DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250, 285, and 290

[Docket ID: MMS–2008–OMM–0012]

RIN 1010–AD30

Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule; Notice of Availability of the Final Environmental Assessment.

SUMMARY: The MMS is publishing final regulations to establish a program to grant leases, easements, and rights-of-way (ROW) for renewable energy project activities on the Outer Continental Shelf (OCS), as well as certain previously unauthorized activities that involve the alternate use of existing facilities located on the OCS; and to establish the methods for sharing revenues generated by this program with nearby coastal States. These regulations will also ensure the orderly, safe, and environmentally responsible development of renewable energy sources on the OCS.

The MMS prepared a Final Environmental Assessment (EA) analyzing this rule. The EA incorporates by reference the Programmatic Environmental Impact Statement *Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final Environmental Impact Statement, October 2007.* The EA was prepared to assess any impacts of this rule. The Final EA is available on the MMS Web site at: *http://www.mms.gov/offshore/AlternativeEnergy/RegulatoryInformation.htm.*

DATES: *Effective Date:* This final rule is effective on June 29, 2009. The incorporation by reference of the publication listed in the regulation is approved by the Director of the Federal Register as of June 29, 2009.

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SUPPLEMENTARY INFORMATION: The MMS developed this program and final regulations under the authority granted to the Secretary of the Interior (Secretary) by the Energy Policy Act of 2005, which amended the Outer Continental Shelf Lands Act (OCS Lands Act). Under this new authority, the Secretary maintains discretionary authority to issue leases, easements, or ROWs on the OCS for previously unauthorized activities that: (i) Produce or support production, transportation, or transmission of energy from sources other than oil and gas; or (ii) use, for energy-related or other authorized marine-related purposes, facilities currently or previously used for activities authorized under the OCS Lands Act.

Background

Mandate of Energy Policy Act of 2005 (EPAct)

The EPAct amended the OCS Lands Act to authorize the Secretary to issue leases, easements, or ROWs on the OCS for activities that:

(i) Support exploration, development, production, or storage of oil or natural gas, except that a lease, easement, or right-of-way shall not be granted in an area in which oil and gas preleasing, leasing, and related activities are prohibited by a moratorium;

(ii) Support transportation of oil or natural gas, excluding shipping activities;

(iii) Produce or support production, transportation, or transmission of energy from sources other than oil and gas; or

(iv) Use, for energy-related or other authorized marine-related purposes, facilities currently or previously used for activities authorized under the OCS Lands Act.

This new authority does not apply to activities that are otherwise authorized by law, including those covered by the OCS Lands Act, the EPAct, the Deepwater Port Act of 1974, and the Ocean Thermal Energy Conversion Act of 1980. On March 20, 2006, the Secretary of the Interior delegated to the MMS the new authority that was conferred by the EPAct. Under this authority, MMS will regulate the generation of electricity or other forms of energy from sources other than oil and natural gas on OCS facilities and the transmission on project easements and ROWs issued under this part. The MMS will not regulate sales of electricity or other forms of energy. The MMS will not regulate the transmission of electricity or other forms of energy on State lands.

In addition, the EPAct requires the Secretary to share with nearby coastal States a portion of the revenues received by the Federal Government from authorized renewable energy and alternate use projects on certain areas of the OCS. This final rule implements this mandate and describes the methods MMS will use for identifying what projects are covered by this requirement, determining which States are eligible to receive shares of the revenues, and—if two or more States are eligible to receive revenues from the same project—allocating the appropriate share to each eligible State.

The EPAct included a requirement that the Secretary develop any necessary regulations to implement the new authority. This final rule applies to the activities described in (iii) and (iv) previously (i.e., those relating to production, transportation, or transmission of energy from sources other than oil and gas, and to the use of existing OCS facilities for energy-related or other authorized marine-related purposes). Regulations for activities described in (i) and (ii) previously (i.e., those relating to oil and gas) will be promulgated separately in appropriate parts of the existing MMS oil and gas regulations.

While the MMS is the lead agency for authorizing OCS renewable energy and alternate use activities, we recognize that other Federal agencies have regulatory responsibility in such activities. The new authority does not expressly supersede or modify existing Federal laws, and all activities must comply fully with such laws. For instance, FERC has exclusive jurisdiction to issue licenses for hydrokinetic projects under Part I of the Federal Power Act and issue exemptions from licensing under Section 405 and 408 of the Public Utility Regulatory Policies Act of 1978 for the construction and operation of hydrokinetic projects on the OCS. However, no FERC license or exemption for a hydrokinetic project on the OCS shall be issued before MMS issues a lease, easement, or right-of-way. The MMS possesses the exclusive authority to issue leases, easements, and rights-of-way for renewable energy projects on the OCS.

In addition to providing the authority to issue leases, easements, and ROWs, the EPAct included a requirement that any activity permitted under this authority be ''carried out in a manner that provides for—

(A) Safety;

(B) Protection of the environment;

(C) Prevention of waste;

(D) Conservation of the natural resources of the outer Continental Shelf;

(E) Coordination with relevant Federal agencies;

(F) Protection of national security interests of the United States;

(G) Protection of correlative rights in the outer Continental Shelf;

(H) A fair return to the United States for any lease, easement, or right-of-way under this subsection;

(I) Prevention of interference with reasonable uses (as determined by the Secretary) of the exclusive economic zone, the high seas, and the territorial seas;

(J) Consideration of—

(i) The location of, and any schedule relating to, a lease, easement, or right-of-way for an area of the outer Continental Shelf; and

(ii) Any other use of the sea or seabed, including use for a fishery, a sealane, a potential site of a deepwater port, or navigation;

(K) Public notice and comment on any proposal submitted for a lease, easement, or right-of-way under this subsection; and

(L) Oversight, inspection, research, monitoring, and enforcement relating to a lease, easement, or right-of-way under this subsection.''

The MMS addresses these items, as appropriate, in this rulemaking.

MMS and Federal Energy Regulatory Commission (FERC) MOU

Until March 2009, regulatory uncertainty existed regarding which Federal agencies had authority to regulate wave and current energy development on the outer Continental Shelf (OCS). Both MMS and the Federal Energy Regulatory Commission (FERC) claimed this authority based on differing interpretations of Part I of the Federal Power Act (FPA) and section 8(p) of OCSLA, as amended by EPAct. However, on March 17, 2009, the Secretary of the Interior and the Acting Chairman of the Federal Energy Regulatory Commission issued a joint statement on the development of renewable energy resources on the OCS. In this joint statement, the Secretary and the Acting Commissioner requested that MMS and FERC staff prepare a Memorandum of Understanding (MOU) to describe the process by which authorizations related to renewable energy resources in offshore waters will be developed.

The MMS and FERC finalized this MOU on April 9, 2009. This agreement clarifies jurisdictional understandings regarding renewable energy projects on the OCS in order to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects. Specifically, the MOU recognizes that (1) MMS has exclusive jurisdiction with regard to the production, transportation, or transmission of energy from non-hydrokinetic alternative energy projects on the OCS, including renewable energy sources such as wind and solar; (2) MMS has exclusive jurisdiction to issue leases, easements, and rights-of-way regarding OCS lands for hydrokinetic projects; and (3) the Commission has exclusive jurisdiction to issue licenses and exemptions for hydrokinetic projects located on the OCS.

Under this new agreement, those entities interested in operating a hydrokinetic project on the OCS must first obtain a lease from MMS. The MMS will issue a public notice to determine whether competitive interest exists in the area, and will proceed with either the competitive or noncompetitive lease issuance process depending on responses received to this public notice. The MMS will conduct the NEPA analysis necessary for the lease issuance and any site assessment activities that will occur on the lease. After an applicant acquires a lease from MMS, FERC may issue a license or exemption for the hydrokinetic project, and conduct any necessary NEPA analysis. After a license is issued, construction and operations of the project may begin as per the terms of the license. To facilitate efficient processing of the lease and license applications, it may be helpful for potential lessees to apprise both MMS and FERC of their interest in hydrokinetic development at the start of the process.

Further, the MOU states that MMS and FERC will work together to the extent practicable to develop policies and regulations with respect to OCS hydrokinetic projects, and coordinate to ensure that hydrokinetic projects meet the public interest, including the adequate protection, mitigation, and enhancement of fish, wildlife, and marine resources and other beneficial public uses. The MOU ensures that the interests of both agencies are adequately represented and that the process of developing renewable energy on the OCS happens efficiently, in an environmentally responsible manner, and with appropriate benefit to the people of the United States.

