coordination with relevant Federal agencies (including, in particular, those agencies involved in planning activities that are undertaken to avoid conflicts among users and to maximize the economic and ecological benefits of the OCS, including multifaceted spatial planning efforts);
  - (6) Protection of National security interests of the United States;
  - (7) Protection of the rights of other authorized users of the OCS;
  - (8) A fair return to the United States;
  - (9) Prevention of interference with reasonable uses (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, research, monitoring, and enforcement of activities authorized by a lease or grant under this part.
- (b) BOEM will require compliance with all applicable laws, regulations, other requirements, and the terms of your lease or grant and approved plans under this part. BOEM will approve, disapprove, or approve with conditions any plans, applications, or other documents submitted to BOEM for approval under the provisions of this part.
- (c) Unless otherwise provided in this part, BOEM may give oral directives or decisions whenever prior BOEM approval is required under this part. BOEM will document in writing any such oral directives within 10 business days.
- (d) BOEM will establish practices and procedures to govern the collection of all payments due to the Federal Government required under the regulations of this part, including any cost recovery fees, rents, operating fees, and other fees or payments. BOEM will do this in accordance with the terms of this part, the leasing notice, the lease

or grant under this part, and applicable Office of Natural Resources Revenue (ONRR) regulations or guidance.

(e) BOEM will provide for coordination and consultation with the Governor of any State, the executive of any local government, and the executive of any Indian Tribe that may be affected by a lease, easement, or ROW under this subsection. BOEM may invite any affected State Governor, representative of an affected Indian Tribe, and affected local government executive to join in establishing a task force or other joint planning or coordination agreement in carrying out our responsibilities under this part.

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

(a) BOEM may prescribe or approve departures from these regulations when departures are necessary to:

- (1) Facilitate the appropriate activities on a lease or grant under this part;
- (2) Conserve natural resources;
- (3) Protect life (including human and wildlife), property, or the marine, coastal, or human environment; or
- (4) Protect sites, structures, or objects of historical or archaeological significance.

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

- (1) Be consistent with subsection 8(p) of the OCS Lands Act;
- (2) Protect the environment and the public health and safety to the same degree as if there was no approved departure from the regulations;
- (3) Not impair the rights of third parties; and
- (4) Be documented in writing.

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

Except as otherwise authorized by law, it will be unlawful for any person to construct, operate, or maintain any facility to produce, transport, or support generation of electricity or other energy product derived from a renewable energy resource on any part of the OCS, except under and in accordance with the terms of a lease, easement, or

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ROW issued pursuant to the OCS Lands Act.

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

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

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

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

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

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

(e) Make all applicable payments on time;

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

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

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

(i) Compile, retain, and make available to BOEM representatives, within the time specified by BOEM, any data and information related to the site assessment, design, and operations of your project; and

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

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

(a) BOEM may take appropriate corrective action under this part if you fail to comply with applicable provisions of Federal law, the regulations in this part, other applicable regulations,

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any order of the Director, the provisions of a lease or grant issued under this part, or the requirements of an approved plan or other approval under this part.

(b) BOEM may issue to you a notice of noncompliance if we determine that there has been a violation of the regulations in this part, any order of the Director, or any provision of your lease, grant, or other approval issued under this part. When issuing a notice of noncompliance, BOEM will serve you at your last known address.

(c) A notice of noncompliance will tell you how you failed to comply with this part, any order of the Director and/or the provisions of your lease, grant or other approval, and will specify what you must do to correct the noncompliance and the time limits within which you must act.

(d) Failure of a lessee, operator, or grant holder to take the actions specified in a notice of noncompliance issued under this part within the time limit specified provides the basis for issuance of a cessation order by BSEE, as provided in 30 CFR 285.401 and/or cancellation of the lease or grant by the Secretary as provided in § 585.422.

(e) BOEM may assess civil penalties, as authorized by section 24 of the OCS Lands Act, if you fail to comply with any provision of this part or any term of a lease, grant, or order issued under the authority of this part, after notice of such failure and expiration of any reasonable period allowed for corrective action. Civil penalties will be determined and assessed in accordance with the procedures set forth in 30 CFR part 550, subpart N.

(f) You may be subject to criminal penalties as authorized by section 24 of the OCS Lands Act.

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

(a) You may hold a lease or grant under this part if you can demonstrate that you have the technical and financial capabilities to conduct the activities authorized by the lease or grant and you are a(n):

(1) Citizen or national of the United States;

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(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; or

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

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

(1) You or your principals are excluded or disqualified from participating in transactions covered by the Federal nonprocurement debarment and suspension system (2 CFR part 1400), unless 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) 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 allowed for compliance) after BOEM or BSEE directed you to comply; and

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

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

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

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

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

(b) An individual must submit a written statement of citizenship status attesting to U.S. citizenship. It does not need to be notarized nor give the age of individual. A resident alien may submit a photocopy of the U.S. Citizenship and Immigration Services form evidencing legal status of the resident alien.

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

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

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

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

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

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

Requirements to qualify to hold leases or grants on the OCS:	Corp.	Ltd. prtmsp.	Gen. prtmsp.	LLC	Trust
(1) Original certificate or certified copy from the State of incorporation stating the name of the corporation exactly as it must appear on all legal documents.	XX	.....	.....		
(2) Certified statement by Secretary/Assistant Secretary over corporate seal, certifying that the corporation is authorized to hold OCS leases.	XX	.....	.....		
(3) Evidence of authority of titled positions to bind corporation, certified by Secretary/Assistant Secretary over corporate seal, including the following:	XX	.....	.....		



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Requirements to qualify to hold leases or grants on the OCS:	Corp.	Ltd. prtensp.	Gen. prtensp.	LLC	Trust
(i) Certified copy of resolution of the board of directors with titles of officers authorized to bind corporation.					
(ii) Certified copy of resolutions granting corporate officer authority to issue a power of attorney.					
(iii) Certified copy of power of attorney or certified copy of resolution granting power of attorney.					
(4) Original certificate or certified copy of partnership or organization paperwork registering with the appropriate State official.	.....	XX	XX	XX	
(5) Copy of articles of partnership or organization evidencing filing with appropriate Secretary of State, certified by Secretary/Assistant Secretary of partnership or member or manager of LLC.	.....	XX	XX	XX	
(6) Original certificate or certified copy evidencing State where partnership or LLC is registered. Statement of authority to hold OCS leases, certified by Secretary/Assistant Secretary, <i>OR</i> original paperwork registering with the appropriate State official.	.....	XX	XX	XX	
(7) Statements from each partner or LLC member indicating the following:	.....	XX	XX	XX	
(i) If a corporation or partnership, statement of State of organization and authorization to hold OCS leases, certified by Secretary/Assistant Secretary over corporate seal, if a corporation.					
(ii) If an individual, a statement of citizenship.					
(8) Statement from general partner, certified by Secretary/Assistant Secretary that:	.....	XX	.....		
(i) Each individual limited partner is a U.S. citizen and;					
(ii) Each corporate limited partner or other entity is incorporated or formed and organized under the laws of a U.S. State or territory.					
(9) Evidence of authority to bind partnership or LLC, if not specified in partnership agreement, articles of organization, or LLC regulations, <i>i.e.</i> , certificates of authority from Secretary/Assistant Secretary reflecting authority of officers.	.....	XX	XX	XX	
(10) Listing of members of LLC certified by Secretary/Assistant Secretary or any member or manager of LLC.	.....	.....	.....	XX	
(11) Copy of trust agreement or document establishing the trust and all amendments, properly certified by the trustee with reference to where the original documents are filed.	.....	.....	.....	.....	XX
(12) Statement indicating the law under which the trust is established and that the trust is authorized to hold OCS leases or grants.	.....	.....	.....	.....	XX

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

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

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

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

**§ 585.109 When must I notify BOEM if an action has been filed alleging that I am insolvent or bankrupt?**

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

**§ 585.110 When must I notify BOEM of mergers, name changes, or changes of business form?**

You must notify BOEM in writing of any merger, name change, or change of

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

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

(a) You must submit all plans, applications, reports, or notices required by this part to BOEM at the following address: Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, VA 20166.

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

**§ 585.112 When and how does BOEM charge me processing fees on a case-by-case basis?**

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

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

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

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

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

(2) You may comment on the proposed fee.

(3) You may:

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

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

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

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

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

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

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

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

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

we adjust the fee downward, we will not pay interest.

**§ 585.113 Definitions.**

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

*Affected local government* means with respect to any activities proposed, conducted, or approved under this part or 30 CFR part 285, any locality—

(1) That is, or is proposed to be, the site of gathering, transmitting, or distributing electricity or other energy product, or is otherwise receiving, processing, refining, or transshipping product, or services derived from activities approved under this part or 30 CFR part 285;

(2) That is used, or is proposed to be used, as a support base for activities approved under this part or 30 CFR part 285; or

(3) In which there is a reasonable probability of significant effect on land or water uses from activities approved under this part, or 30 CFR part 285.

*Affected State* means with respect to any activities proposed, conducted, or approved under this part or 30 CFR part 285, any coastal State—

(1) That is, or is proposed to be, the site of gathering, transmitting, or distributing energy or is otherwise receiving, processing, refining, or transshipping products, or services derived from activities approved under this part or 30 CFR part 285;

(2) That is used, or is scheduled to be used, as a support base for activities approved under this part or 30 CFR part 285; or

(3) In which there is a reasonable probability of significant effect on land or water uses from activities approved under this part or 30 CFR part 285.

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

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

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

*BOEM* means Bureau of Ocean Energy Management of the Department of the Interior.

*BSEE* means Bureau of Safety and Environmental Enforcement of the Department of the Interior.

*Certified Verification Agent (CVA)* means an individual or organization, experienced in the design, fabrication, and installation of offshore marine facilities or structures, who will conduct specified third-party reviews, inspections, and verifications in accordance with 30 CFR part 285.

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

*Commercial activities* mean, for renewable energy leases and grants, all activities associated with the generation, storage, or transmission of electricity or other energy product from a renewable energy project on the OCS, and for which such electricity or other energy product is intended for distribution, sale, or other commercial use, except for electricity or other energy product distributed or sold pursuant to technology-testing activities on a limited lease. This term also includes activities associated with all stages of development, including initial site characterization and assessment, facility construction, and project decommissioning.

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

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

*Decommissioning* means removing BOEM and BSEE approved facilities and returning the site of the lease or

grant to a condition that meets the requirements under subpart I of 30 CFR part 285.

*Director* means the Director of the Bureau of Ocean Energy Management (BOEM), of the Department of the Interior, or an official authorized to act on the Director's behalf.

*Distance* means the minimum great circle distance.

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

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

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

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

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

*Human environment* means the physical, social, and economic components, conditions, and factors that interactively determine the state, condi-

tion, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

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

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

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

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

*Miles* mean nautical miles, as opposed to statute miles.

*Natural resources* include, without limiting the generality thereof, renewable energy, oil, gas, and all other minerals (as defined in section 2(q) of the OCS Lands Act), and marine animal and marine plant life.

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

*Outer Continental Shelf (OCS)* means all submerged lands lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 of the Submerged Lands Act (43

U.S.C. 1301), whose subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

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

*Project*, for the purposes of defining the source of revenues to be shared, means a lease ROW, RUE, or Alternate Use RUE on which the activities authorized under this part and/or 30 CFR part 285 or 586 are conducted on the OCS. The term “project” may be used elsewhere in this rule to refer to these same authorized activities, the facilities used to conduct these activities, or to the geographic area of the project, *i.e.*, the project area.

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

*Project easement* means an easement to which, upon approval of your Construction and Operations Plan (COP) or General Activities Plan (GAP), you are entitled as part of the lease for the purpose of installing, gathering, transmission, and distribution cables, pipelines, and appurtenances on the OCS as necessary for the full enjoyment of the lease.

*Renewable Energy* means energy resources other than oil and gas and minerals as defined in 30 CFR part 580. Such resources include, but are not limited to, wind, solar, and ocean waves, tides, and current.

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

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

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

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

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

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

*We, us, and our* refer to the Bureau of Ocean Energy Management of the Department of the Interior, or its possessive, depending on the context.

*You and your* means an applicant, lessee, the operator, or designated operator, ROW grant holder, or RUE grant holder under this part, or the designated agent of any of these, or the possessive of each, depending on the context. The terms *you* and *your* also include contractors and subcontractors of the entities specified in the preceding sentence.

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

(a) BOEM will make data and information available in accordance with the requirements and subject to the

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limitations of the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the regulations contained in 43 CFR part 2.

(b) BOEM will not release such data and information that we have determined is exempt from disclosure under exemption 4 of FOIA. We will review

such data and information and objections of the submitter by the following schedule to determine whether release at that time will result in substantial competitive harm or disclosure of trade secrets.

If you have a . . .	Then BOEM will review data and information for possible release:
(1) Commercial lease .....	At the earlier of: (i) 3 years after the initiation of commercial generation or (ii) 3 years after the lease terminates.
(2) Limited lease .....	At 3 years after the lease terminates.
(3) ROW or RUE grant .....	At the earliest of: (i) 10 years after the approval of the grant; (ii) Grant termination; or (iii) 3 years after the completion of construction activities.

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

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

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

**§ 585.115 Paperwork Reduction Act statements—information collection.**

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

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

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

(d) Comments regarding any aspect of the collections of information under this part, including suggestions for reducing the burden, should be sent to the Information Collection Clearance Officer, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166.