Importantly, the agreement addresses the issue of potential site-banking by developers on the OCS by eliminating redundant regulatory processes for acquiring use of OCS lands. In addition, by eliminating dual regulatory processes, the agreement addresses the potential for granting conflicting awards of OCS sites to developers by the two agencies. Specifically, FERC has agreed not to issue preliminary permits for hydrokinetic activities on the OCS, and MMS has agreed that FERC will have the primary responsibility to issue licenses for these activities. The Federal Government has effectively eliminated the opportunity for abuse by entities seeking to reserve, block, or acquire for speculative purposes large portions of the OCS. These concerns were raised by many commenters on the REAU rulemaking. The DOI/FERC MOU creates a unified, coherent process for the authorization of hydrokinetic activities on the OCS, ensuring that U.S. resources on the OCS will not be subject to a ''land rush,'' and will be developed in the most efficient manner possible.

Regulatory Process

On December 30, 2005, the MMS issued an Advance Notice of Proposed Rulemaking (ANPR) (70 FR 77345) requesting comments on the program requirements.

The ANPR requested public comments on five major program areas:

(1) Access to OCS lands and resources;

(2) Environmental information, management, and compliance;

(3) Operational activities;

(4) Payments and revenues; and

(5) Coordination and consultation.

The MMS provided a summary of the comments received on the ANPR in the Notice of Proposed Rulemaking (NPR) (73 FR 39376) published on July 9, 2008. The NPR is available on the *Regulations.gov* Web site.

Programmatic Environmental Impact Statement (PEIS) Summary

The MMS prepared a final PEIS in support of the establishment of a program for authorizing renewable energy and alternate use activities on the OCS. The final PEIS examines the potential environmental effects of the program on the OCS and identifies policies and best management practices that may be adopted for the program. The PEIS examined three alternatives, as well as the no action alternative. The three alternatives were: (1) The proposed action which would establish the program; (2) a case-by-case alternative that would evaluate each project individually without the benefit of a comprehensive program; and (3) the preferred alternative, which consisted of a combination of the first two alternatives, thus allowing MMS to review projects during the interim while the program and regulations are being established.

Given the rapidly evolving nature of this nascent industry, the MMS cannot reasonably anticipate and assess the

potential environmental impacts of all of the various technologies and potential OCS locations where these renewable energy and alternate use projects could someday be proposed. Accordingly, this PEIS is focused on renewable energy technologies and areas on the OCS that industry has expressed a potential interest in and ability to develop or evaluate from 2007 to 2014. The PEIS proposed policies and best management practices based on the analyses in the PEIS. As the program evolves and more is learned, the mitigation measures may be modified or new measures developed. Each project developed under this new program will be subject to environmental reviews under the National Environmental Policy Act (NEPA), and each project may have additional project-specific mitigation measures.

A Record of Decision (ROD) was published on January 10, 2008. The preferred alternative was selected as well as interim policies and best management practices that were recommended in the PEIS. The PEIS and ROD are available at: *http://ocsenergy.anl.gov/*.

Environmental Assessment

The MMS prepared a Final EA analyzing this rule. The EA incorporates by reference the PEIS, *Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final Environmental Impact Statement, October 2007*. This EA was prepared to assess any impacts of this rule. The Final EA is available on the MMS Web site at: *http://www.mms.gov/offshore/AlternativeEnergy/RegulatoryInformation.htm*.

Notice of Proposed Rulemaking

Summary of Comments

The MMS published a NPR (73 FR 39376) on July 9, 2008. The proposed rule was accompanied by a 60-day public comment period that ended September 8, 2008.

In response to the request for comments, MMS received 280 letters from a range of entities, including, but not limited to, Non-Governmental Organizations, State and local governments, industry, and the general public. A list of commenters is included at the end of the summary. The following table illustrates the segmentation of comment letter submissions received by organization type:

Type	Number Received
State Government	38
Non-Governmental Organizations	37
Oil and Gas Industry	3
Renewable Energy Industry	27
Local Government	7
Congress	4
Tribal Government	1
Federal Government	7
Research Organizations	1
Individuals	155
Total	280

No single issue dominated the comments, which were divergent and wide-ranging. In general, comments were supportive of renewable energy developments on the OCS and reuse of existing OCS facilities. Commenters advised MMS to provide as much certainty as possible in the final rule to support the burgeoning offshore renewable energy industry, while also providing flexibility to allow industry to meet the necessary requirements. The MMS was also urged to advocate for early and consistent stakeholder involvement in both the program and with individual project permitting.

The most common topics addressed by commenters included: Aquaculture, State and local consultation, bonding, confidentiality, alternate-use liability transference, jurisdiction, revenue sharing, and environmental review processes. These topics and others are addressed further in the sections that follow.

Access to OCS Lands and Procedures for Leasing

With regard to timeframes for activities required by the proposed rule, several commenters requested this rule provide clear and defined timelines for MMS's responsibilities. Some suggested that timelines should be set for the issuance of the public notice to determine developer interest. Others suggested that a timeline be set for the comment evaluation period following the deadline for public comments in response to a public notice. Some suggested that a timeline be set for the determination of competitive interest. Other commenters proposed a timeline be set for MMS action on lease-suspension requests.

With regard to jurisdiction, one commenter raised the question about whether MMS has jurisdiction over the cables associated with a renewable energy project even if these cables were used for a nonrenewable energy project at the end of the original lease term.

Some commenters requested that due-diligence requirements be established to ensure that the applicant is financially and technically sound when being considered as a potential leaseholder.

Some comments suggested that additional clarification is needed on a number of elements in the rule, including on what constitutes competitive interest, the ROW and right-of-use and easement (RUE) grant process, and activity cessation and suspension orders and the activities that these orders affect.

A large number of comments related to the process for renewing leases. Some of these comments requested that the renewal process begin earlier, and others asked that while a lease renewal request is pending, the rule make it clear that the lease term will be automatically extended until MMS makes a decision.

Some commenters expressed concern with the concept of lease area contractions, suggesting that MMS could contract leases capriciously. Other commenters suggested MMS should reconsider allowing for the scaling of projects to ensure fairness and ease of market entry. The MMS should also consider additional strategies beyond diligence requirements to ensure that individual developers could not tie up large areas of the OCS, thereby prohibiting other development interests and, potentially, other uses.

Many commenters suggested that MMS should permit lessees of limited leases to have priority consideration when considering a commercial lease application. For instance, if a lessee is already operating on a limited lease in a given area, and that same area is opened up for a commercial lease sale, that lessee should be given priority over other competitors for that lease area.

With regard to the issuance of limited leases for the purpose of research, some commenters supported the idea of having Department of Energy supported research access rights expanded to include State governments and academic institutions.

Several comments urged MMS to consider and establish a multi-factor evaluation process when considering a project proposal in a competitive lease sale.

Environmental Information, Management, and Compliance Programs

Several commenters suggested that the environmental review process proposed by MMS would be overly burdensome and redundant. Some commenters suggested that the NEPA process proposed by MMS goes far beyond what NEPA requires and what other agencies require to implement NEPA in order to demonstrate the extent of environmental impact. Some commenters suggested that the NEPA process is far too cumbersome as set out in the proposed rule. Having the Site Assessment Plan (SAP), Construction and Operations Plan (COP), and lease sale Environmental Impact Statement (EIS) undergo NEPA is burdensome and unnecessary.

With regard to the environmental review process, several comments pertained to the division of cost burden, requesting clarification, or changes to the designation of responsible parties with regard to payment. Some commenters suggested that MMS should allow companies the option of developing the required environmental documents instead of having MMS staff and its contractors develop them for projects.

With regard to the Coastal Zone Management Act (CZMA) review process, several commenters requested clarification on how the process would work. Some commenters suggested that it is unclear in the proposed rule regarding exactly what is required under a noncompetitive lease sale versus a competitive lease sale. Other commenters were unclear on what parts of CZMA applied to these types of lease sales.