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

30 CFR 585 subpart and title	Reasons for collecting information and how used
(1) Subpart A—General Provisions .....	To inform BOEM of actions taken to comply with general operational requirements on the OCS. To ensure that operations on the OCS meet statutory and regulatory requirements, are safe and protect the environment, and result in diligent development on OCS leases.
(2) Subpart B—Issuance of OCS Renewable Energy Leases ...	To provide BOEM with information needed to determine when to use a competitive process for issuing a renewable energy lease, to identify auction formats and bidding systems and variables that we may use when that determination is affirmative, and to determine the terms under which we will issue renewable energy leases.

30 CFR 585 subpart and title	Reasons for collecting information and how used
(3) Subpart C—ROW Grants and RUE Grants for Renewable Energy Activities.	To issue ROW grants and RUE grants for OCS renewable energy activities that are not associated with a BOEM-issued renewable energy lease.
(4) Subpart D—Lease and Grant Administration .....	To ensure compliance with regulations pertaining to a lease or grant; assignment and designation of operator; and suspension, renewal, termination, relinquishment, and cancellation of leases and grants.
(5) Subpart E—Payments and Financial Assurance Requirements.	To ensure that payments and financial assurance payments for renewable energy leases comply with subpart E.
(6) Subpart F—Plan Requirements .....	To enable BOEM to comply with the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), and other Federal laws and to ensure the safety of the environment on the OCS.

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

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

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

(c) BOEM will publish such requests for information by the Director in the FEDERAL REGISTER.

**§ 585.117 [Reserved]**

**§ 585.118 What are my appeal rights?**

(a) Any party adversely affected by a BOEM official’s final decision or order issued under the regulations of this part may appeal that decision or order to the Interior Board of Land Appeals. The appeal must conform with the procedures found in 30 CFR part 590 and in

43 CFR part 4, subpart E. Appeal of a final decision for bid acceptance is covered under paragraph (c) of this section.

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

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

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

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

**Subpart B—Issuance of OCS Renewable Energy Leases**

GENERAL LEASE INFORMATION

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

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

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(1) Commercial activities; or

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

(b) A lease issued under this part confers on the lessee the right to one or more project easements without further competition for the purpose of installing gathering, transmission, and distribution cables; pipelines; and appurtenances on the OCS as necessary for the full enjoyment of the lease.

(1) You must apply for the project easement as part of your COP or GAP, as provided under subpart F of this part; and

(2) BOEM will incorporate your approved project easement in your lease as an addendum.

(c) A commercial lease issued under this part may be developed in phases, with BOEM approval as provided in § 585.238.

### § 585.201 How will BOEM issue leases?

BOEM will issue leases on a competitive basis, as provided under §§ 585.210 through 585.225. However, if we determine after public notice of a proposed lease that there is no competitive interest, we will issue leases noncompetitively, as provided under §§ 585.230 and 585.232. We will issue leases on forms approved by BOEM and will include terms, conditions, and stipulations identified and developed through the process set forth in §§ 585.211 and 585.231.

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

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

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

For leases issued under this part, through either the competitive or non-competitive process, BOEM, prior to issuing the lease, will coordinate and consult with relevant Federal agencies (including, in particular, those agencies involved in planning activities that are undertaken to avoid or mini-

mize conflicts among users and to maximize the economic and ecological benefits of the OCS, including multifaceted spatial planning efforts), the Governor of any affected State, the executive of any affected local government, and any affected Indian Tribe, as directed by subsections 8(p)(4) and (7) of the OCS Lands Act or other relevant Federal laws. Federal statutes that require BOEM to consult with interested parties or Federal agencies or to respond to findings of those agencies include the Endangered Species Act (ESA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA). BOEM also engages in consultation with State and Tribal historic preservation officers pursuant to the National Historic Preservation Act (NHPA).

### § 585.204 What areas are available for leasing consideration?

BOEM may offer any appropriately platted area of the OCS, as provided in § 585.205, for a renewable energy lease, except any area within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, National Marine Sanctuary System, or any National Monument.

### § 585.205 How will leases be mapped?

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

### § 585.206 What is the lease size?

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

(b) The lease size includes the minimum area that will allow the lessee sufficient space to develop the project and manage activities in a manner that is consistent with the provisions of this part and 30 CFR part 285. The lease



may include whole lease blocks or portions of a lease block.

§§ 585.207–585.209 [Reserved]

COMPETITIVE LEASE PROCESS

**§ 585.210 How does BOEM initiate the competitive leasing process?**

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

**§ 585.211 What is the process for competitive issuance of leases?**

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

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

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

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

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

(b) *Area identification*. BOEM will identify areas for environmental analysis and consideration for leasing. We will do this in consultation with appropriate Federal agencies, States, local

governments, affected Indian Tribes, and other interested parties.

(1) We may consider for lease those areas nominated in response to the Call for Information and Nominations, together with other areas that BOEM determines are appropriate for leasing.

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

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

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

(c) *Proposed Sale Notice*. BOEM will publish the Proposed Sale Notice in the FEDERAL REGISTER and send it to the Governor of any affected State, any Indian Tribe that might be affected, and the executive of any local government that might be affected. The comment period following issuance of a Proposed Sale Notice will be 60 days.

(d) *Final Sale Notice*. BOEM will publish the Final Sale Notice in the FEDERAL REGISTER at least 30 days before the date of the sale.

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

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

(a) If, after reviewing comments in response to the notice of Request for Interest, BOEM determines that there is no competitive interest in the lease area, and one party wishes to acquire a lease, we will discontinue the competitive process and will proceed with the noncompetitive process set forth in § 585.231(d) through (i) following receipt of the acquisition fee specified in § 585.502(a).

(b) If, after reviewing comments in response to the notice of Request for

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Interest, BOEM determines that competitive interest in the lease area continues to exist, we will continue with the competitive process set forth in §§ 585.211 through 585.225.

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

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

- (a) The area of interest for a possible lease.
- (b) A general description of your objectives and the facilities that you would use to achieve those objectives.
- (c) A general schedule of proposed activities, including those leading to commercial operations.
- (d) Available and pertinent data and information concerning renewable energy and environmental conditions in the area of interest, including energy and resource data and information used to evaluate the area of interest. BOEM will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and as provided in § 585.114.
- (e) Documentation showing that you are qualified to hold a lease, as specified in § 585.107.
- (f) Any other information requested by BOEM in the FEDERAL REGISTER notice.

### § 585.214 What will BOEM do with information from the Requests for Information or Calls for Information and Nominations?

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

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

### § 585.215 What areas will BOEM offer in a lease sale?

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

### § 585.216 What information will BOEM publish in the Proposed Sale Notice and Final Sale Notice?

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

- (a) The area available for leasing.
- (b) Proposed and final lease provisions and conditions, including, but not limited to:
  - (1) Lease size;
  - (2) Lease term;
  - (3) Payment requirements;
  - (4) Performance requirements; and
  - (5) Site-specific lease stipulations.
- (c) Auction details, including:
  - (1) Bidding procedures and systems;
  - (2) Minimum bid;
  - (3) Deposit amount;
  - (4) The place and time for filing bids and the place, date, and hour for opening bids;
  - (5) Lease award method; and
  - (6) Bidding or application instructions.
- (d) The official BOEM lease form to be used or a reference to that form.
- (e) Criteria BOEM will use to evaluate competing bids or applications and how the criteria will be used in decision-making for awarding a lease.
- (f) Award procedures, including how and when BOEM will award leases and how BOEM will handle unsuccessful bids or applications.
- (g) Procedures for appealing the lease issuance decision.
- (h) Execution of the lease instrument.

**§§ 585.217–585.219**

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**§§ 585.217–585.219 [Reserved]**

COMPETITIVE LEASE AWARD PROCESS

**§ 585.220 What auction format may BOEM use in a lease sale?**

(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:

Type of auction	Bid variable	Bidding process
(1) Sealed bidding .....	A cash bonus or an operating fee rate ...	One sealed bid per company per lease or packaged bidding unit.
(2) Ascending bidding .....	A cash bonus or an operating fee rate ...	Continuous bidding per lease.
(3) Two-stage bidding (combination of ascending and sealed bidding).	An operating fee rate in one, both, or neither stage and a cash bonus in one, both, or neither stage.	Ascending or sealed bidding until: (i) Only two bidders remain, or (ii) More than one bidder offers to pay the maximum bid amount.
(4) Multiple-factor bidding .....	Factors may include, but are not limited to: technical merit, timeliness, financing and economics, environmental considerations, public benefits, compatibility with State and local needs, cash bonus, rental rate, and an operating fee rate.	Stage-two sealed or ascending bidding commences at some predetermined time after the end of stage-one bidding. One proposal per company per lease or packaged bidding unit.

(b) You 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.

**§ 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:

Bid system	Bid variable
(1) Cash bonus with a constant fee rate (decimal) .....	Cash bonus.
(2) Constant operating fee rate with fixed cash bonus .....	A fee rate used in the formula found in § 585.506 to set the operating fee per year during the operations term of your lease.
(3) Sliding operating fee rate with a fixed cash bonus .....	A fee rate used in the formula in § 585.506 to set the operating fee for the first year of the operations term of your lease. The fee rate for subsequent years changes by a mathematical function we specify in the Final Sale Notice.
(4) Cash bonus and constant operating fee rate .....	Cash bonus and operating fee rate as stated in paragraph (a)(2) of this section (two-stage auction format only).
(5) Cash bonus and sliding operating fee rate .....	Cash bonus and operating fee rate as stated in paragraph (a)(3) of this section (two-stage auction format only).
(6) Multiple-factor combination of nonmonetary and monetary factors.	BOEM will identify bidding variables in the Final Sale Notice. Variables may include: (i) Nonmonetary (e.g., technical merit) factors and (ii) Monetary (e.g., cash bonus, rental rate, fee rate) factors.

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

**§ 585.222 What does BOEM do with my bid?**

(a) If sealed bidding is used:  
(1) We open the sealed bids at the place, date, and hour specified in the

Final Sale Notice for the sole purpose of publicly announcing and recording the bids. We do not accept or reject any bids at that time.

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

(b) If we use ascending bidding, we may, in the Final Sale Notice, reserve the right to accept the winning bid solely based on its being the highest bid submitted by a qualified bidder (qualified to be an OCS lessee under § 585.107).

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

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

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

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

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

**§ 585.223 What does BOEM do if there is a tie for the highest bid?**

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

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

**§ 585.224 What happens if BOEM accepts my bid?**

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

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

(1) Execute the lease;

(2) File financial assurance as required under §§ 585.515 through 585.537 as applicable; and

(3) Pay the balance of the bonus bid as specified in the lease sale notice.

(b) Within 45 days after you receive the lease copies, you must pay the first 12 months' rent as required in § 585.503.

(c) When you execute three copies of the lease and return the copies to us, we will execute the lease on behalf of the United States and send you one fully executed copy.

(d) You will forfeit your deposit if you do not execute and return the lease within 10- business days of receipt, or otherwise fail to comply with applicable regulations or terms of the Final Sale Notice.

(e) We may extend the 10 business day time period for executing and returning the lease if we determine the delay to be caused by events beyond your control.

(f) We reserve the right to withdraw an OCS area in which we have held a lease sale before you and BOEM execute the lease in that area. If we exercise this right, we will refund your bid deposit, without interest.

(g) If the awarded lease is executed by an agent acting on behalf of the bidder, the bidder must submit, along with the executed lease, written evidence that the agent is authorized to act on behalf of the bidder.

(h) BOEM will consider the highest submitted qualified bid to be the winning bid when bidding occurs under the systems described in § 585.221(a)(1) through (5). We will determine the winning bid for proposals submitted under the multiple-factor bidding format on the basis of selection by the panel as specified in § 585.222(d) when the bidding system under § 585.221(a)(6) is used. We will refund the deposit on all other bids.

**§ 585.225**

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

(a) If we reject your bid, we will provide a written statement of the reasons and refund any money deposited with your bid, without interest.

(b) You may ask the BOEM Director for reconsideration, in writing, within 15 business days of bid rejection, under § 585.118(c)(1). We will send you a written response either affirming or reversing the rejection.

**§§ 585.226–585.229 [Reserved]**

**NONCOMPETITIVE LEASE AWARD PROCESS**

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

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

(a) The area you are requesting for lease.

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

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

(d) Available and pertinent data and information concerning renewable energy and environmental conditions in the area of interest, including energy and resource data and information used to evaluate the area of interest. BOEM will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and as provided in § 585.114.

(e) If available from the appropriate State or local government authority, a statement that the proposed activity conforms with State and local energy planning requirements, initiatives, or guidance.

(f) Documentation showing that you meet the qualifications to become a lessee, as specified in § 585.107.

(g) An acquisition fee, as specified in § 585.502(a).

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**§ 585.231 How will BOEM process my unsolicited request for a non-competitive lease?**

(a) BOEM will consider unsolicited requests for a lease on a case-by-case basis and may issue a lease non-competitively in accordance with this part. We will not consider an unsolicited request for a lease under this part that is proposed in an area of the OCS that is scheduled for a lease sale under this part.

(b) BOEM will issue a public notice of a request for interest relating to your proposal and consider comments received to determine if competitive interest exists.

(c) If BOEM determines that competitive interest exists in the lease area:

(1) BOEM will proceed with the competitive process set forth in §§ 585.210 through 585.225;

(2) If you submit a bid for the lease area in a competitive lease sale, your acquisition fee will be applied to the deposit for your bonus bid; and

(3) If you do not submit a bid for the lease area in a competitive lease sale, BOEM will not refund your acquisition fee.

(d) If BOEM determines that there is no competitive interest in a lease, we will publish in the FEDERAL REGISTER a notice of Determination of No Competitive Interest. After BOEM publishes this notice, you will be responsible for submitting any required consistency certification and necessary data and information pursuant to 15 CFR part 930, subpart D, to the applicable State CZMA agency or agencies and BOEM.

(e) BOEM will coordinate and consult with affected Federal agencies, State, and local governments, and affected Indian Tribes in the review of non-competitive lease requests.

(f) After completing the review of your lease request, BOEM may offer you a noncompetitive lease.

(g) If you accept the terms and conditions of the lease, then we will issue the lease, and you must comply with all terms and conditions of your lease and all applicable provisions of this part and 30 CFR part 285. If we issue you a lease, we will send you a notice with 3 copies of the lease form.

**Ocean Energy Management, Interior**

**§ 585.235**

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

- (i) Execute the lease;
- (ii) File financial assurance as required under §§585.515 through 585.537; and

(2) Within 45 days after you receive the lease copies, you must pay the first 12 months' rent, as required in §585.503.

(h) BOEM will publish in the FEDERAL REGISTER a notice announcing the issuance of your lease.

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

**§ 585.232 May I acquire a lease non-competitively after responding to a Request for Interest or Call for Information and Nominations?**

(a) If you submit an area of interest for a possible lease and BOEM receives no competing submissions in response

to the RFI or Call, we may inform you that there does not appear to be competitive interest, and ask if you wish to proceed with acquiring a lease.

(b) If you wish to proceed with acquiring a lease, you must submit your acquisition fee as specified in §585.502(a).

(c) After receiving the acquisition fee, BOEM will follow the process outlined in §585.231(d) through (i).

**§§ 585.233–585.234 [Reserved]**

**COMMERCIAL AND LIMITED LEASE TERMS**

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

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

Lease term	Automatic extensions	Requirements
(1) Each commercial lease will have a preliminary term of 12 months, within which the lessee must submit: (i) a SAP; or (ii) a combined SAP and Construction and Operations Plan (COP). The preliminary term begins on the effective date of the lease.	If BOEM receives a SAP that satisfies the requirements of §§585.605–585.613 or a SAP/COP that satisfies the requirements of §§585.605–585.613 and §§585.620–585.628, the preliminary term will be extended for the time necessary for us to conduct technical and environmental reviews of the SAP or SAP/COP.	The SAP must meet the requirements of §§585.605–585.613. The SAP/COP must meet the requirements of §§585.605–585.613 and §§585.620–585.628.
(2) A commercial lease will have a site assessment term of five years to conduct site assessment activities and to submit a COP, if a SAP/COP has not been submitted. Your site assessment term begins when BOEM approves your SAP or SAP/COP.	If we receive a COP that satisfies the requirements of §§585.620–585.628, the site assessment term will be automatically extended for the period of time necessary for us to conduct technical and environmental reviews of the COP.	The COP must meet the requirements of §§585.620–585.628.
(3) A commercial lease will have an operations term of 25 years, unless a longer term is negotiated by the parties. A request for lease renewal must be submitted two years before the end of the operations term. If you submit a COP, your operations term begins on the date that BOEM approves the COP. If you submit a SAP/COP, your operations term begins on the earliest of the following dates: five years after BOEM approves the SAP/COP; when fabrication begins; or, when installation commences.	.....	The lease renewal request must meet the requirements in §§585.425–585.429.
(4) A commercial lease may have additional time added to the operations term through a lease renewal. The term of the lease renewal will not exceed the original term of the lease, unless a longer term is negotiated by the parties. The lease renewal term begins upon expiration of the original operations term.	.....	NOTE: BOEM may also order or grant a suspension of the operations term, as provided in §§585.415–585.421 thereby effectively extending the term of the lease.

**§ 585.236**

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

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

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

Lease term	Extension or suspension	Requirements
(1) Each limited lease has a preliminary term of 12 months to submit a GAP. The preliminary term begins on the effective date of the lease.	If we receive a GAP that satisfies the requirements of §§ 585.640–585.648 of this part, the preliminary term will be automatically extended for the period of time necessary for us to conduct a technical and environmental review of the plans.	The GAP must meet the requirements of §§ 585.640–585.648.
(2) Each limited lease has an operations term of five years for conducting site assessment, technology testing, or other activities. The operations term begins on the date that we approve your GAP.	We may order or grant a suspension of the operations term as provided in §§ 585.415–585.421.	

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

**§ 585.237 What is the effective date of a lease?**

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

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

**§ 585.238 May I develop my commercial lease in phases?**

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

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

(a) The Director may issue OCS leases, ROW grants, and RUE grants to a Federal agency or a State for renewable energy research activities that

support the future production, transportation, or transmission of renewable energy.

(b) In issuing leases, ROW grants, and RUE grants to a Federal agency or a State on the OCS for renewable energy research activities under this 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 exists.

(d) The Director and the head of the Federal agency or the Governor of a requesting State, or their authorized representatives, will negotiate the terms and conditions of such renewable energy leases, RUEs, or ROWs under this provision on a case-by-case basis. The framework for such negotiations, and standard terms and conditions of such leases, RUEs, or ROWs may be set forth in a memorandum of agreement (MOA) or other agreement between BOEM and a Federal agency or a State. The MOA must include the agreement of the head of the Federal agency or the Governor to assure that all subcontractors comply with this part and 30 CFR part 285, other applicable laws,

and terms and conditions of such leases or grants.

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

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

(2) Requirements to comply with these regulations and 30 CFR part 285, except as otherwise provided in the lease or grant.

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

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

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

ROW GRANTS AND RUE GRANTS

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

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

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

(c) You do not need a ROW grant or RUE grant for a project easement authorized under § 585.200(b) to serve your lease.

**§ 585.301 What do ROW grants and RUE grants include?**

(a) A ROW grant:

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

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

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

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

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

(a) To acquire a ROW grant or RUE grant you must provide evidence that you meet the qualifications as required in § 585.107.

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

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

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

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

(a) Each ROW or RUE grant will have a preliminary term of 12 months from the date of issuance of the ROW or RUE grant within which to submit a GAP. The preliminary term begins on the effective date of the grant. You must submit a GAP no later than the end of the preliminary term for your grant to remain in effect. However, you



**§ 585.304**

may submit a GAP prior to the issuance of your ROW or RUE grant.

(b) Except as described in paragraph (a) of this section, your ROW grant or RUE grant will remain in effect for as long as the associated activities are properly maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant.

**§ 585.304 [Reserved]**

OBTAINING ROW GRANTS AND RUE GRANTS

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

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

- (a) The area you are requesting for a ROW grant or RUE grant.
- (b) A general description of your objectives and the facilities that you would use to achieve those objectives.
- (c) A general schedule of proposed activities.
- (d) Pertinent information concerning environmental conditions in the area of interest.

**§ 585.306 What action will BOEM take on my request?**

BOEM will consider requests for ROW grants and RUE grants on a case-by-case basis and may issue a grant competitively, as provided in § 585.308, or noncompetitively if we determine after public notice that there is no competitive interest. BOEM will coordinate and consult with relevant Federal agencies, with the Governor of any affected State, and the executive of any affected local government.

(a) In response to an unsolicited request for a ROW grant or RUE grant, BOEM will first determine if there is competitive interest, as provided in § 585.307.

(b) If BOEM determines that there is no competitive interest in a ROW grant or RUE grant, we will publish a notice in the FEDERAL REGISTER of such determination. After BOEM publishes this

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notice, you will be responsible for submitting any required consistency certification and necessary data and information pursuant to 15 CFR part 930, subpart D, to the applicable State CZMA agency or agencies and BOEM. We will establish terms and conditions for the grant in consultation with you.

**§ 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.

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

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

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

(2) Conduct a competitive auction for issuing the ROW grant or RUE grant. The auction process for ROW grants and RUE grants will be conducted following the same process for leases set forth in §§ 585.211 through 585.225.

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

**§ 585.309 When will BOEM issue a non-competitive ROW grant or RUE grant?**

After completing the review of your grant request, BOEM may offer you a noncompetitive grant.

(a) If you accept the terms and conditions of the grant, then we will issue the grant, and you must comply with all terms and conditions of your grant and all applicable provisions of this part and 30 CFR part 285.

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

## Ocean Energy Management, Interior

## § 585.406

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

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

### §§ 585.311–585.314 [Reserved]

#### FINANCIAL REQUIREMENTS FOR ROW GRANTS AND RUE GRANTS

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

(a) You must make a deposit, as required in § 585.501(a), regardless of whether the auction is a sealed-bid, oral, electronic, or other auction format. BOEM will specify in the sale notice the official to whom you must submit the payment, the time by which the official must receive the payment, and the forms of acceptable payment.

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

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

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

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

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

(b) An annual rent for the first year of the grant, as specified in § 585.508.

## Subpart D—Lease and Grant Administration

### §§ 585.400–585.404 [Reserved]

#### DESIGNATION OF OPERATOR

### § 585.405 How do I designate an operator?

(a) If you intend to designate an operator who is not the lessee or grant holder, you must identify the proposed operator in your SAP (under § 585.610(a)(3)), COP (under § 585.626(b)(2)), or GAP (under § 585.645(b)(3)), as applicable. If no operator is designated in a SAP, COP, or GAP, BOEM will deem the lessee or grant holder to be the operator.

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

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

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

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

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

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

### § 585.406 Who is responsible for fulfilling lease and grant obligations?

(a) When you are not the sole lessee or grantee, you and your co-lessee(s) or co-grantee(s) are jointly and severally responsible for fulfilling your obligations under the lease or grant and the provisions of this part and 30 CFR part 285, unless otherwise provided in these regulations.

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

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

## § 585.407

jointly and severally responsible for complying with the regulations.

### § 585.407 [Reserved]

#### LEASE OR GRANT 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, 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 one paper copy and one electronic copy of an assignment application to BOEM. 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 and the assignee, if applicable;

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

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

(6) A statement that the assignee agrees to comply with and to be bound by the terms and conditions of the lease or grant;

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

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

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

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or changes of business form. You must notify BOEM of these events under § 585.109.

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

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

(b) Any assignee will be subject to all the terms and conditions of your original lease or grant, including the requirement to furnish financial assurance in the amount required in §§ 585.515 through 585.537.

(c) The assignee must submit proof of eligibility and other qualifications specified in § 585.107.

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

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

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

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

(a) As assignee, you are liable for all lease or grant obligations that accrue after BOEM approves the assignment. As assignee, you must comply with all the terms and conditions of the lease or grant and all applicable regulations, remedy all existing environmental and operational problems on the lease or grant, and comply with all decommissioning requirements under 30 CFR part 285, subpart I.

(b) Assignees are bound to comply with each term or condition of the

lease or grant and the regulations in this part and 30 CFR part 285. You are jointly and severally liable for the performance of all obligations under the lease or grant and under the regulations in this part and 30 CFR part 285 with each prior and subsequent lessee who held an interest from the time the obligation accrued until it is satisfied, unless this part provides otherwise.

§§ 585.412–585.414 [Reserved]

LEASE OR GRANT SUSPENSION

**§ 585.415 What is a lease or grant suspension?**

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

(1) As approved by BOEM at your request, as provided in § 585.416; or

(2) As ordered by BOEM, as provided in § 585.417 or by BSEE as provided in 30 CFR 285.417.

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

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

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

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

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

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

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

(d) Any other information BOEM may require.

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

BOEM may order a suspension under the following circumstances:

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

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

**§ 585.418 How will BOEM issue a suspension?**

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

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

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

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

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

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

(a) While BOEM evaluates your request for a suspension under § 585.416, you must continue to fulfill your payment obligation until the end of the original term of your lease or grant. If our evaluation goes beyond the end of the original term of your lease or grant, the term of your lease or grant will be extended for the period of time necessary for BOEM to complete its evaluation of your request, but you will not be required to make payments during the time of the extension.

(b) If BOEM approves your request for a suspension, as provided in § 585.416, we may suspend your payment obligation, as appropriate for the term that is suspended, depending on the reasons for the requested suspension.

(c) If BOEM orders a suspension, as provided in § 585.417, your payments, as

## § 585.421

appropriate for the term that is suspended, will be waived during the suspension period.

### § 585.421 How long will a lease or grant suspension be in effect?

A lease or grant suspension will be in effect for the period specified by BOEM.

(a) BOEM will not approve a lease or grant suspension request pursuant to § 585.416 for a period longer than 2 years.

(b) If BOEM determines that the circumstances giving rise to a suspension ordered under § 585.417 cannot be resolved within 5 years, the Secretary may initiate cancellation of the lease or grant.

#### LEASE OR GRANT CANCELLATION

### § 585.422 When can my lease or grant be canceled?

(a) The Secretary will cancel any lease or grant issued under this part upon proof that it was obtained by fraud or misrepresentation, and after notice and opportunity to be heard has been afforded to the lessee or grant holder.