Many commenters expressed concern with minimizing the environmental impacts of leases, easements, and ROWs. With regard to cumulative impacts and monitoring, several commenters proposed that projects be closely monitored for their overall impacts on the environment, both beneficial and adverse. Some commenters suggested that the proposed rule did not adequately address the need for consideration of potential impacts on commercial fishing. Other commenters advocated that monitoring activities should not only encompass the proposed project area, but also those areas directly adjacent to projects. Some commenters suggested that the guidelines for monitoring should clarify that States reserve the right to impose additional requirements as needed. The MMS also received comments suggesting that cumulative effects should be required as part of an applicant's SAP, COP, and initial project proposal. The cumulative effects should also be considered as part of the lease-sale evaluation process.

With regard to adaptive management, several commenters proposed that the requirements and process for adaptive management are unclear in the proposed rule and need to be clarified. Some suggested that the lease instrument should be site specific and clearly specify the scope of the adaptive management activities MMS might require. Some comments pointed to the approach employed by the U.S. Fish and Wildlife Service for specifying adaptive management, where the terms and obligations are negotiated upfront. Some suggest that adaptive management should be included as a standard component of the SAP, General Activities Plan (GAP), and COP.

Several commenters advocate that MMS apply categorical exclusions for certain data gathering activities. Some comments suggest that categorical exclusions could apply to most, if not all, resource evaluation activities, the installation of monitoring devices, and activities conducted prior to the approval of plans while on a lease. Some comments point to the policy currently employed by the U.S. Bureau of Land Management (BLM) for granting these exclusions.

Facility Design, Fabrication, and Installation

With regard to facility design and engineering, the majority of comments pertained to the proposed requirement that the lessee use a Certified Verification Agent (CVA). Many commenters suggested that the required use of a CVA is redundant, expensive, and not effective where such design, fabrication, installation, repairs, and modifications are done under the direction of a licensed engineer. Some commenters pointed out that because construction of offshore wind facilities consist of repeated installation of numerous, nearly identical units, requiring the CVA to verify, witness, survey, or check most, if not all, of a wind farm installation is burdensome and unnecessary.

With regard to the engineering and design standards by which offshore renewable energy facilities are aligned, many commenters suggested it was unclear in the proposed rule to what standard(s) the CVA would compare individual projects, as there is no governing body approving such designs, nor does MMS state specific standards in the rule. Some commenters urged MMS to adopt internationally accepted standards wherever possible. Other commenters suggested that MMS consider a phased approach in the facility design, fabrication, and installation requirements, thereby proposing that MMS rely on existing standards while proceeding with the analysis of all standards to determine what modifications might be justified in a second phase of the program. In addition, because there are no set standards or governing body, some commenters proposed that MMS provide training to prospective CVAs to meet the safety requirements that MMS will impose.

Regulation of Operational and Decommissioning Activities

With regard to site-assessment activities, some commenters expressed a desire to have the ability to conduct site-assessment activities before a lease has been issued. Other commenters suggested that the SAP and COP be combined into a single plan, while others recommended that MMS create a categorical exclusion for site-assessment activities.

With regard to information requirements, many commenters requested additional clarification regarding various information requirements under the lease, including

those required during the application phase, within the plans, during the environmental reviews, and during the technical evaluation of a proposed project.

A large number of comments addressed the topic of the proposed notification requirements. Some commenters suggested that the 3-day notification requirement, as explained in subpart H, should be restated to address equipment or failures that pose significant risk to the environment, personnel, or property. Some commenters suggested that the notification requirement may not be appropriate for routine repair work, and would be better suited to emergency repairs only or those that would require environmental documentation. As stated in the proposed rule, the notification requirements are unclear regarding what activities would require notification; because there are a range of activities that could take place, such as changing light bulbs, this provision needs to be better defined.

Several comments addressed the topic of inspections. Some commenters pointed out that renewable energy facilities, like wind farms, will be unmanned and, as such, should not be subject to the same inspection requirements that the oil and gas industry are subject to. Certain commenters suggested that offshore wind turbines be classified as unmanned for safety purposes, as these facilities are unmanned during normal operations. Unscheduled inspections to the actual wind turbines or energy generating facilities would be better served with visits to the 24-hour shoreside monitoring station, where real-time information on the condition and operation of the facility would be available. Some commenters advocated unscheduled inspections should be coordinated with the developer to minimize possible safety risks to the inspector.

A large number of comments pertained to the decommissioning obligations set out in the proposed rule. Some suggested that allowing structures to remain in place at the end of a lease makes more sense than removal, both from a financial perspective and from an environmental perspective. Facility components, such as a turbine foundation, scour protection equipment, and cabling could cause greater harm to the surrounding ecology during and after removal than if left in place. Some commenters suggested that these structures could benefit the local ecology by continuing to serve as artificial reefs. Some comments requested that MMS require CZMA review as part of the decommissioning application. Others advocated having decommissioning requirements be determined on a case-by-case basis in the COP, by considering site-specific characteristics. On the side of those that support removal of all structures, some commenters suggested that the final rule should include a requirement that the development site be returned to the ecological baseline that existed prior to the installation of the energy project. Other commenters suggested that the requirements incorporate a presumption that all facilities, cables, and other obstructions be removed, as submarine cables and other components can pose a long-term obstruction for much of the fishing gear used on the OCS.

Some comments suggested that the specifics of the decommissioning requirements should be modified. Some suggested that the removal of structures to the seabed depth specified in the rule is unnecessary. Some pointed to requirements employed in Europe, where the common removal depth for a wind turbine foundation is no more than 2 meters or 6 feet.

Payments, Royalties, Fees, and Bonds

The majority of comments regarding payments and financial assurance requirements urged MMS to expand the range of financial assurance options available to the lessee, including allowing the use of a third-party guaranty, audited financial statements, power purchase or other sale agreements, insurance, or other alternatives approved by MMS.

Another point raised in a large volume of comments addressed the topic of decommissioning costs. Some commenters suggested MMS should separate financial assurance for decommissioning costs from financial assurance for other regulatory obligations, while others suggested that the rule be crafted in a way that ensured the final bonding costs will remain within reason and are reviewed carefully to cover only the necessary costs. A number of commenters suggested MMS should revise the provisions to provide more cost-effective protection against defaults on decommissioning obligations. Some commenters shared concern regarding MMS's ability to use bonding for cleanup and recovery activities once a lease term has ended. Some commenters suggested the decommissioning obligation under a limited lease, with a meteorological tower cited as an example, should not accrue—at a minimum—until after the development lease is awarded and MMS has approved the plan.

At least one commenter mentioned the uncertainty in the requirements and in the process of granting and overseeing ROWs and RUEs will impact the feasibility for the developer to obtain financing.

With regard to operating fees, many commenters recommended that operating fees under a commercial lease be deferred until the leaseholder is either generating energy or has begun construction on the lease. One suggestion was made to have the operating fees deferred until the CVA approves the COP.

With regard to bidding, some commenters recommended MMS establish minimum bids and allow for the rejection of high bids in certain circumstances.

Some commenters suggested the leasing fees, royalties, and rent in the proposed rule were set too low in light of the value of existing fisheries that could be displaced by renewable energy projects.

Coordination and Consultation

Many commenters urged early and consistent consultation and coordination with relevant State and Federal agencies. A few commenters suggested the establishment of standing inter-agency advisory and planning committees to allow for continuous dialogue with multiple stakeholders during the lease issuance process. Some commenters requested they be specifically mentioned as a consulting entity in the rule.

With regard to State competitions for offshore development, some commenters requested MMS recognize the results of State competitions and grants for renewable energy development offshore their States when considering potential lessees in Federal waters.

With regard to consultation during specific stages in the lease issuance process, some commenters suggested the rule require applicants consult with affected State and local governments during the area identification stage and throughout the remaining SAP and COP review processes. Some suggested MMS work more closely with the Federal Energy Regulatory Commission to avoid duplication in coastal EAs and reviews, while others suggested MMS work just as closely with State agencies during the coastal zone management processes. Other comments from industry suggested that renewable energy developers should also confer with local oil and gas project planners to ensure compatibility. Some commenters advocated that MMS express, in the final rule, a process for MMS to

coordinate with States, tribes, and local governments in adjusting mitigation and monitoring requirements.

A common thread running through the comments on coordination and consultation is the desire to establish and use planning and coordination mechanisms to facilitate appropriate siting of OCS renewable energy activity and to develop meaningful priorities. Some commenters recommended establishing new mechanisms, and others suggested working with existing means. The MMS believes that such approaches may be accommodated under the final rule, and we are committed to reaching out to stakeholders, and local, state, and Federal government agencies as we implement the rule.