(b) The Secretary may cancel any lease or grant issued under this part when:

(1) The Secretary determines after notice and opportunity for a hearing that, with respect to the lease or grant that would be canceled, the lessee or grantee has failed to comply with any applicable provision of the OCS Lands Act or these regulations; any order of the Director; or any term, condition or stipulation contained in the lease or grant, and that the failure to comply continued 30 days (or other period BOEM specifies) after you receive notice from BOEM. The Secretary will mail a notice by registered or certified letter to the lessee or grantee at its record post office address;

(2) The Secretary determines after notice and opportunity for a hearing that you have terminated commercial operations under your COP, as provided in § 585.635, or other approved activities under your GAP, as provided in § 585.656;

(3) Required by national security or defense; or

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

(i) Would cause serious harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; and

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

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

### §§ 585.423-585.424 [Reserved]

#### LEASE OR GRANT RENEWAL

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

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

### § 585.426 When must I submit my request for renewal?

(a) You must request a renewal from BOEM:

(1) No later than 180 days before the termination date of your limited lease or grant.

(2) No later than 2 years before the termination date of the operations term of your commercial lease.

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

### § 585.427 How long is a renewal?

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

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

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

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

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

If you timely request a renewal:

(a) You may continue to conduct activities approved under your lease or grant under the original terms and conditions for as long as your request is pending decision by BOEM.

(b) You may request a suspension of your lease or grant, as provided in § 585.416, while we consider your request.

(c) For the period BOEM considers your request for renewal, you must continue to make all payments in accordance with the original terms and conditions of your lease or grant.

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

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

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

**§§ 585.430–585.431 [Reserved]**

LEASE OR GRANT TERMINATION

**§ 585.432 When does my lease or grant terminate?**

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

- (a) The expiration of the applicable term of your lease or grant, unless your term is automatically extended under § 585.235 or § 585.236, a request for renewal of your lease or grant is pending a decision by BOEM, or your lease or grant is suspended or renewed as provided in this subpart;
- (b) A cancellation, as set forth in § 585.422; or
- (c) Relinquishment, as set forth in § 585.435.

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

- (a) After your lease or grant terminates, you must:
  - (1) Make all payments due, including any accrued rentals and deferred bonuses; and
  - (2) Perform any other outstanding obligations under the lease or grant within 6 months.
- (b) Within 2 years following termination of a lease or grant, you must remove or dispose of all facilities, installations, and other devices permanently or temporarily attached to the seabed on the OCS in accordance with a plan approved by BOEM under subpart F of this part or an application approved by BSEE under 30 CFR part 285, subpart I.

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

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

**§ 585.434 When may BOEM authorize facilities to remain in place following termination of a lease or grant?**

- (a) In your decommissioning application that you submit to BSEE in accordance with 30 CFR 285.902, you may request that certain facilities authorized in your lease or grant remain in

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place for activities authorized in this part, elsewhere in this subchapter, or by other applicable Federal laws.

(b) BOEM may approve such requests on a case-by-case basis considering the following:

- (1) Potential impacts to the marine environment;
- (2) Competing uses of the OCS;
- (3) Impacts on marine safety and National defense;
- (4) Maintenance of adequate financial assurance; and
- (5) Other factors determined by the Director.

(c) Except as provided in paragraph (d) of this section, if BOEM authorizes facilities to remain in place, the former lessee or grantee under this part remains jointly and severally liable for decommissioning the facility unless satisfactory evidence is provided to BOEM showing that another party has assumed that responsibility and has secured adequate financial assurances.

(d) In your decommissioning application, you may request that certain facilities authorized in your lease or grant be converted to an artificial reef or otherwise toppled in place. BOEM will evaluate all such requests.

**LEASE OR GRANT RELINQUISHMENT**

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

(a) You may surrender the lease or grant, or an officially designated subdivision thereof, by filing one paper copy and one electronic copy of a relinquishment application with BOEM. A relinquishment takes effect on the date we approve your application, subject to the continued obligation of the lessee and the surety to:

- (1) Make all payments due on the lease or grant, including any accrued rent and deferred bonuses;
- (2) Decommission all facilities on the lease or grant to be relinquished to the satisfaction of BSEE; and
- (3) Perform any other outstanding obligations under the lease or grant.

(b) Your relinquishment application must include:

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

- (4) Fax number;
- (5) Email address;
- (6) BOEM-assigned lease or grant number, and, if applicable, the name of any facility;
- (7) A description of the geographic area you are relinquishing;
- (8) The name, title, and signature of your authorizing official (the name, title, and signature must match exactly the name, title, and signature in BOEM qualification records); and
- (9) A statement that you will adhere to the requirements of 30 CFR part 285, subpart I.

(c) If you have submitted an application to relinquish a lease or grant, you will be billed for any outstanding payments that are due before the relinquishment takes effect, as provided in paragraph (a) of this section.

**LEASE OR GRANT CONTRACTION**

**§ 585.436 Can BOEM require lease or grant contraction?**

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

(a) BOEM will give you the opportunity to present orally or in writing information demonstrating that you need the area in question to manage lease or grant activities consistent with these regulations.

(b) Prior to taking action to contract the lease or grant area, BOEM will issue a decision addressing your contentions that the area is needed.

(c) You may appeal this decision under § 585.118.

**Subpart E—Payments and Financial Assurance Requirements**

**PAYMENTS**

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

(a) For acquisition fees or the initial 12 months' rent paid for the preliminary term of your lease, you must

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make your electronic payments through the *Fees for Services* page on the BOEM website at <http://www.boem.gov>, and you must include one copy of the *Pay.gov* confirmation receipt page with your unsolicited request.

(b) For all other required rent payments and for operating fee payments, you must make your payments as required in 30 CFR 1218.51.

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

	Payment	Amount	Due date	Payment mechanism	Section reference
<b>Initial payments for leases</b>					
(1) If your lease is issued competitively.	Bid Deposit .....	As set in Final Sale Notice/ depends on bid.	With bid .....	<i>Pay.Gov</i> .....	§ 585.501.
	Bonus Balance ...	.....	Lease issuance	30 CFR 1218.51.	
(2) If your lease is issued non-competitively.	Acquisition Fee ...	\$0.25 per acre, unless otherwise set by the Director.	With application	<i>Pay.gov</i> .....	§ 585.502.
(3) All leases ....	Initial Rent .....	\$3 per acre per year.	45 days after lease issuance.	<i>Pay.gov</i> .....	§ 585.503.
<b>Subsequent payments for leases and project easements</b>					
(4) All leases ....	Subsequent Rent	\$3 per acre per year.	Annually .....	30 CFR 1218.51.	§§ 585.503 and 585.504.
(5) If you have a project easement.	Rent .....	Greater of \$5 per acre per year or \$450 per year.	When operations term for associated lease starts, then annually.	30 CFR 1218.51.	§ 585.507.
(6) If your commercial lease is producing.	Operating Fee ....	Determined by the formula in § 585.506.	Annually .....	30 CFR 1218.51.	§ 585.506.
<b>Payments for ROW grants and RUE grants <sup>1</sup></b>					
(7) All ROW grants and RUE grants.	Initial Rent .....	\$70 per statute mile, and the greater of \$5 per acre per year or \$450 per year.	Grant Issuance	<i>Pay.gov</i> .....	§ 585.508.
	Subsequent Rent	.....	Annually or in 5-year batches.	30 CFR 1218.51.	

<sup>1</sup> There is no acquisition fee for ROW grants or RUE grants.

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

(a) For a competitive lease or grant that we offer through sealed bidding, you must submit a deposit of 20 percent of the total bid amount, unless some other amount is specified in the Final Sale Notice.

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

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



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

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

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

(a) If you request a noncompetitive lease, you must submit an acquisition fee of \$0.25 per acre, unless otherwise set by the Director, as provided in § 585.500.

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

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

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

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

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

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

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

### **§ 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 or lease.

(1) You must pay ONRR the initial 12 months' rent 45 days after you receive the lease copies from BOEM in accordance with the requirements provided in § 585.500(a).

(2) You must pay ONRR, under the regulations at 30 CFR part 1218, rent at

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the beginning of each subsequent 1-year period in accordance with the regulations at 30 CFR 1218.51 for the entire lease area until the facility begins to generate commercially, as specified in § 585.506 or as otherwise specified in the Final Sale Notice or lease instrument:

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

(ii) For leases issued noncompetitively, BOEM will specify in the lease any adjustment to the rent fee to take effect during the operations term and prior to the commercial generation.

(3) You must pay ONRR, under the regulations at 30 CFR part 1218, the rent for a project easement in addition to the lease rent, as provided in § 585.507. You must commence rent payments for your project easement upon our approval of your COP or GAP.

(b) After your lease begins commercial generation of electricity or on the date specified by BOEM, you must pay operating fees in the amount specified in § 585.506:

(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.

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

If you develop your commercial lease in phases, as approved by us in your COP under § 585.238, you must pay ONRR, under the regulations at 30 CFR part 1218:

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

(b) Operating fees on the portion of the lease that is authorized for commercial operations, in the amount specified in § 585.506 and as described in § 585.503(b).

(c) Rent for a project easement in addition to lease rent, as provided in

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§ 585.507. You must commence rent payments for your project easement upon our approval of your COP.

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

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

(b) You must pay ONRR the initial 12 months' rent 45 days after you receive the lease copies from BOEM in accordance with the requirements provided in § 585.500(a).

(c) You must pay ONRR, under the regulations at 30 CFR part 1218, rent at the beginning of each subsequent 1-year period on the entire lease area for the duration of your operations term in accordance with the regulations at 30 CFR 1218.51.

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

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

If you are generating electricity, you must pay ONRR, under the regulations

at 30 CFR part 1218, 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)
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(c) BOEM will specify operating fee parameters in the Final Sale Notice for commercial leases issued competitively and in the lease for those issued non-competitively.

(1) Unless BOEM specifies otherwise, in the operating fee rate, "r" is 0.02 for each year the operating fee applies when you begin commercial generation of electricity. We may apply a different fee rate for new projects (*i.e.*, a new generation based on new technology) after considering factors such as program objectives, state of the industry, project type, and project potential. Also, we may agree to reduce or waive the fee rate under § 585.510.

(2) The power price "P," for each year when the operating fee applies, will be determined annually. The process by which the power price will be de-

termined 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 DOE, Energy Information Administration (EIA), or other publicly available wholesale power price indices; and
- (ii) May adjust the published average wholesale power price to reflect documented variations by State or within a region and recent market conditions.

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

(i) Upon the completion of the first year of commercial operations on the

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

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

(iii) The process by which BOEM will adjust the capacity factor, including any calculations (incorporating an average capacity factor reflecting actual operating experience), will be specified in the lease. The operator or lessee may request review and adjustment of the capacity factor under § 585.510.

(4) 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.

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

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

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

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

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

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

(a) You must pay ONRR, under the regulations at 30 CFR part 1218, a rent fee for your project easement of \$5 per acre, subject to a minimum of \$450 per year, unless specified otherwise in the Final Sale Notice or lease:

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

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

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

(1) You must make the first rent payment when the operations term begins, as provided in § 585.500;

(2) You must submit all subsequent rent payments in accordance with the regulations at 30 CFR 1218.51; and

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

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

(a) For each ROW grant BOEM approves under subpart C of this part, you must pay ONRR, under the regulations at 30 CFR part 1218, an annual rent as follows, unless specified otherwise in the Final Sale Notice:

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

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

(b) For each RUE grant BOEM approves under subpart C of this part, you must pay ONRR, under the regulations at 30 CFR part 1218, a rent of:

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

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

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

(1) An annual basis;

(2) For a 5-year period; or

(3) For multiples of 5 years.

(d) You must make the first annual rent payment upon approval of your

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ROW grant or RUE grant request, as provided in §585.500, and all subsequent rent payments to ONRR in accordance with the regulations at 30 CFR 1218.51.

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

(a) For each lease, ROW grant, or RUE grant issued under this part, you must identify one person who is responsible for all payments due and payable under the provisions of the lease or grant. The responsible person identified is designated as the payor, and you must document acceptance of such responsibilities, as provided in 30 CFR 1218.52.

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

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

(a) The BOEM Director may reduce or waive the rent or operating fee or components of the operating fee, such as the fee rate or capacity factor, when the Director determines that it is necessary to encourage continued or additional activities.

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

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

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

**§§ 585.511–585.514 [Reserved]**

**FINANCIAL ASSURANCE REQUIREMENTS FOR COMMERCIAL LEASES**

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

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

- (1) A \$100,000 minimum, lease-specific bond; or
- (2) Another approved financial assurance instrument guaranteeing performance up to \$100,000, as specified in §§ 585.526 through 585.529.

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

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

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

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

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

Before BOEM will . . .	You must provide . . .
(1) Issue a commercial lease or approve an assignment of an existing commercial lease.	A \$100,000 minimum, lease-specific financial assurance.

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Before BOEM will . . .	You must provide . . .
(2) Approve your SAP .....	A supplemental bond or other financial assurance, in an amount determined by BOEM, if upon reviewing your SAP, BOEM determines that a supplemental bond is required in addition to your minimum lease-specific bond, due to the complexity, number, and location of any facilities involved in your site assessment activities.
(3) Approve your COP .....	A supplemental bond or other financial assurance, in an amount determined by BOEM based on the complexity, number, and location of all facilities involved in your planned activities and commercial operation. The supplemental financial assurance requirement is in addition to your lease-specific bond and, if applicable, the previous supplement associated with SAP approval.
(4) Allow you to install facilities approved in your COP .....	A decommissioning bond or other financial assurance, in an amount determined by BOEM based on anticipated decommissioning costs. BOEM will allow you to provide your financial assurance for decommissioning in accordance with the number of facilities installed or being installed. BOEM must approve the schedule for providing the appropriate financial assurance coverage.

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

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

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

(a) BOEM will base the determination for the amounts of the SAP, COP, and decommissioning financial assurance requirements on estimates of the cost to meet all accrued lease obligations.

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

- (1) The projected amount of rent and other payments due the Government over the next 12 months;
- (2) Any past due rent and other payments;
- (3) Other monetary obligations; and
- (4) The estimated cost of facility decommissioning, as required by 30 CFR part 285, subpart I.

(c) If your cumulative potential obligations and liabilities increase or decrease, we may adjust the amount of supplemental or the decommissioning financial assurance.

(1) If we propose adjusting your financial assurance amount, we will notify you of the proposed adjustment and give you an opportunity to comment; and

(2) We may approve a reduced financial assurance amount if you request it and if the reduced amount that you request continues to be greater than the sum of:

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

**§§ 585.518–585.519 [Reserved]**

**FINANCIAL ASSURANCE FOR LIMITED LEASES, ROW GRANTS, AND RUE GRANTS**

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

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

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(1) A \$300,000 minimum, lease- or grant-specific bond; or

(2) Another approved financial assurance instrument of such minimum level as specified in §§ 585.526 through 585.529.

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

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

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

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

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

(1) The projected amount of rent and other payments due the Government over the next 12 months;

(2) Any past due rent and other payments;

(3) Other monetary obligations; and

(4) The estimated cost of facility decommissioning.

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

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

(1) The separate decommissioning bond or other financial assurance in-

strument must meet the requirements specified in §§ 585.525 through 585.529.

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

### **§§ 585.522–585.524 [Reserved]**

#### REQUIREMENTS FOR FINANCIAL ASSURANCE INSTRUMENTS

### **§ 585.525 What general requirements must a financial assurance instrument meet?**

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

(1) Be payable to BOEM upon demand; and

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

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

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

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

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

(f) You may not terminate the period of liability of your bond or cancel your bond, except as provided in this subpart. Bonds must continue in full force

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and effect even though an event has occurred that could diminish or terminate a surety's obligation under State law.

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

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

(2) The Treasury decertifies the surety.

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

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

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

(2) Cash in an amount equal to the required dollar amount of the financial assurance, to be deposited and maintained in a Federal depository account of the U.S. Treasury by BOEM;

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

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

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

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

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

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

(b) If you use a Treasury security:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) You may use a third-party guaranty if the guarantor meets the criteria prescribed in paragraph (b) of this

section and submits an agreement meeting the criteria prescribed in paragraph (c) of this section. The agreement must guarantee compliance with the obligations of all lessees and operators and grant holders.

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

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

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

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

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

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

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

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

Your guarantor must submit . . .	That . . .
(i) Financial statements for the most recently completed FY . . . .	Include a report by an independent certified public accountant containing the accountant's audit or review opinion of the statements. The report must be prepared in conformance with generally accepted accounting principles and contain no adverse opinion.
(ii) Financial statement for completed quarter in the current FY	Your guarantor's financial officer certifies to be correct.



Your guarantor must submit . . .	That . . .
(iii) Additional information related to bonds, if requested by the Director.	Your guarantor's financial officer certifies to be correct.

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

(c) Your guarantor must submit an agreement executed by the guarantor and all parties bound by the agreement. All parties are bound jointly and severally and must meet the qualifications set forth in § 585.107.

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

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

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

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

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

(6) If your guarantor wants to terminate the period of liability, your guarantor must notify you and us at least 90 days before the proposed termination date, obtain our approval for termination of all or a specified por-

tion of the guarantee for liabilities arising after that date, and remain liable for all your work performed during the period the agreement is in effect.

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

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

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

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

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

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

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

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

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

### Changes in Financial Assurance

#### **§ 585.530 What must I do if my financial assurance lapses?**

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

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

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

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

#### **§ 585.531 What happens if the value of my financial assurance is reduced?**

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

#### **§ 585.532 What happens if my surety wants to terminate the period of liability of my bond?**

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

(1) Obligations that started to accrue before the beginning of the period of liability and have not been met; and

(2) Obligations that began accruing during the period of liability.

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

#### **§ 585.533 How does my surety obtain cancellation of my bond?**

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

(1) BOEM determines that there are no outstanding obligations covered by the bond; or

(2) The following occurs:

(i) BOEM accepts a replacement bond or an alternative form of financial assurance in an amount equal to or greater than the bond to be cancelled to cover the terminated period of liability;

(ii) The surety issuing the new bond has expressly agreed to assume all outstanding liabilities under the original bond that accrued during the period of liability that was terminated; and

(iii) The surety issuing the new bond has agreed to assume that portion of the outstanding liabilities that accrued during the terminated period of liability that exceeds the coverage of the bond prescribed under § 585.515, § 585.516, § 585.520, or § 585.521, and of which you were notified.

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

(1) The period of liability ends when you cease all operations and activities under the lease or grant, including decommissioning and site clearance;

(2) Your surety or collateral financial assurance will not be released until 7 years after the lease ends, or a longer period as necessary to complete any appeals or judicial litigation related to your bonded obligation, or for BOEM to determine that all of your obligations under the lease or grant have been satisfied; and

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(3) BOEM will reduce the amount of your bond or return a portion of your financial assurance if we determine that we need less than the full amount of the bond or financial assurance to meet any possible future obligations.

**§ 585.534 When may BOEM cancel my bond?**

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

Bond	The period of liability ends . . .	Your bond will not be released until . . .
(a) Bonds for commercial leases submitted under § 585.515.	When BOEM determines that you have met all of your obligations under the lease.	Seven years after the lease ends, or a longer period as necessary to complete any appeals or judicial litigation related to your bond obligation. BOEM will reduce the amount of your bond or return a portion of your security if BOEM determines that you need less than the full amount of the bond to meet any possible future obligations.
(b) Supplemental or decommissioning bonds submitted under § 585.516.	When BOEM determines that you have met all your decommissioning, site clearance, and other obligations.	(1) Seven years after the lease ends, or a longer period as necessary to complete any appeals or judicial litigation related to your bond obligation. BOEM will reduce the amount of your bond or return a portion of your security if BOEM determines that you need less than the full amount of the bond to meet any possible future obligations; and (2) BOEM determines that the potential liability resulting from any undetected noncompliance is not greater than the amount of the lease base bond.
(c) Bonds submitted under §§ 585.520 and 585.521 for limited leases, ROW grants, or RUE grants.	When BOEM determines that you have met all of your obligations under the limited lease or grant.	Seven years after the limited lease, ROW, or RUE grant or a longer period as necessary to complete any appeals or judicial litigation related to your bond obligation. BOEM will reduce the amount of your bond or return a portion of your security if BOEM determines that you need less than the full amount of the bond to meet any possible future obligations.

**§ 585.535 Why might BOEM call for forfeiture of my bond?**

(a) BOEM may call for forfeiture of all or part of the bond, pledged security, or other form of guaranty if:

(1) After notice and demand for performance, you refuse or fail, within the timeframe prescribed, to comply with any term or condition of your lease or grant, other authorization or approval, or applicable regulations; or

(2) You default on one of the conditions under which we accepted your bond.

(b) We may pursue forfeiture without first making demands for performance against any co-lessee or holder of an interest in your ROW or RUE, or other person approved to perform obligations under your lease or grant.

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

(a) BOEM will notify you and your surety, including any provider of financial assurance, in writing of the call for forfeiture and provide the reasons for the forfeiture and the amount to be forfeited. We will base the amount upon an estimate of the total cost of corrective action to bring your lease or grant into compliance.

(b) We will advise you and your surety that you may avoid forfeiture if, within 10 business days:

(1) You agree to and demonstrate in writing to BOEM that you will bring your lease or grant into compliance within the timeframe we prescribe, and you do so; or

(2) Your surety agrees to and demonstrates that it will bring your lease or grant into compliance within the

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

### § 585.537 How will BOEM proceed once my bond or other security is forfeited?

(a) If BOEM determines that your bond or other security is forfeited, we will collect the forfeited amount and use the funds to bring your lease or grant(s) into compliance and correct any default.

(b) If the amount collected under your bond or other security is insufficient to pay the full cost of corrective action, BOEM may take or direct action to obtain full compliance and recover all costs in excess of the forfeited bond from you or any co-lessee or co-grantee.

(c) If the amount collected under your bond or other security exceeds the full cost of corrective action to bring your lease or grant(s) into compliance, we will return the excess funds to the party from whom the excess was collected.

### §§ 585.538–585.539 [Reserved]

#### REVENUE SHARING WITH STATES

### § 585.540 How will BOEM equitably distribute revenues to States?

(a) BOEM will distribute among the eligible coastal States 27 percent of the following revenues derived from qualified projects, where a qualified project and qualified project area is determined in § 585.541 and an eligible State is determined in § 585.542, with each term defined in § 585.113. Revenues subject to distribution to eligible States include all bonuses, acquisition fees, rentals, and operating fees derived from the entire qualified project area and associated project easements not limited to revenues attributable to the portion of the project area within 3 miles of the seaward boundary of a coastal State. The revenues to be shared do not include administrative fees such as service fees and those assessed for civil penalties and forfeiture of bond or other surety obligations.

(b) The project area is the area included within a single lease or grant. For each qualified project, BOEM will determine and announce the project

area and its geographic center at the time it grants or issues a lease, easement, or right-of-way on the OCS. If a qualified project lease or grant's boundaries change significantly due to actions pursuant to § 585.435 or § 585.436, BOEM will re-evaluate the project area to determine whether the geographic center has changed. If it has, BOEM will re-determine State eligibility and shares accordingly.

(c) To determine each eligible State's share of the 27 percent of the revenues for a qualified project, BOEM will use the inverse distance formula, which apportions shares according to the relative proximity of the nearest point on the coastline of each eligible State to the geographic center of the qualified project area. If  $S_i$  is equal to the nearest distance from the geographic center of the project area to the  $i = 1, 2, \dots, n$ th eligible State's coastline, then eligible State  $i$  would be entitled to the fraction  $F_i$  of the 27-percent aggregate revenue share due to all the eligible States according to the formula:

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

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

A qualified project for the purpose of revenue sharing with eligible coastal States is one authorized under subsection 8(p) of the OCS Lands Act, which includes acreage within the area extending 3 nautical miles seaward of State submerged lands. A qualified project is subject to revenue sharing with those States that are eligible for revenue sharing under § 585.542. The entire area within a lease or grant for the qualified project, excluding project easements, is considered the qualified project area.

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

A State is eligible for payment of revenues if any part of the State's coastline is located within 15 miles of the announced geographic center of the project area of a qualified project. A State is not eligible for revenue sharing if all parts of that State's coastline are more than 15 miles from the announced geographic center of the qualified project area. This is the case even if the qualified project area is located

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wholly or partially within an area extending 3 nautical miles seaward of the submerged lands of that State or if there are no States with a coastline less than 15 miles from the announced geographic center of the qualified project area.

**§ 585.543 Example of how the inverse distance formula works.**

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

- (1) State A's share =  $[(\frac{1}{12}) \div (\frac{1}{12} + \frac{1}{4})] = \frac{1}{4}$ .
- (2) State B's share =  $[(\frac{1}{4}) \div (\frac{1}{12} + \frac{1}{4})] = \frac{3}{4}$ .

(b) Therefore, State B would receive a share of revenues that is three times as large as that awarded to State A,

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

- (1) State A's share =  $\$270,000 \times \frac{1}{4} = \$67,500$ .
- (2) State B's share =  $\$270,000 \times \frac{3}{4} = \$202,500$ .

**Subpart F—Plan Requirements**

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

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

Before you:	You must submit and obtain approval for your:
(a) Conduct any site assessment activities on your commercial lease.	SAP, according to §§ 585.605 through 585.613.
(b) Conduct any activities pertaining to construction of facilities for commercial operations on your commercial lease.	COP, according to §§ 585.620 through 585.628.
(c) Conduct any activities on your limited lease, ROW grant, or RUE grant in any OCS area.	GAP, according to §§ 585.640 through 585.648.

**§ 585.601 When am I required to submit my plans to BOEM?**

You must submit your plans as follows:

(a) You may submit your SAP or GAP prior to lease or grant issuance, but must submit your SAP or GAP no later than 12 months from the date of lease or grant issuance.

(b) If you intend to continue your commercial lease with an operations term, you must submit a COP, or a FERC license application, at least 6 months before the end of your site assessment term.

(c) You may submit your COP or FERC license application with your SAP.

(1) You must provide sufficient data and information with your COP for BOEM to complete the needed reviews and NEPA analysis; and

(2) BOEM may need to conduct additional reviews, including NEPA analysis, if significant new information becomes available after you complete your site assessment activities or you revise your COP. As a result of the additional reviews, we may require modification of your COP.

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**SITE ASSESSMENT PLAN AND INFORMATION REQUIREMENTS FOR COMMERCIAL LEASES**

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

(a) A SAP describes the activities (*e.g.*, installation of meteorological towers, meteorological buoys) you plan to perform for the characterization of your commercial lease, including your

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project easement, or to test technology devices.