We began outreach to officials and organizations at the national, regional, state, and local levels when we began the rulemaking process, and we have received valuable input throughout the process. We have participated in existing regional planning mechanisms, such as the West Coast Governors Agreement and the Northeast Regional Ocean Council, which are working toward properly balanced uses of the ocean through a regionally coordinated approach to relevant issues, including renewable energy development. We recognize and support new efforts, such as the one under way jointly by the States of New York, New Jersey, Delaware, Maryland, and Virginia to convene a Mid-Atlantic Ocean Summit, as well as the U.S. Offshore Wind Collaborative's proposed New England and Mid-Atlantic States Joint Planning Agreement. We also have been working with individual States, localities, and tribes in the implementation of the MMS interim policy on resource assessment and technology testing and hope to build on those efforts in the establishment of joint task forces addressing commercial renewable energy development opportunities as provided under the final rule.

Two States—New Jersey and Rhode Island—are well along in planning efforts that will help to determine appropriate areas of the OCS for development, and MMS has been an active partner with those States. Such efforts—supported by MMS environmental study and technical research initiatives, as well as the Coordinated OCS Mapping Initiative mandated by EPAct—will contribute significantly as MMS implements this final rule.

Section 388 of EPAct 2005 requires that any activity permitted under this authority be carried out in a manner that provides for, among other things, protection of the environment, conservation of the natural resources of the outer continental shelf; coordination with relevant Federal agencies; protection of national security interests of the United States, prevention of interference with reasonable uses and functions of the exclusive economic zone, the high seas, and the territorial seas, and consideration of any other use of the sea or seabed, including, but not limited to fisheries, protection of biodiversity and ecosystem function, sealanes, potential siting of deepwater ports, or navigation. Consistent with this statutory direction, MMS understands that this rule will be applied in conjunction with interagency-led planning activities that are undertaken to avoid conflicts among users and maximize the economic and ecological benefits of the OCS. These activities will include multifaceted spatial planning effort that will incorporate ecosystem based science and stewardship along with socioeconomics, research, and modeling in the context for demands for other ocean uses and functions. It is anticipated that the Council on Environmental Quality will help coordinate this interagency effort, with the National Oceanic and Atmospheric Administration (NOAA) playing a key role, along with MMS. Through this type of coordination and advance planning, we expect to be able to speed the process of developing renewable energy projects in the OCS.

This final rule is designed to be implemented both within the existing federal framework of multi-agency management of ocean activities, as well as to adapt to alternative ocean governance regimes that could be developed in the future. MMS will coordinate closely with all relevant federal and state agencies both on the implementation of this rule, through actualization and operation to termination and decommissioning, as well as on the development of any broader governance structure to address the many competing demands and interests facing our oceans.

The MMS is responsible for ensuring that the decisions made within this comprehensive regulatory structure are supported by environmental analysis, documents, and other decision support resources. We will ensure that environmental analysis for OCS renewable energy proposals is proportional to the scope and scale of each proposal, is effectively tiered to programmatic NEPA documents, and efficiently incorporates other publicly available information by reference. The MMS will ensure timely and efficient coordination of the development and review of environmental documents with all agencies that have jurisdiction or special expertise to provide the decisionmakers. We will ensure that mitigation and monitoring information informs future decisionmaking processes.

Management of renewable energy activities by MMS under this rule is founded on many years of experience in administering OCS energy and mineral programs and will be supported by extensive investigation and information gathering under the MMS Environmental Studies and the Technology Assessment and Research Programs. Both of these programs will play a significant role to ensure the safe and environmentally-responsible use of OCS renewable energy resources. Several initiatives examine real offshore renewable energy activity experiences in Europe that will provide useful information in considering similar activity in U.S. waters as well as opportunities to form close partnerships with and learn from international governments and developers possessing offshore renewable energy expertise. As we implement our regulatory framework to harness these new and exciting ocean renewable energy opportunities, we will draw on partnerships among the Federal, state, and local governments entities to share critical information, and agency expertise, and to foster better communication between different arms of the Federal Government

The MMS believes that all of these efforts and others will be extremely helpful in deciding where and when to pursue development of renewable energy on the OCS. They will help government at all levels to commit resources appropriately and will provide developers with information to facilitate proper and efficient project proposals. Most importantly, MMS coordination and consultation with regional, state, and local planning mechanisms will give those entities that will be most affected by renewable energy activity a proper voice in the development of priorities.

Reuse of Existing Facilities

The vast majority of comments pertaining to alternate use addressed the concern that MMS would authorize mariculture activities on the OCS in the absence of express Federal mariculture legislation (such as the National Offshore Aquaculture Act that has been debated in Congress but never passed). Several commenters argued that MMS did not have the legal authority under subsection 8(p) of the OCS Lands Act to authorize Alternate Use RUEs for

mariculture activities that involved the use of an existing OCS facility.

Several commenters raised concerns regarding the apportionment of decommissioning liability between the holder of the alternate use right-of-use and easement (Alternate Use RUE) and the existing OCS lessee or operator. Most of these commenters argued that the Alternate Use RUE holder should assume liability for decommissioning the existing OCS facility, thereby allowing the existing lessee or operator to shed its decommissioning liabilities for that particular existing structure that is subject to the approved alternate use. Other commenters expressed concern that the alternate use provisions were too general in nature, and did not set forth specific grant terms, payment levels, or financial assurance commitments.

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LIST OF COMMENTERS
(EXCLUDING PRIVATE CITIZENS)

Organization	State	Organization	State
Alabama Department of Environmental Management	AL	National Hydropower Association	DC
Alaska Marine Conservation Council	AK	National Ocean Ind. Association	DC
Alaska Trollers Association	AK	National Park Service (NPS)	DC
Alliance for Affordable Energy	LA	National Park Service (Assateague NPS)	MD
Alliance to Protect Nantucket Sound	MA	Natural Resources Defense Council	NY
American Petroleum Institute)	DC	Nature Conservancy	VA
American Soybean Association	MO	Naval Surface Warfare Center	FL
American Wind Energy Association	US	New Jersey Department of Environmental Protection	NJ
Babcock & Brown	CA	North Carolina Department of Environment and Natural Resources	NC
Bluewater Wind-Member of American Wind Energy Association	NJ	Ocean Conservancy	CA
California Coastal Commission	CA	Ocean Power Technology	NJ
California Department of Fish and Game	CA	Ocean Protection Coalition	CA
California Energy Commission	CA	Ocean Renewable Energy Coalition	DC
California State Lands Commission	CA	Ocean Stewards Institute	HI
Center for Food Safety	DC	Oceans Public Trust Initiative	ME
Clean Energy States Alliance	VT	Offshore Operators Committee	LA
Clean Ocean Action	NJ	Oregon Albacore/Salmon Commission	OR
Clipper Windpower	CA	Oregon Coastal Zone Management Association	OR
Coastal States Organization	DC	Oregon Wave Energy Trust	OR
College of Marine and Earth Studies, University of Delaware	DE	Pacific Gas and Electric Company	CA
Community Environmental Council	CA	Pelamis Wave Power Ltd.	Scotland
Connecticut Department of Environmental Protection	CT	Pew Environmental Group	PA
Conservation Law Foundation	ME	PNGC Power	OR
County of Santa Barbara Planning and Development	CA	Port of Garibaldi	OR
Crab Boat Owners' Association	CA	Principle Power Inc.	WA
Deepwater Wind	NJ	Quinault Indian Nation	WA
Delaware Department of Natural Resources and Environmental Control	DE	Recreational Fishing Alliance	CA
Delaware Public Service Commission; Delaware Energy Office; Delaware Office of Management and Budget; Delaware Controller General	DE	Rhode Island Department of Environmental Management, Division of Fish and Wildlife	RI
EcoRigs	LA	San Francisco Public Utilities Commission	CA
Environmental Defense Center	CA	Southern Alliance for Clean Energy	GA
Federal Energy Regulatory Commission	DC	Southern Company	AL
Fishermen's Energy of New Jersey,	NJ	Southern Oregon Ocean Resource	OR