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

(2) BOEM will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and as provided in § 585.114.

(b) Your SAP must include data from:

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

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

(c) You must receive BOEM approval of your SAP before you can begin any of the approved activities on your lease, as provided in § 585.613.

(d) If you propose to construct a facility or combination of facilities deemed by BOEM to be complex or significant, as provided in § 585.613(a)(1), you must also comply with the requirements of 30 CFR part 285, subpart G, and submit your safety management system as required by 30 CFR 285.810.

**§ 585.606 What must I demonstrate in my SAP?**

(a) Your SAP must demonstrate that you have planned and are prepared to conduct the proposed site assessment activities in a manner that conforms to your responsibilities listed in § 585.105(a) and:

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

(2) Is safe;

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

(4) Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(5) Uses best available and safest technology;

(6) Uses best management practices; and

(7) Uses properly trained personnel.

(b) You must also demonstrate that your site assessment activities will collect the necessary information and data required for your COP, as provided in § 585.626(a).

**§ 585.607 How do I submit my SAP?**

You must submit one paper copy and one electronic version of your SAP to BOEM at the address listed in § 585.110.

**§§ 585.608–585.609 [Reserved]**

CONTENTS OF THE SITE ASSESSMENT PLAN

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

Your SAP must include the following information, as applicable.

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

Project information:	Including:
(1) Contact information .....	The name, address, e-mail address, and phone number of an authorized representative.
(2) The site assessment or technology testing concept .....	A discussion of the objectives; description of the proposed activities, including the technology you will use; and proposed schedule from start to completion.
(3) Designation of operator, if applicable .....	As provided in § 585.405.
(4) Commercial lease stipulations and compliance .....	A description of the measures you took, or will take, to satisfy the conditions of any lease stipulations related to your proposed activities.
(5) A location plat .....	The surface location and water depth for all proposed and existing structures, facilities, and appurtenances located both offshore and onshore.
(6) General structural and project design, fabrication, and installation.	Information for each type of facility associated with your project.
(7) Deployment activities .....	A description of the safety, prevention, and environmental protection features or measures that you will use.

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Project information:	Including:
(8) Your proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.	A description of the measures you will use to avoid or minimize adverse effects and any potential incidental take, before you conduct activities on your lease, and how you will mitigate environmental impacts from your proposed activities, including a description of the measures you will use as required by 30 CFR part 285, subpart H.
(9) CVA nomination, if required .....	CVA nominations for reports in 30 CFR part 285, subpart G, as required by § 285.706, or a request to waive the CVA requirement, as required by § 285.705.
(10) Reference information .....	A list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans you previously submitted or that are otherwise readily available to BOEM.
(11) Decommissioning and site clearance procedures .....	A discussion of methodologies.
(12) Air quality information .....	Information as described in § 585.700.
(13) A listing of all Federal, State, and local authorizations or approvals required to conduct site assessment activities on your lease.	A statement indicating whether such authorization or approval has been applied for or obtained.
(14) A list of agencies and persons with whom you have communicated, or with whom you will communicate, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.
(15) Financial assurance information .....	Statements attesting that the activities and facilities proposed in your SAP are or will be covered by an appropriate bond or other approved security, as required in §§ 585.515 and 585.516.
(16) Other information .....	Additional information as requested by BOEM.

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

Information	Report contents	Including
(1) Geotechnical .....	The results from the geotechnical survey with supporting data.	A description of all relevant seabed and engineering data and information to allow for the design of the foundation for that facility. You must provide data and information to depths below which the underlying conditions will not influence the integrity or performance of the structure. This could include a series of sampling locations (borings and in situ tests) as well as laboratory testing of soil samples, but may consist of a minimum of one deep boring with samples.
(2) Shallow hazards .....	The results from the shallow hazards survey with supporting data.	A description of information sufficient to determine the presence of the following features and their likely effects on your proposed facility, including: (i) Shallow faults; (ii) Gas seeps or shallow gas; (iii) Slump blocks or slump sediments; (iv) Hydrates; and (v) Ice scour of seabed sediments.
(3) Archaeological resources.	The results from the archaeological survey with supporting data, if required.	(i) A description of the results and data from the archaeological survey; (ii) A description of the historic and prehistoric archaeological resources, as required by the National Historic Preservation Act (NHPA) of 1966, as amended.
(4) Geological survey .....	The results from the geological survey with supporting data.	A report that describes the results of a geological survey that includes descriptions of: (i) Seismic activity at your proposed site; (ii) Fault zones; (iii) The possibility and effects of seabed subsidence; and (iv) The extent and geometry of faulting attenuation effects of geologic conditions near your site.

Information	Report contents	Including
(5) Biological survey .....	The results from the biological survey with supporting data.	A description of the results of a biological survey, including descriptions of the presence of live bottoms; hard bottoms; topographic features; and surveys of other marine resources such as fish populations (including migratory populations), marine mammals, sea turtles, and sea birds.

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

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

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

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

You must submit, with your SAP, detailed information to assist BOEM in complying with NEPA and other relevant laws as appropriate.

(a) A SAP submitted for an area in which BOEM has not previously reviewed site assessment activities under NEPA or other applicable Federal laws, must describe those resources, condi-

tions, and activities listed in the following table that could be affected by your proposed activities or that could affect the activities proposed in your SAP.

(b) For a SAP submitted for an area in which BOEM has previously considered site assessment activities under applicable Federal law (*e.g.*, a NEPA analysis and CZMA consistency determination for site assessment activities), BOEM will review the SAP to determine if its impacts are consistent with those previously considered. If the anticipated effects of your proposed SAP activities are significantly different than those previously anticipated, we may determine that additional NEPA and other relevant Federal reviews are required. In that case, BOEM will notify you of such determination, and you must submit a SAP that describes those resources, conditions, and activities listed in the following table that could be affected by your proposed activities or that could affect the activities proposed in your SAP, including:

Type of information:	Including:
(1) Hazard information .....	Meteorology, oceanography, sediment transport, geology, and shallow geological or manmade hazards.
(2) Water quality .....	Turbidity and total suspended solids from construction.
(3) Biological resources .....	Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, plankton, sea grasses, and other plant life.
(4) Threatened or endangered species .....	As required by the Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531 <i>et seq.</i> ).
(5) Sensitive biological resources or habitats.	Essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, sanctuaries, rookeries, hard bottom habitat, chemosynthetic communities, calving grounds, barrier islands, beaches, dunes, and wetlands.
(6) Archaeological resources .....	As required by the NHPA (16 U.S.C. 470 <i>et seq.</i> ), as amended.
(7) Social and economic conditions .....	Employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, coastal zone management programs, and viewshed.
(8) Coastal and marine uses .....	Military activities, vessel traffic, and energy and non-energy mineral exploration or development.
(9) Consistency Certification .....	If required by CZMA, as appropriate: (i) 15 CFR part 930, subpart D, if the SAP is submitted prior to lease issuance; (ii) 15 CFR part 930, subpart E, if the SAP is submitted after lease issuance.



**§ 585.612**

Type of information:	Including:
(10) Other resources, conditions, and activities.	As identified by BOEM.

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

Your SAP will be processed based on whether it is submitted before or after your lease is issued:

If your SAP is submitted:	Consistency review of your SAP will be handled as follows:
(a) Before lease issuance .....	You will furnish a copy of your SAP, consistency certification, and necessary data and information pursuant to 15 CFR part 930, subpart D, to the applicable State CZMA agency or agencies and BOEM at the same time.
(b) After lease issuance .....	You will submit a copy of your SAP, consistency certification, and necessary data and information pursuant to 15 CFR part 930, subpart E, to BOEM. BOEM will forward to the applicable State CZMA agency or agencies one paper copy and one electronic copy of your SAP, consistency certification, and necessary data and information required under 15 CFR part 930, subpart E, after BOEM has determined that all information requirements for the SAP are met.

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

(a) BOEM will review your submitted SAP, and additional information provided pursuant to §585.611, to determine if it contains the information necessary to conduct our technical and environmental reviews.

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

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

(b) BOEM will prepare NEPA analysis, as appropriate.

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

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

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

(1) If we approve your SAP, we will specify terms and conditions to be incorporated into your SAP. You must certify compliance with those terms and conditions, required under 30 CFR 285.615(b); and

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

**ACTIVITIES UNDER AN APPROVED SAP**

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

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

(b) If you are installing a facility or a combination of facilities deemed by BOEM to be complex or significant, as provided in §585.613(a)(1), you must comply with the requirements of 30

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## § 585.618

CFR part 285, subpart G, and also submit your Safety Management System required by 30 CFR 285.810 before construction may begin.

### **§ 585.615 What other reports or notices must I submit to BOEM under my approved SAP?**

You must prepare and submit to BOEM a report annually on November 1 of each year that summarizes your site assessment activities and the results of those activities. BOEM will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and as provided in § 585.114.

### **§ 585.616 [Reserved]**

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

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

(b) BOEM will periodically review the activities under an approved SAP. The frequency and extent of the review will be based on the significance of any changes in available information and on onshore or offshore conditions affecting, or affected by, the activities conducted under your SAP. If the review indicates that the SAP should be revised to meet the requirements of this part, BOEM will require you to submit the needed revisions.

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

- (1) Activities not described in your approved SAP;
- (2) Modifications to the size or type of facility or equipment you will use;
- (3) Changes in the surface location of a facility or structure;
- (4) Addition of a facility or structure not contemplated in your approved SAP;

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

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

(7) Structural failure of one or more facilities; or

(8) Changes to any other activity specified by BOEM.

(d) We may begin the appropriate NEPA analysis and other relevant consultations when we determine that a proposed revision could:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional Federal authorizations; or

(3) Involve activities not previously identified and evaluated.

(e) When you propose a revision, we may approve the revision if we determine that the revision is:

(1) Designed not to cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; and

(2) Otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

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

(a) If, prior to the expiration of your site assessment term, you timely submit a COP meeting the requirements of this subpart, or a complete FERC license application, that describes the continued use of existing facilities approved in your SAP, you may keep such facilities in place on your lease during the time that BOEM reviews your COP for approval or FERC reviews your license application for approval.

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(b) You are not required to initiate the decommissioning process for facilities that are authorized to remain in place under your approved COP or approved FERC license.

(c) If, following the technical and environmental review of your submitted COP, BOEM determines that such facilities may not remain in place, you must initiate the decommissioning process, as provided in 30 CFR part 285, subpart I.

(d) If FERC determines that such facilities may not remain in place, you must initiate the decommissioning process as provided in 30 CFR part 285, subpart I.

(e) You must initiate the decommissioning process, as set forth in 30 CFR part 285, subpart I, upon the termination of your lease.

**§ 585.619 [Reserved]**

CONSTRUCTION AND OPERATIONS PLAN  
FOR COMMERCIAL LEASES

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

The COP describes your construction, operations, and conceptual decommissioning plans under your commercial lease, including your project easement. BOEM will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of § 585.114.

(a) Your COP must describe all planned facilities that you will construct and use for your project, including onshore and support facilities and all anticipated project easements.

(b) Your COP must describe all proposed activities including your proposed construction activities, commercial operations, and conceptual decommissioning plans for all planned facilities, including onshore and support facilities.

(c) You must receive BOEM approval of your COP before you can begin any

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of the approved activities on your lease.

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

Your COP must demonstrate that you have planned and are prepared to conduct the proposed activities in a manner that conforms to your responsibilities listed in § 585.105(a) and:

(a) Conforms to all applicable laws, implementing regulations, lease provisions, and stipulations or conditions of your commercial lease;

(b) Is safe;

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

(d) Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(e) Uses best available and safest technology;

(f) Uses best management practices; and

(g) Uses properly trained personnel.

**§ 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 § 585.110.

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

**§§ 585.623-585.625 [Reserved]**

CONTENTS OF THE CONSTRUCTION AND OPERATIONS PLAN

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

(a) 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:

Information:	Report contents:	Including:
(1) Shallow hazards .....	The results of the shallow hazards survey with supporting data.	Information sufficient to determine the presence of the following features and their likely effects on your proposed facility, including:

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**§ 585.626**

Information:	Report contents:	Including:
(2) Geological survey relevant to the design and siting of your facility.	The results of the geological survey with supporting data.	(i) Shallow faults; (ii) Gas seeps or shallow gas; (iii) Slump blocks or slump sediments; (iv) Hydrates; or (v) Ice scour of seabed sediments. Assessment of: (i) Seismic activity at your proposed site; (ii) Fault zones; (iii) The possibility and effects of seabed subsidence; and (iv) The extent and geometry of faulting attenuation effects of geologic conditions near your site.
(3) Biological .....	The results of the biological survey with supporting data.	A description of the results of biological surveys used to determine the presence of live bottoms, hard bottoms, and topographic features, and surveys of other marine resources such as fish populations (including migratory populations), marine mammals, sea turtles, and sea birds.
(4) Geotechnical survey ..	The results of your sediment testing program with supporting data, the various field and laboratory test methods employed, and the applicability of these methods as they pertain to the quality of the samples, the type of sediment, and the anticipated design application. You must explain how the engineering properties of each sediment stratum affect the design of your facility. In your explanation, you must describe the uncertainties inherent in your overall testing program, and the reliability and applicability of each test method.	(i) The results of a testing program used to investigate the stratigraphic and engineering properties of the sediment that may affect the foundations or anchoring systems for your facility. (ii) The results of adequate <i>in situ</i> testing, boring, and sampling at each foundation location, to examine all important sediment and rock strata to determine its strength classification, deformation properties, and dynamic characteristics. (iii) The results of a minimum of one deep boring (with soil sampling and testing) at each edge of the project area and within the project area as needed to determine the vertical and lateral variation in seabed conditions and to provide the relevant geotechnical data required for design.
(5) Archaeological resources.	The results of the archaeological resource survey with supporting data.	A description of the historic and prehistoric archaeological resources, as required by the NHPA (16 U.S.C. 470 <i>et. seq.</i> ), as amended.
(6) Overall site investigation.	An overall site investigation report for your facility that integrates the findings of your shallow hazards surveys and geologic surveys, and, if required, your subsurface surveys with supporting data.	An analysis of the potential for: (i) Scouring of the seabed; (ii) Hydraulic instability; (iii) The occurrence of sand waves; (iv) Instability of slopes at the facility location; (v) Liquefaction, or possible reduction of sediment strength due to increased pore pressures; (vi) Degradation of subsea permafrost layers; (vii) Cyclic loading; (viii) Lateral loading; (ix) Dynamic loading; (x) Settlements and displacements; (xi) Plastic deformation and formation collapse mechanisms; and (xii) Sediment reactions on the facility foundations or anchoring systems.

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

Project information:	Including:
(1) Contact information .....	The name, address, e-mail address, and phone number of an authorized representative.
(2) Designation of operator, if applicable .....	As provided in § 585.405.

Project information:	Including:
(3) The construction and operation concept .....	A discussion of the objectives, description of the proposed activities, tentative schedule from start to completion, and plans for phased development, as provided in § 585.238.
(4) Commercial lease stipulations and compliance .....	A description of the measures you took, or will take, to satisfy the conditions of any lease stipulations related to your proposed activities.
(5) A location plat .....	The surface location and water depth for all proposed and existing structures, facilities, and appurtenances located both offshore and onshore, including all anchor/mooring data.
(6) General structural and project design, fabrication, and installation.	Information for each type of structure associated with your project and, unless BSEE provides otherwise, how you will use a CVA to review and verify each stage of the project.
(7) All cables and pipelines, including cables on project easements.	Location, design and installation methods, testing, maintenance, repair, safety devices, exterior corrosion protection, inspections, and decommissioning.
(8) A description of the deployment activities .....	Safety, prevention, and environmental protection features or measures that you will use.
(9) A list of solid and liquid wastes generated .....	Disposal methods and locations.
(10) A listing of chemical products used (if stored volume exceeds Environmental Protection Agency (EPA) reportable quantities).	A list of chemical products used; the volume stored on location; their treatment, discharge, or disposal methods used; and the name and location of the onshore waste receiving, treatment, and/or disposal facility. A description of how these products would be brought onsite, the number of transfers that may take place, and the quantity that will be transferred each time.
(11) A description of any vessels, vehicles, and aircraft you will use to support your activities.	An estimate of the frequency and duration of vessel/vehicle/aircraft traffic.
(12) A general description of the operating procedures and systems.	(i) Under normal conditions. (ii) In the case of accidents or emergencies, including those that are natural or manmade.
(13) Decommissioning and site clearance procedures .....	A discussion of general concepts and methodologies.
(14) A listing of all Federal, State, and local authorizations, approvals, or permits that are required to conduct the proposed activities, including commercial operations.	(i) The U.S. Coast Guard, U.S. Army Corps of Engineers, and any other applicable authorizations, approvals, or permits, including any Federal, State or local authorizations pertaining to energy gathering, transmission or distribution (e.g., inter-connection authorizations). (ii) A statement indicating whether you have applied for or obtained such authorization, approval, or permit.
(15) Your proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.	A description of the measures you will use to avoid or minimize adverse effects and any potential incidental take before you conduct activities on your lease, and how you will mitigate environmental impacts from your proposed activities, including a description of the measures you will use as required by this part and 30 CFR part 285, subpart H.
(16) Information you incorporate by reference .....	A listing of the documents you referenced.
(17) A list of agencies and persons with whom you have communicated, or with whom you will communicate, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.
(18) Reference .....	A list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans you previously submitted or that are otherwise readily available to BOEM.
(19) Financial assurance .....	Statements attesting that the activities and facilities proposed in your COP are or will be covered by an appropriate bond or security, as required by §§ 585.515 and 585.516.
(20) CVA nominations for reports required in 30 CFR part 285, subpart G.	CVA nominations for reports in 30 CFR part 285, subpart G, as required by § 285.706, or a request for a waiver under § 285.705(c).
(21) Construction schedule .....	A reasonable schedule of construction activity showing significant milestones leading to the commencement of commercial operations.
(22) Air quality information .....	As described in § 585.700.
(23) Other information .....	Additional information as required by BOEM.

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

(a) You must submit with your COP detailed information to assist BOEM in complying with NEPA and other rel-

evant laws. Your COP must describe those resources, conditions, and activities listed in the following table that could be affected by your proposed activities, or that could affect the activities proposed in your COP, including:

Type of information:	Including:
(1) Hazard information .....	Meteorology, oceanography, sediment transport, geology, and shallow geological or manmade hazards.
(2) Water quality .....	Turbidity and total suspended solids from construction.
(3) Biological resources .....	Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, plankton, seagrasses, and plant life.
(4) Threatened or endangered species .....	As defined by the ESA (16 U.S.C. 1531 <i>et seq.</i> ).
(5) Sensitive biological resources or habitats .....	Essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, sanctuaries, rookeries, hard bottom habitat, chemosynthetic communities, calving grounds, barrier islands, beaches, dunes, and wetlands.
(6) Archaeological resources .....	As required by the NHPA (16 U.S.C. 470 <i>et seq.</i> ), as amended.
(7) Social and economic resources .....	Employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, coastal zone management programs, and viewshed.
(8) Coastal and marine uses .....	Military activities, vessel traffic, and energy and non-energy mineral exploration or development.
(9) Consistency Certification .....	As required by the CZMA regulations: (i) 15 CFR part 930, subpart D, if your COP is submitted before lease issuance. (ii) 15 CFR part 930, subpart E, if your COP is submitted after lease issuance.
(10) Other resources, conditions, and activities .....	As identified by BOEM.

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

- (1) One copy of your consistency certification either under subsection 307(c)(3)(B) of the CZMA (16 U.S.C. 1456(c)(3)(B)) and 15 CFR 930.76, or under subsection 307(c)(3)(A) of the CZMA (16 U.S.C. 1456(c)(3)(A)) and 15 CFR 930.57, stating that the proposed activities described in detail in your plans comply with the State(s) approved coastal management program(s) and will be conducted in a manner that is consistent with such program(s); and
- (2) "Necessary data and information," as required by 15 CFR 930.58.

(c) You must submit your oil spill response plan to BSEE as required by 30 CFR part 254.

(d) You must submit your safety management system to BSEE as required by 30 CFR 285.810.

**§ 585.628 How will BOEM process my COP?**

(a) BOEM will review your submitted COP, and the information provided pursuant to § 585.627, to determine if it contains all the required information necessary to conduct our technical and environmental reviews. We will notify you if your submitted COP lacks any necessary information.

(b) BOEM will prepare an appropriate NEPA analysis.

(c) If your COP is submitted after lease issuance, BOEM will forward one copy of your COP, consistency certification, and associated data and information under the CZMA to the applicable State CZMA agency or agencies after all information requirements for the COP are met.

(d) As appropriate, BOEM will coordinate and consult with relevant Federal, State, and local agencies and affected

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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, or approve with modifications your COP.

(1) If we approve your COP, we will specify terms and conditions to be incorporated into your COP. You must certify compliance with certain of those terms and conditions, as required under 30 CFR 285.633(a); and

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

(g) If 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.

**§§ 585.629–585.630 [Reserved]**

**ACTIVITIES UNDER AN APPROVED COP**

**§ 585.631 When must I initiate activities under an approved COP?**

After your COP is approved, you must commence construction by the date given in the construction schedule required by § 585.626(b)(21), and included as a part of your approved COP, unless

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BOEM approves a deviation from your schedule.

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

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

Document:	Requirements are found in:
(1) Facility Design Report .....	30 CFR 285.701.
(2) Fabrication and Installation Report.	30 CFR 285.702.

(b) You must submit your Safety Management System, as required by 30 CFR 285.810.

(c) These activities must fall within the scope of your approved COP. If they do not fall within the scope of your approved COP, you will be required to submit a revision to your COP, under § 585.634, for BOEM approval before commencing the activity.

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**§ 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 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, BOEM will require you to submit the needed revisions.

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

(1) Activities not described in your approved COP;

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

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

(4) Addition of a facility or structure not described in your approved COP;

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

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

(7) Structural failure of one or more facilities; or

(8) Change in any other activity specified by 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.

(e) When you propose a revision, we may approve the revision if we determine that the revision is:

(1) Designed not to cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; and

(2) Otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

### **§ 585.635 What must I do if I cease activities approved in my COP before the end of my commercial lease?**

You must notify the BSEE, within 5 business days, any time you cease commercial operations, without an approved suspension, under your approved COP. If you cease commercial operations for an indefinite period which extends longer than 6 months, we may cancel your lease under

§ 585.422 and, you must initiate the decommissioning process as set forth in 30 CFR part 285, subpart I.

### **§§ 585.636–585.639 [Reserved]**

### **GENERAL ACTIVITIES PLAN REQUIREMENTS FOR LIMITED LEASES, ROW GRANTS, AND RUE GRANTS**

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

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

(b) You must receive BOEM approval of your GAP before you can begin any of the approved activities on your lease or grant. You must submit your GAP no later than 12 months from the date of the lease or grant issuance.

### **§ 585.641 What must I demonstrate in my GAP?**

Your GAP must demonstrate that you have planned and are prepared to conduct the proposed activities in a manner that:

(a) Conforms to all applicable laws, implementing regulations, lease provisions and stipulations;

(b) Is safe;

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

(d) Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(e) Uses best available and safest technology;

(f) Uses best management practices; and

(g) Uses properly trained personnel.

### **§ 585.642 How do I submit my GAP?**

(a) You must submit one paper copy and one electronic version of your GAP



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to BOEM at the address listed in § 585.110.

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

**§§ 585.643–585.644 [Reserved]**

CONTENTS OF THE GENERAL ACTIVITIES PLAN

**§ 585.645 What must I include in my GAP?**

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

Information:	Report contents:	Including:
(1) Geotechnical .....	The results from the geotechnical survey with supporting data.	A description of all relevant seabed and engineering data and information to allow for the design of the foundation for that facility. You must provide data and information to depths below which the underlying conditions will not influence the integrity or performance of the structure. This could include a series of sampling locations (borings and in situ tests) as well as laboratory testing of soil samples, but may consist of a minimum of one deep boring with samples.
(2) Shallow hazards .....	The results from the shallow hazards survey with supporting data.	A description of information sufficient to determine the presence of the following features and their likely effects on your proposed facility, including: (i) Shallow faults; (ii) Gas seeps or shallow gas; (iii) Slump blocks or slump sediments; (iv) Hydrates; or (v) Ice scour of seabed sediments.
(3) Archaeological resources.	The results from the archaeological survey with supporting data, if required.	(i) A description of the results and data from the archaeological survey; (ii) A description of the historic and prehistoric archaeological resources, as required by NHPA (16 U.S.C. 470 <i>et seq.</i> ), as amended.
(4) Geological survey .....	The results from the geological survey with supporting data.	A report that describes the results of a geological survey that includes descriptions of: (i) Seismic activity at your proposed site; (ii) Fault zones; (iii) The possibility and effects of seabed subsidence; and (iv) The extent and geometry of faulting attenuation effects of geologic conditions near your site.
(5) Biological survey .....	The results from the biological survey with supporting data.	A description of the results of a biological survey, including the presence of live bottoms, hard bottoms, and topographic features, and surveys of other marine resources such as fish populations (including migratory populations), marine mammals, sea turtles, and sea birds.

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

Project information:	Including:
(1) Contact information .....	The name, address, e-mail address, and phone number of an authorized representative.
(2) The site assessment or technology testing concept .....	A discussion of the objectives; description of the proposed activities, including the technology you will use; and proposed schedule from start to completion.
(3) Designation of operator, if applicable .....	As provided in § 585.405.

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Project information:	Including:
(4) ROW, RUE or limited lease grant stipulations, if known .....	A description of the measures you took, or will take, to satisfy the conditions of any lease stipulations related to your proposed activities.
(5) A location plat .....	The surface location and water depth for all proposed and existing structures, facilities, and appurtenances located both offshore and onshore.
(6) General structural and project design, fabrication, and installation.	Information for each type of facility associated with your project.
(7) Deployment activities .....	A description of the safety, prevention, and environmental protection features or measures that you will use.
(8) A list of solid and liquid wastes generated .....	Disposal methods and locations.
(9) A listing of chemical products used (only if stored volume exceeds USEPA reportable quantities).	A list of chemical products used; the volume stored on location; their treatment, discharge, or disposal methods used; and the name and location of the onshore waste receiving, treatment, and/or disposal facility. A description of how these products would be brought onsite, the number of transfers that may take place, and the quantity that will be transferred each time.
(10) Reference information .....	A list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans you previously submitted or that are otherwise readily available to BOEM.
(11) Decommissioning and site clearance procedures .....	A discussion of methodologies.
(12) Air quality information .....	As described in § 585.700.
(13) A listing of all Federal, State, and local authorizations or approvals required to conduct site assessment activities on your lease.	A statement indicating whether such authorization or approval has been applied for or obtained.
(14) A list of agencies and persons with whom you have communicated, or with whom you will communicate, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.
(15) Financial assurance information .....	Statements attesting that the activities and facilities proposed in your GAP are or will be covered by an appropriate bond or other approved security, as required in §§ 585.520-521.
(16) Other information .....	Additional information as requested by BOEM.