Organization	State	Organization	State
LLC		Coalition	
Fishermen's Advisory Committee For Tillamook	OR	State Congressmen (Collection of 12)	DC
Florida Department of Environmental Protection	FL	State of Alaska	AK
Florida Power & Light Company	FL	State of California Resources Agency	CA
Food and Water Watch	US	State of Florida (Governor's office)	FL
Gamesa Energy	DC	State of Louisiana (Governor's Office)	LA
Georgia Coastal Management Program	GA	State of Oregon (Governor's Office)	OR
Georgia Wind Working Group	GA	Surety & Fidelity Association of America	DC
Hatch Energy	NY	Surfrider Foundation	CA
Heal the Bay		The Commonwealth of Massachusetts	MA
Hubbs Seaworld Research Institute	CA	Tillamook County, OR	OR
Humane Society of the United States	US	United Fishermen of Alaska	AK
Hydropower Reform Coalition	DC	United Soybean Board	MO
International Association of Geophysical Contractors	TX	U.S. Offshore Wind Collaborative	MA
Lincoln County and the Fishermen Involved in Natural Energy Committee	OR	U.S. Senators and Congressman	DC
Lockheed Martin Corp.	VA	Virginia Coastal Energy Research Consortium	VA
Louisiana Department of Natural Resources	LA	Virginia Department of Environmental Quality	VA
Louisiana Universities Marine Consortium	LA	Washington Department of Fish and Wildlife	WA
Maine State Planning Office	ME	Washington State Department of Natural Resources	WA
Mass Audubon	MA	Washington State Dept. of Ecology	WA
Nantucket Planning and Economic Development Commission	MA	World Wildlife Fund	DC
National Fisheries Institute	VA		

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Overview of the MMS Alternative Energy and Alternate Use Program

To accommodate the regulations to support the Alternative Energy and Alternate Use Program, MMS will add a new part to subchapter B of title 30 of the Code of Federal Regulations (CFR). The new part 285 will be titled *Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf* and will address the requirements of section 388(a) of the EPAct, which amended the OCS Lands Act by adding section 8(p) (43 U.S.C. 1337(p)). In the proposed rule the new part 285 was titled *Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf.* We are now using the term ''renewable energy'' instead of alternative energy because it is a more commonly used term and more easily understood by the industry and general public.

Approach to Rulemaking

The MMS developed these regulations to provide a regulatory framework for leasing and managing OCS renewable energy project activities and authorizing activities that involve the alternate use of OCS Lands Act-permitted facilities. These regulations are also intended to encourage orderly, safe, and environmentally responsible development of renewable energy sources on the OCS. The MMS expects that renewable energy projects in the near term will involve the production of electricity from wind, wave, and ocean current. In the future, other types of renewable energy projects may be pursued on the OCS, including solar energy and hydrogen production projects. These regulations were developed to allow for a broad spectrum of renewable energy development, without specific requirements for each type of energy production.

Following the publication of these regulations, MMS will publish a guidance document to support the regulations. This guidance document will provide more details on the program and will describe the type of information that we are looking for in various plan submittals. As we gain experience with renewable energy development on the OCS, we will update our regulations to include energy-resource-specific provisions and incorporate by reference appropriate documents.

This final rule (30 CFR part 285) applies to all aspects of the Alternative Energy and Alternate Use Program except for the procedures applying to appeals of MMS decisions or orders, which are covered in 30 CFR part 290, subpart A. The MMS is revising § 290.2 to clarify our decisions on bids under this program that are exempt from the appeals process at 30 CFR part 290 and are covered under § 285.118(c). This section describes the procedures for a bidder whose high bid was rejected to apply for reconsideration by the Director of MMS (Director) for renewable energy leases, ROW grants, RUE grants, or Alternate Use RUE.

Overview of the Project Development Process

General Overview

Types of Access Rights

The MMS will issue lease access rights for commercial development and site assessment and technology testing. The ROW and RUE grants will be issued for the support of renewable energy activities. The MMS will use a special grant, the Alternate Use RUE, for activities that use an existing facility.

Commercial and Limited Leases

The MMS will issue two types of leases: (1) Commercial or (2) limited. A commercial lease would convey the access and operational rights necessary to produce, sell, and deliver power through spot market transactions or a long-term power purchase agreement. A commercial lease provides the lessee full rights to apply for and receive the authorizations needed to assess, test, and produce renewable energy on a commercial scale over the long term (approximately 30 years). A commercial lease will include the right to a project easement, which will be issued to allow the lessee to install gathering, transmission, and distribution cables to transmit electricity; pipelines to transport other energy products (i.e., hydrogen); and appurtenances on the OCS, as necessary, for the full enjoyment of the lease. The project easement will be issued upon approval of the COP (for commercial leases) or GAP (for limited leases).

A limited lease will convey access and operational rights for 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. In a change from the proposed rule, MMS has decided to permit limited leases that generate power during technology testing to sell that power within limits set in the lease instrument. For example, a limited lease could include in its terms and conditions the authorization to sell electricity produced during the testing of experimental ocean current turbine generators of up to 5 megawatts (MW) total installed capacity, thereby allowing the lessee to recoup some of the expenses entailed in its limited lease activities. Limited leases may be issued for site-assessment purposes only or for site assessment and development and testing of new or experimental renewable energy technology. Limited leases will be issued for a short term, 5 years. Under the provisions of these regulations, limited leases may be renewed, but they cannot be converted to commercial leases. If the holder of a limited lease wished to pursue commercial development on the OCS, the leaseholder will need to obtain a new commercial lease through the leasing process, as defined in these regulations.

RUE Grants and ROW Grants

The MMS will issue RUE grants authorizing the use of a designated portion of the OCS to support renewable energy activities on a lease or other approval not issued under this part (e.g., on a State-issued lease).

The MMS will issue ROW grants to allow 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 not generated on a lease issued under this part. An ROW grant could be used to transport electricity from a State lease to shore or from one State to another State through a transmission line that must cross the Federal OCS. An ROW is not the same as a project easement issued with a renewable energy lease under this part.

Alternate Use RUEs

The MMS will issue an alternate use RUE for the energy- or marine-related use of an existing OCS facility for activities not otherwise authorized by this subchapter or other applicable law. See preamble at subpart J, for more details regarding Alternate Use RUEs.

Obtaining Access Rights

The EPAct requires MMS to award leases, ROW grants, and RUE grants competitively, unless we make a determination of no competitive interest. In conjunction with the competitive leasing process, we will prepare NEPA and other environmental compliance documents. The MMS will put forth a call for interest, designate the lease or grant area, and publish in the **Federal Register** all other notices and calls relating to the sale. If, after putting forth a call for interest, we determine that there is no competitive interest in that particular OCS area, we may proceed in issuing a lease or grant noncompetitively. Whether a company acquires a lease or grant competitively or noncompetitively, it must comply with all MMS lease stipulations or conditions in the grant.

Federal Compliance for the Leasing Process

All activities permitted under this part must comply with all relevant Federal laws, regulations, and statutes, including, but not limited to, the following:

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Responsible Federal Agency/Agencies	Statute/Executive Order (E.O.)	Summary of Pertinent Provisions
Council on Environmental Quality	National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.)	Requires Federal agencies to prepare an EIS to evaluate the potential environmental impacts of any proposed major Federal action that would significantly affect the quality of the human environment, and to consider alternatives to such proposed actions.
U.S. Fish and Wildlife Service (FWS); National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS)	Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.)	Requires Federal agencies to consult with the FWS and the NMFS to ensure that proposed Federal actions are not likely to jeopardize the continued existence of any species listed at the Federal level as endangered or threatened, or result in the destruction or adverse modification of critical habitat designated for such species.
FWS (walruses, sea and marine otters, polar bears, manatees and dugongs); NMFS (seals, sea lions, whales, dolphins, and porpoises)	Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361-1407)	Prohibits, with certain exceptions, the take of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the United States.
NMFS	Magnuson-Stevens Fishery Conservation and Management Act (also known as the Fishery Conservation and Management Act of 1976, as amended by the Sustainable Fisheries Act) (16 U.S.C. 1801 et seq.)	Requires Federal agencies to consult with the NMFS on proposed Federal actions that may adversely affect Essential Fish Habitats that are necessary for spawning, breeding, feeding, or growth to maturity of federally managed fisheries.
U.S. Environmental Protection Agency (EPA); U.S. Army Corps of Engineers (ACOE); NOAA	Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401 et seq.)	Prohibits, with certain exceptions, the dumping or transportation for dumping of materials including, but not limited to, dredged material, solid waste, garbage, sewage, sewage sludge, chemicals, biological and laboratory waste, wrecked or discarded equipment, rock, sand, excavation debris, and other waste into ocean waters without a permit from the EPA. In the case of ocean dumping of dredged material, the ACOE is given permitting authority.
NOAA	National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.)	Prohibits the destruction, loss of, or injury to, any sanctuary resource managed under the law or permit, and requires Federal agency consultation on Federal agency actions, internal or external to national marine sanctuaries, that are likely to destroy, injure, or cause the loss of any sanctuary resource.
FWS	E.O. 13186, "Responsibilities of Federal Agencies to Protect Migratory Birds"	Requires that Federal agencies taking actions likely to negatively affect migratory bird populations enter into Memoranda of