(c) If you are applying for a project easement or constructing a facility, or a combination of facilities deemed by BOEM to be complex or significant, you must provide the following information in addition to what is required in paragraphs (a) and (b) of this section and comply with the requirements of 30 CFR part 285, subpart G:

mation in addition to what is required in paragraphs (a) and (b) of this section and comply with the requirements of 30 CFR part 285, subpart G:

Project information:	Including:
(1) The construction and operation concept .....	A discussion of the objectives, description of the proposed activities, and tentative schedule from start to completion.
(2) All cables and pipelines, including cables on project easements.	The location, design, installation methods, testing, maintenance, repair, safety devices, exterior corrosion protection, inspections, and decommissioning.
(3) A description of the deployment activities .....	Safety, prevention, and environmental protection features or measures that you will use.
(4) A general description of the operating procedures and systems.	(i) Under normal conditions. (ii) In the case of accidents or emergencies, including those that are natural or manmade.
(5) CVA nominations for reports required in 30 CFR part 285, subpart G.	CVA nominations for reports in 30 CFR part 285, subpart G, as required by § 285.706, or a request for a waiver under § 285.705.
(6) Construction schedule .....	A reasonable schedule of construction activity showing significant milestones leading to the commencement of activities.
(7) Other information .....	Additional information as required by the BOEM.

(d) BOEM will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure in accordance with the terms of § 585.114.

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

You must submit, with your GAP, detailed information to assist BOEM in

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complying with NEPA and other relevant laws as appropriate.

(a) A GAP submitted for an area in which BOEM has not reviewed GAP activities under NEPA or other applicable Federal laws must describe those resources, conditions, and activities listed in the following table that could be affected by your proposed activities or that could affect the activities proposed in your GAP.

(b) For a GAP submitted for an area in which BOEM has considered GAP activities under applicable Federal law (e.g., a NEPA analysis and CZMA consistency determination for the GAP activities), BOEM will review the GAP to

determine if its impacts are consistent with those previously considered. If the anticipated effects of your proposed GAP activities are significantly different than those previously anticipated, we may determine that additional NEPA and other relevant Federal reviews are required. In that case, BOEM will notify you of such determination, and you must submit a GAP that describes those resources, conditions, and activities listed in the following table that could be affected by your proposed activities or that could affect the activities proposed in your GAP, including:

Type of information:	Including:
(1) Hazard information .....	Meteorology, oceanography, sediment transport, geology, and shallow geological or manmade hazards.
(2) Water quality .....	Turbidity and total suspended solids from construction.
(3) Biological resources .....	Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, plankton, sea grasses, and other plant life.
(4) Threatened or endangered species .....	As required by the ESA (16 U.S.C. 1531 <i>et seq.</i> ).
(5) Sensitive biological resources or habitats.	Essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, sanctuaries, rookeries, hard bottom habitat, chemosynthetic communities, calving grounds, barrier islands, beaches, dunes, and wetlands.
(6) Archaeological resources .....	As required by NHPA (16 U.S.C. 470 <i>et seq.</i> ), as amended.
(7) Social and economic conditions .....	Employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, coastal zone management programs, and view shed.
(8) Coastal and marine uses .....	Military activities, vessel traffic, and energy and non-energy mineral exploration or development.
(9) Consistency Certification .....	If required by CZMA, as appropriate: (i) 15 CFR part 930, subpart D, if the GAP is submitted prior to lease or grant issuance; (ii) 15 CFR part 930, subpart E, if the GAP is submitted after lease or grant issuance.
(10) Other resources, conditions, and activities.	As required by BOEM.

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

Your GAP will be processed based on whether it is submitted before or after your lease or grant is issued:

If your GAP is submitted:	Consistency review of your GAP will be handled as follows:
(a) Before lease or grant issuance .....	You will furnish a copy of your GAP, consistency certification, and necessary data and information pursuant to 15 CFR part 930, subpart D, to the applicable State CZMA agency or agencies and BOEM at the same time.
(b) After lease or grant issuance .....	You will submit a copy of your GAP, consistency certification, and necessary data and information pursuant to 15 CFR 930, subpart E, to BOEM. BOEM will forward to the applicable State CZMA agency or agencies one paper copy and one electronic copy of your GAP, consistency certification, and necessary data and information required under 15 CFR part 930, subpart E, after BOEM has determined that all information requirements for the GAP are met.

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### § 585.648 How will BOEM process my GAP?

(a) BOEM will review your submitted GAP, along with the information and certifications provided pursuant to § 585.646, to determine if it contains all the required information necessary to conduct our technical and environmental reviews.

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

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

(b) BOEM will prepare appropriate NEPA analysis.

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

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

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

(1) If we approve your GAP, we will specify terms and conditions to be incorporated into your GAP. You must certify compliance with certain of those terms and conditions, as required under 30 CFR 285.653(b); and

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

### § 585.649 [Reserved]

ACTIVITIES UNDER AN APPROVED GAP

### § 585.650 When may I begin conducting activities under my GAP?

After BOEM approves your GAP, you may begin conducting the approved activities that do not involve a project easement or the construction of facilities on the OCS that BOEM has deemed to be complex or significant.

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

If you are applying for a project easement, or installing a facility or a combination of facilities on your limited lease deemed by BOEM to be complex or significant, as provided in § 585.648(a)(1), you also must comply with the requirements of 30 CFR part 285, subpart G, and submit your safety management system description required by 30 CFR 285.810 before construction may begin.

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

After BOEM approves your GAP, you have:

(a) For a limited lease, 5 years to conduct your approved activities, unless we renew the term under §§ 585.425 through 585.429.

(b) For a ROW grant or RUE grant, the time provided in the terms of the grant.

### § 585.653 What other reports or notices must I submit to BOEM under my approved GAP?

You must prepare and submit to BOEM annually a report that summarizes the findings from any activities you conduct under your approved GAP and the results of those activities. We will protect the information from public disclosure as provided in § 585.114.

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

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

(b) BOEM will periodically review the activities conducted under an approved GAP. The frequency and extent of the review will be based on the significance of any changes in available information and on onshore or offshore conditions affecting, or affected by, the activities conducted under your GAP. If the review indicates that the GAP should be revised to meet the requirement of this part, BOEM will require you to submit the needed revisions.

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

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

sultations when we determine that a proposed revision could:

- (1) Result in a significant change in the impacts previously identified and evaluated;
- (2) Require any additional Federal authorizations; or
- (3) Involve activities not previously identified and evaluated.

(e) When you propose a revision, we may approve the revision if we determine that the revision is:

- (1) Designed not to cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; and
- (2) Otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

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

You must notify the BOEM any time you cease activities under your approved GAP without an approved suspension. If you cease activities for an indefinite period that exceeds 6 months, BOEM may cancel your lease or grant under § 585.422, as applicable, and you must initiate the decommissioning process, as set forth in 30 CFR part 285, subpart I.

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

Upon completion of your approved activities under your GAP, you must initiate the decommissioning process as set forth in 30 CFR part 285, subpart I. You must submit your decommissioning application as provided in 30 CFR 285.905 and 285.906.

**CABLE AND PIPELINE DEVIATIONS**

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

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

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

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

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

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

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

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

**§ 585.659 [Reserved]**

**ENVIRONMENTAL PROTECTION REQUIREMENTS UNDER APPROVED PLANS**

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

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

If your project is located . . .	You must . . .
(1) in the Gulf of Mexico west of 87.5° west longitude (western Gulf of Mexico).	include in your plan any information required for BOEM to make the appropriate air quality determinations for your project.
(2) anywhere else on the OCS .....	follow the appropriate implementing regulations as promulgated by the EPA under 40 CFR part 55.

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

**§ 585.701 How must I conduct my approved activities to protect marine mammals, threatened and endangered species, and designated critical habitat?**

(a) You must not conduct any activity under your lease or grant that may affect threatened or endangered species or that may affect designated critical habitat of such species until the appropriate level of consultation is con-

ducted, as required under the ESA, as amended (16 U.S.C. 1531*et seq.*), to ensure that your actions are not likely to jeopardize a threatened or endangered species and are not likely to destroy or adversely modify designated critical habitat.

(b) You must not conduct any activity under your lease or grant that may result in an incidental taking of marine mammals until the appropriate authorization has been issued under the Marine Mammal Protection Act of 1972 (MMPA) as amended (16 U.S.C. 1361*et seq.*).

(c) If there is reason to believe that a threatened or endangered species may be present while you conduct your BOEM-approved activities or may be affected by the direct or indirect effects of your actions:

(1) You must notify us that endangered or threatened species may be present in the vicinity of the lease or grant or may be affected by your actions; and

(2) We will consult with appropriate State and Federal fish and wildlife

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agencies and, after consultation, shall identify whether, and under what conditions, you may proceed.

(d) If there is reason to believe that designated critical habitat of a threatened or endangered species may be affected by the direct or indirect effects of your BOEM-approved activities:

(1) You must notify us that designated critical habitat of a threatened or endangered species in the vicinity of the lease or grant may be affected by your actions; and

(2) We will consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, you may proceed.

(e) If there is reason to believe that marine mammals may be incidentally taken as a result of your proposed activities:

(1) You must agree to secure an authorization from National Oceanic and Atmospheric Administration (NOAA) or the U.S. Fish and Wildlife Service (FWS) for incidental taking, including taking by harassment, that may result from your actions; and

(2) You must comply with all measures required by the NOAA or FWS, including measures to affect the least practicable impact on such species and their habitat and to ensure no immitigable adverse impact on the availability of the species for subsistence use.

(f) Submit to us:

(1) Measures designed to avoid or minimize adverse effects and any potential incidental take of the endangered or threatened species or marine mammals;

(2) Measures designed to avoid likely adverse modification or destruction of designated critical habitat of such endangered or threatened species; and

(3) Your agreement to monitor for the incidental take of the species and adverse effects on the critical habitat, and provide the results of the monitoring as required; and

(4) Your agreement to perform any relevant terms and conditions of the Incidental Take Statement that may result from the ESA consultation.

(5) Your agreement to perform any relevant mitigation measures under an MMPA incidental take authorization.

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**§ 585.702 What must I do if I discover a potential archaeological resource while conducting my approved activities?**

(a) If you, your subcontractors, or any agent acting on your behalf discovers a potential archaeological resource while conducting construction activities, or any other activity related to your project, you must:

(1) Immediately halt all seafloor-disturbing activities within the area of the discovery;

(2) Notify BOEM of the discovery within 72 hours; and

(3) Keep the location of the discovery confidential and not take any action that may adversely affect the archaeological resource until we have made an evaluation and instructed you on how to proceed.

(b) We may require you to conduct additional investigations to determine if the resource is eligible for listing in the National Register of Historic Places under 36 CFR 60.4. We will do this if:

(1) The site has been impacted by your project activities; or

(2) Impacts to the site or to the area of potential effect cannot be avoided.

(c) If investigations under paragraph (b) of this section indicate that the resource is potentially eligible for listing in the National Register of Historic Places, we will tell you how to protect the resource, or how to mitigate adverse effects to the site.

(d) If we incur costs in protecting the resource, under section 110(g) of the NHPA, we may charge you reasonable costs for carrying out preservation responsibilities under the OCS Lands Act.

**§ 585.703 How must I conduct my approved activities to protect essential fish habitats identified and described under the Magnuson-Stevens Fishery Conservation and Management Act?**

(a) If, during the conduct of your approved activities, BOEM finds that essential fish habitat or habitat areas of particular concern may be adversely affected by your activities, BOEM must consult with National Marine Fisheries Service.

(b) Any conservation recommendations adopted by BOEM to avoid or

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minimize adverse effects on essential fish habitat will be incorporated as terms and conditions in the lease and must be adhered to by the applicant. BOEM may require additional surveys to define boundaries and avoidance distances.

(c) If required, BOEM will specify the survey methods and instrumentations for conducting the biological survey and will specify the contents of the biological report.

### **PART 586—ALTERNATE USES OF EXISTING FACILITIES ON THE OUTER CONTINENTAL SHELF**

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#### **Subpart A—General Provisions**

##### **§ 586.100 Authority.**

The authority for this part derives from subsection 8 of the Outer Continental Shelf Lands Act (OCS Lands Act) (43 U.S.C. 1337). The Secretary of the Interior delegated to the Bureau of Ocean Energy Management (BOEM) the authority to regulate activities under section 1337(p)(1)(D) of OCS Lands Act.

##### **§ 586.101 What is the purpose of this part?**

The purpose of this part is to:

- (a) Establish procedures for issuance and administration of right-of-use and easement (RUE) grants for the alternate use of existing OCS facilities for energy or marine-related purposes;
- (b) Inform you and third parties of your obligations when you undertake activities authorized in this part; and
- (c) Ensure that activities involving the alternate use of OCS facilities for energy or marine-related purposes are