Responsible Federal Agency/Agencies	Statute/Executive Order (E.O.)	Summary of Pertinent Provisions
	(January 10, 2001)	Understanding with the FWS, which, among other things, ensure that environmental reviews mandated by NEPA evaluate the effects of agency actions on migratory birds, with emphasis on species of concern.
NOAA's Office of Ocean and Coastal Resource Management (NOAA OCRM)	CZMA of 1972, as amended (16 U.S.C. 1451 et seq.)	Specifies that coastal States may protect coastal resources and manage coastal development. A State with a coastal zone management program approved by NOAA OCRM can deny or restrict development off its coast if the reasonably foreseeable effects of such development would be inconsistent with the State's coastal zone management program.
EPA; MMS	Clean Air Act, as amended (CAA) (42 U.S.C. 7401 et seq.)	Prohibits Federal agencies from providing financial assistance for, or issuing a license or other approval to, any activity that does not conform to an applicable, approved implementation plan for achieving and maintaining the National Ambient Air Quality Standards (NAAQS). Requires EPA (or an authorized State agency) to issue a permit before construction of any new major stationary source or major modification of a stationary source of air pollution. The permit—called a Prevention of Significant Deterioration (PSD) Permit for stationary sources located in areas that comply with the NAAQS, and a Nonattainment Area Permit in areas that do not comply with the NAAQS—must control emissions in the manner prescribed by EPA regulations to either prevent significant deterioration of air quality (in attainment areas), or contribute to reducing ambient air pollution in accordance with an approved implementation plan (in nonattainment areas). Requires the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process to submit a Risk Management Plan to EPA. In the western portion of the Gulf of Mexico, MMS has authority pursuant to the OCS Lands Act for clean air regulations.
EPA; U.S. Coast Guard (USCG); MMS	Clean Water Act (CWA), Section 311, as amended (33 U.S.C. 1321); E.O. 12777, "Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as Amended, and the Oil Pollution Act of 1990"	Prohibits discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the OCS Lands Act, or which may affect natural resources belonging to the United States. Authorizes EPA and the USCG to establish programs for preventing and containing discharges of oil and hazardous substances from nontransportation-related facilities and

Responsible Federal Agency/Agencies	Statute/Executive Order (E.O.)	Summary of Pertinent Provisions
		transportation-related facilities, respectively. Directs the Secretary of the Interior (MMS) to establish requirements for preventing and containing discharges of oil and hazardous substances from offshore facilities, including associated pipelines, other than deepwater ports.
USCG	Marking of Obstructions (14 U.S.C. 86)	The Coast Guard may mark for the protection of navigation any sunken vessel or other obstruction existing on the navigable waters or waters above the continental shelf of the U.S. in such manner and for so long as, in his judgment, the needs of maritime navigation require.
EPA	CWA, Sections 402 and 403, as amended (33 U.S.C. 1342 and 1343)	Requires a National Pollutant Discharge Elimination System (NPDES) Permit from EPA (or an authorized State) before discharging any pollutant into territorial waters, the contiguous zone, or the ocean from an industrial point source, a publicly owned treatment works, or a point source composed entirely of storm water.
ACOE; EPA	CWA, Section 404, as amended (33 U.S.C. 1344)	Requires a permit from the ACOE before discharging dredged or fill material into waters of the United States, including wetlands.
USCG	Ports and Waterways Safety Act, as amended (33 U.S.C. 1221 et seq.)	Authorizes the USCG to implement, in waters subject to the jurisdiction of the United States, measures for controlling or supervising vessel traffic or for protecting navigation and the marine environment. Such measures may include but are not limited to: reporting and operating requirements, surveillance and communications systems, routing systems, and fairways.
ACOE	Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401 et seq.)	Section 10 (33 U.S.C. 403) delegates to the ACOE the authority to review and regulate certain structures and work that are located in or that affect navigable waters of the United States. The OCS Lands Act extends the jurisdiction of the ACOE, under Section 10, to the seaward limit of Federal jurisdiction.
EPA	Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. 6901 et seq.)	Requires waste generators to determine whether they generate hazardous waste and, if so, to determine how much hazardous waste they generate and notify the responsible regulatory agency. Requires hazardous waste treatment, storage, and disposal facilities (TSDFs) to demonstrate in their permit applications that design and operating standards established by the EPA (or an authorized State) will be met. Requires hazardous waste TSDFs to obtain permits.
National Park Service (NPS);	National Historic Preservation Act of 1966, as	Requires each Federal agency to consult with the Advisory Council on Historic Preservation and

Responsible Federal Agency/Agencies	Statute/Executive Order (E.O.)	Summary of Pertinent Provisions
Advisory Council on Historic Preservation; State or Tribal Historic Preservation Officer	amended (16 U.S.C. 470-470t); Archaeological and Historical Preservation Act of 1974 (16 U.S.C. 469-469c-2)	the State or Tribal Historic Preservation Officer before allowing a federally licensed activity to proceed in an area where cultural or historic resources might be located; authorizes the Interior Secretary to undertake the salvage of archaeological data that may be lost due to a Federal project.
NPS; Advisory Council on Historic Preservation; State or Tribal Historic Preservation Office	American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996); E.O. 13007, "Indian Sacred Sites" (May 24, 1996)	Requires Federal agencies to facilitate Native American access to and ceremonial use of sacred sites on Federal lands, to promote greater protection for the physical integrity of such sites, and to maintain the confidentiality of such sites, where appropriate.
Federal Aviation Administration (FAA)	Federal Aviation Act of 1958 (49 U.S.C. 44718); 14 CFR part 77	Requires that, when construction, alteration, establishment, or expansion of a structure is proposed, adequate public notice be given to the FAA as necessary to promote safety in air commerce and the efficient use and preservation of the navigable airspace.

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National Environmental Policy Act Compliance

The NEPA process helps public officials make decisions based on an understanding of environmental consequences and take actions that protect, restore, and enhance the environment. It provides the tools to carry out these goals by mandating that every Federal agency prepare an in-depth study of the impacts of "major federal actions significantly affecting the quality of the human environment" and alternatives to those actions, and by requiring that each agency make that information an integral part of its decisions. The NEPA also requires that agencies make a diligent effort to involve the interested and affected public before they make decisions affecting the environment.

The MMS is the lead Federal agency for NEPA compliance for renewable energy and alternate use activities on the OCS. Some of the information we request under this part are in support of other Federal agencies' information requirements associated with compliance with the laws and regulations that they enforce.

Coastal Zone Management Act Compliance

Each coastal State has a federally-approved coastal management plan (CMP). In compliance with CZMA mandates found at section 307(c)(1), when MMS conducts a competitive lease sale for leases or grants under this part, MMS will determine if the sale activity is reasonably likely to affect any land or water use or natural resource of a State's coastal zone. If such effects are reasonably foreseeable, the MMS must submit a consistency determination (CD) to the affected State(s) at least 90 days before the lease sale. This CD will include a detailed description of the proposed activity, its expected coastal effects, and an evaluation of how the proposed activity is consistent with applicable enforceable policies in the State's CMP. If the affected State(s) agree with MMS's determination, MMS may proceed with the competitive sale. If the affected State(s) disagree, MMS will follow the procedures as outlined in 15 CFR part 930, subpart C.

In their CMP, the State lists Federal licenses and permits which are reasonably likely to affect coastal uses or resources and requires a Federal consistency review. Listed activities must be conducted in a manner that is consistent with the enforceable policies of the State's CMP, and the applicant must submit a Federal consistency certification to the State and approving Federal agency. Also, the State may ask the NOAA ORCM for permission to review, for consistency, activities that are not listed in its CMP. If NOAA approves the request, the applicant is required to submit a consistency certification for the unlisted Federal license/permit. In compliance with CZMA mandates, MMS will not issue noncompetitive leases or approve noncompetitive grants or plans under this part if: (1) Consistency has not been conclusively presumed; or (2) the State objects to the applicant's consistency certification, and the Secretary of Commerce has not found that the permitted activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security. Table 1 summarizes the NEPA and CZMA compliance requirements for leases and grants.

Table 1

Activity	MMS Process	NEPA Documentation	Lease or Grant Conditions	CZMA
Leases				
Competitive lease sale.	Conduct competitive lease sale and issue leases.	Covers lease sale area.	Stipulations, mitigation, and conditions established in lease contract.	Covers a Federal agency activity and must comply with 15 CFR part 930, subpart C.
Noncompetitive lease.	Negotiate noncompetitive lease and issue decision on the SAP or GAP.	Covers identified noncompetitive lease area and proposed activities in the SAP or GAP.	Stipulations, conditions, mitigation, and monitoring established in the lease and SAP or GAP.	Covers a nonfederal activity that requires a Federal license or permit and must comply with 15 CFR part 930, subpart D.
Grants				
Competitive ROW grants and RUE grants.	Conduct competitive ROW grant or RUE grant sale and issue grants.	Covers ROW grant- and RUE grant-specific sale area.	Stipulations and conditions established in grant award.	Covers a Federal agency activity and must comply with 15 CFR part 930, subpart C.
Noncompetitive ROW grants and RUE grants.	Negotiate noncompetitive ROW grants or RUE grants and evaluate GAP.	Covers identified noncompetitive grant site and proposed activities in the GAP.	Stipulations, conditions, mitigation, and monitoring established in grant award and GAP.	Covers a nonfederal activity that requires a Federal license or permit and must comply with 15 CFR part 930, subpart D.

Development Process

Developing Leases and Grants

Once a company acquires a lease, ROW grant, or RUE grant, it must submit certain plans to MMS for development of the lease or grant. The various plans serve as a blueprint for site development, construction, operations, and decommissioning. The MMS has specific requirements for each phase of the lease, grant, and plan. The MMS will not allow development without proper plan submission and approval. Site assessment activities on a commercial lease will require the applicant to submit a SAP and receive MMS approval of that plan before beginning those activities. The SAP will undergo the appropriate NEPA reviews and may require either an Environmental Impact Statement (EIS) or an EA. The SAP must demonstrate how you will conduct the proposed activities to comply with relevant Federal statutes such as the CZMA, Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), and CWA.

For a commercial lease, after you perform site assessment activities, you will be required to submit and receive MMS approval of a COP before you may begin any development and production activities on your lease. Like the SAP, the COP will undergo the appropriate NEPA reviews and may require either an EIS or an EA. Like the SAP, the COP must also comply with relevant Federal statutes.

For limited leases, ROW grants, and RUE grants, you will be required to submit a GAP, which covers all activities on the lease or the grant including site assessment, development, operations, and decommissioning. Like the SAP and COP, the GAP will undergo the appropriate NEPA reviews and must comply with relevant Federal Statutes.

Revenue Sharing

The new subsection 8(p)(2)(B) of the OCS Lands Act (43 U.S.C. 1337(p)(2)(B)) requires payment to certain coastal States of 27 percent of the revenues received by the Federal Government from any projects under this section that are located wholly or partially within the area extending 3 nautical miles seaward of State submerged lands. (For ease of description, this 3-mile-wide area adjoining State submerged lands will be referred to in this preamble as the "8(g) zone," a term widely used to refer to the identical 3-mile area described in subsection 8(g) of the OCS Lands Act (43 U.S.C. 1337(g)). In addition, when a project extends into the 8(g) zone of at least one State, subsection 8(p) extends eligibility for a share of the revenues to States with a coastline that is located within 15 miles of the geographic center of the project. The Secretary is required to establish a formula by rulemaking that provides for the equitable distribution of payments to eligible States based on the proximity of each State's coastline to the geographic center of the project.

Operations

The regulations that address operations cover environmental management, safety management, inspections, facility assessments, and decommissioning. The regulations on operations are designed to ensure safety and prevent or minimize the likelihood of harm or damage to the marine and coastal environments. The structure of the regulations is based on adaptive management. The company will be required to monitor activities and demonstrate that its performance satisfies specified standards in its approved plans. In addition, the

company will be required to comply with regulations regarding air quality, safety, maintenance and shutdowns, equipment failure, adverse environmental effects, inspections, facility assessments, and incident reporting.

Alternate Use of Existing Facilities

These regulations establish general requirements for how MMS will consider proposals for activities that involve the alternate use of existing OCS facilities. This includes general provisions that explain how we will approve and regulate such alternate use activities on the OCS. We will authorize such activities through the issuance of an Alternate Use RUE.

These regulations explain how applicants can request an Alternate Use RUE; how MMS will decide whether to issue Alternate Use RUEs; how Alternate Use RUEs will be competitively issued (if we determine that competitive interest exists); the terms of such authorizations; required payments to MMS; necessary financial assurance; other administrative issues such as assignment, suspension, and termination; and decommissioning of approved alternate use structures.

In addition to the provisions in subpart J, MMS will make associated revisions to our existing oil and gas decommissioning regulations found in 30 CFR part 250, subpart Q, to clarify the oil and gas platform owner's obligations for decommissioning in the event we approve alternate uses of the platform.

Subpart-by-Subpart Discussion

Part 285—Renewable Energy And Alternate Uses Of Existing Facilities On The Outer Continental Shelf

Subpart A—General Provisions
Subpart B—Issuance of OCS Renewable Energy Leases
Subpart C—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Renewable Energy Activities
Subpart D—Lease and Grant Administration
Subpart E—Payments and Financial Assurance Requirements
Subpart F—Plans and Information Requirements
Subpart G—Facility Design, Fabrication, and Installation
Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs and GAPs
Subpart I—Decommissioning
Subpart J—Rights of Use and Easements for Energy and Marine-Related Activities Using Existing OCS Facilities

Subpart A—General Provisions

Overview

Subpart A establishes MMS's authority and the purpose for the regulations. It also addresses the general requirements that apply to all activities regulated under this part, for example, the qualifications for holding leases, ROW grants, and RUE grants on the OCS, and the appeals process. The definitions for these regulations are also in subpart A.

Approach

The OCS Lands Act requires MMS to ensure that the activities permitted under these regulations are carried out in a manner that provides for safety, protection of the environment, oversight, and enforcement (43 U.S.C. 1337(p)(4)). This subpart lays the foundation for these responsibilities. The responsibilities of the lessee, applicant, operator, or holder of a ROW grant, RUE grant, or Alternate Use RUE grant are based on ensuring that projects under these regulations are designed and conducted in a safe and environmentally sound manner.

Departures from the regulations were selected as a way of allowing MMS to maintain flexibility within the program and to be able to adapt to this new and changing industry. Requirements and qualifications for lessees and grant holders are based on section 8 of the OCS Lands Act and are designed to deter nuisance and speculative interference with the leasing process. Appeal rights are modeled after those established for offshore oil and gas operations.

This subpart provides for participation of State and local governments in task forces or other joint planning agreements with MMS. The joint planning provision is modeled after § 281.13 of this subchapter, which pertains to the use of task forces when considering leasing of minerals in the OCS other than oil, gas, and sulphur. We envision that such task forces could be useful and applicable to any phase of the OCS Alternative Energy Program, from preliminary studies and lease sale formulation, through site assessment and construction, to decommissioning. We may invite any affected State Governor or local government executive to join in establishing a task force or other joint planning or coordination agreement if we are considering to offer or issue leases (or grants) under this part. Participation in a task force will give the parties opportunities to contribute to the planning process and access to nonproprietary information. The task force or other such arrangements will be constituted and conducted, as agreed to by the participants, consistent with Federal law and these regulations. The task force may make recommendations and may be requested to conduct or oversee research, studies, or reports. However, MMS is not limited to using just task forces for coordination and consultation. Throughout the lease, grant issuance, and project development processes, MMS will work with affected State, local, and tribal governments and other planning and oversight organizations.

Section-by-Section Discussion of Subpart A

Authority (§ 285.100)

This section restates MMS's authority to issue regulations and oversee access and development on the OCS for renewable energy and alternate use of existing facilities. The authority statement is included to inform the affected public and other interested parties of the basis for establishing these regulations. The authority for these regulations was granted to the Secretary of the Interior in amendments to subsection 8 of the OCS Lands Act (43 U.S.C. 1337), as set forth in section 388(a) of the EPAct (Pub. L. 109–58).

With regard to hydrokinetic projects on the OCS, MMS possesses the exclusive authority to issue leases, easements, and rights-of-way for such projects, but will not duplicate the operational approvals granted by FERC when it issues licenses and exemptions for the construction and operation of hydrokinetic projects on the OCS.

The MMS revised this section from the NPR to state that the Secretary of the Interior delegated to MMS the authority to regulate activities under section 388(a) of the EPAct. These regulations will address activities that: (a) Produce or support production, transportation, or transmission of energy from sources other than oil and gas; or (b) use, for energy-related purposes or for other authorized marine-related purposes, facilities currently or previously used for activities authorized under the EPAct.

What is the purpose of this part? (§ 285.101)

This section describes MMS's objectives for this rule. Our objectives include: (1) Establishing procedures for issuance of leases, ROW grants, and RUE grants and for administration of operations for activities permitted under this part; (2) informing applicants and third parties of their obligations under this part; and (3) ensuring that these

activities are conducted in a safe and environmentally sound manner, in conformance with applicable laws and regulations, and the terms of the lease or grant. However, this part does not convey access rights for oil, gas, or other minerals.

We did not make any changes to the section.

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

This section describes MMS's responsibilities, which are derived from section 8(p)(4) of the OCS Lands Act (43 U.S.C. 1337(p)(4)). These responsibilities include ensuring activities are carried out in a manner that provides for:

- Safety;
- Protection of the environment;
- Prevention of waste;
- Conservation of the natural resources of the OCS;
- Coordination with relevant Federal agencies;
- Protection of national security interests of the United States;
- Protection of the rights of other authorized users of the OCS;
- A fair return to the United States;
- 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;
- 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;
- Public notice and comment on any proposal submitted for a lease or grant under this part; and
- Oversight, inspection, research, monitoring, and enforcement of activities authorized by a lease or grant under this part.

To enforce these responsibilities, MMS will require compliance with all applicable laws, regulations, other requirements, the terms of your lease or grant under this part, and approved plans. We will also establish practices and procedures to govern the collection of all payments due to the Federal Government, including any service recovery fees, rents, operating fees, and other fees or payments. We will coordinate and consult with the Governor of any affected State and executive of any affected local government or Indian tribe. As part of coordination and consultation with State and local governments, we may invite any affected State Governor, representative of an affected Indian tribe, and affected local government executive to join a task force or other joint planning or coordination agreement.

Based on comments received on the NPR, we added affected Indian tribes to this section. In addition, we added text in paragraph (a)(5) to emphasize coordination with Federal agencies involved in planning activities that are undertaken to avoid conflicts among users and maximize the economic and ecological benefits of the OCS, including multifaceted spatial planning efforts.

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

This section establishes times when MMS may approve departures from the requirements established in the regulations. We will consider a departure when it is needed to:

- Facilitate the proper development of a lease or grant under this part;
- Conserve natural resources;
- Protect life (including human and wildlife), property, or the marine, coastal, or human environment; or
- Protect sites, structures, or objects of historical or archaeological significance.

A departure must be consistent with subsection 8(p) of the OCS Lands Act and must protect the environment and safety to the same degree as if there was no approved departure from the regulations.

We did not make any changes to the section.

Do I need an MMS lease or other authorization to produce or support the production of electricity or other energy product from a renewable energy resource on the OCS? (§ 285.104)

This section explains that, except as otherwise authorized by law, it is unlawful for any person to construct, operate, or maintain any facility to produce, transport, or support the generation of electricity or other energy product derived from a renewable energy resource on any part of the OCS, except under and in accordance with the terms of a lease, easement, or ROW issued pursuant to the OCS Lands Act. If you intend to construct and operate a hydrokinetic facility on OCS lands, you will first need a lease from MMS and later be required to seek a license from FERC.

It should be noted that with the final rule MMS is clarifying that authorization of geological and geophysical and related site assessment surveys will be the responsibility of the U.S. Army Corps of Engineers. In many instances these types of activities may be verified under the Corps' Nationwide Permit Program. We have revised the regulation at subpart F to remove MMS approval of these types of surveys and the requirement to describe the design of such surveys in relevant plans. Although MMS will not be the permitter for such surveys—either before or after issuance of a lease or grant—we strongly urge that those conducting surveys coordinate with MMS and the Corps to ensure that proposed activities meet both Corps permitting requirements and MMS information requirements described in subpart F relating to lease or grant issuance and plan approval.

We did not make any changes to the section.

What are my responsibilities under this part? (§ 285.105)

This section describes the general responsibilities of a lessee, applicant, operator, or holder of a ROW grant, RUE grant, or Alternate Use RUE grant under these regulations. These responsibilities include:

- Designing projects and conducting operations in a safe manner to minimize adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components to the extent practicable, and taking measures to prevent the discharge of pollutants, including marine trash and debris;
- Submitting requests, applications, plans, notices, modifications, and supplemental information as required by this part; following up any oral request or notification in writing within 3 business days;
- Complying with the terms and conditions of the applications, plans, notices, and modifications; making payments on time;
- Complying with the Department of the Interior's (DOI) nonprocurement debarment regulations; including the requirement to comply with 2 CFR part 1400 in all contracts and transactions related to a lease or grant under this part; and
- Responding to requests from the Director in a timely manner.

We added measures to prevent the discharge of pollutants, including marine trash and debris, to this section to clarify that adverse effects to the environment include pollutants, trash, and debris. Also, while hydrokinetic projects will entail obligations and responsibilities relating to FERC regulation under licenses and exemptions, the holder of a hydrokinetic lease must comply with all terms and conditions set forth in the MMS-issued lease including MMS' right to access data and information for all activities conducted on leases issued under this part to meet our statutory responsibilities as lessor.

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

This section details the qualifications of a lessee or grant holder. To qualify for a lease or grant, you must be either a citizen or a national of the United States; an alien lawfully admitted for permanent residence in the United States; a private, public, or municipal corporation organized under the laws of the United States, any of its States or territories, or the District of Columbia; or an association of any of the parties described previously. In addition, you may be excluded from becoming a lessee or grant holder if you are excluded or disqualified from participating in transactions covered by the Federal nonprocurement debarment and suspension system, you have failed to meet or exercise due diligence under any OCS lease or grant, or you 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 after MMS directed you to comply.

Based on comments received on the NPR, MMS added a requirement to this section that in order to qualify to become a lessee or a grant holder, the applicant must demonstrate the technical and financial capabilities to construct, operate, maintain, and terminate/decommission projects for which you are requesting authorization. We also deleted § 285.106(b)(4) because it was redundant with § 285.106(b)(2).

The MMS also received comments requesting that we limit ownership of leases and grants to United States citizens and companies. The requirements for lease and grant holders limit ownership to United States citizens, lawfully admitted aliens, and United States companies. Another comment stated that it is not clear if private universities and research institutions are eligible to hold leases or grants under this part. Private universities and research institutions could be qualified to hold leases or grants under these regulations, under paragraph (a)(4), as an ''association''.

In addition, we added Federal agencies to the list of entities qualified to hold a lease. After the proposed rule was published, MMS received inquiries from the U.S. Navy concerning the acquisition of areas of the OCS as set-asides for renewable energy development to meet requirements imposed by the Energy Independence and Security Act of 2007 and EPAct that pertain to improved energy performance in the federal sector. By adding Federal agencies to the qualification list, MMS could issue a lease to the Navy or other Federal agency that would authorize OCS renewable energy development to provide electrical generation for its installations and facilities.

As with hydrokinetic commercial leases issued to private entities, a Federal or state agency holding an MMS lease cannot construct or operate an hydrokinetic project without a FERC-approved license or exemption.

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

This section describes the evidence you must submit to MMS to establish qualification to hold a lease, ROW grant, or RUE grant. For an individual, this evidence includes documents that demonstrate citizenship or lawful admittance of permanent residence. For an association, the acceptable evidence includes a certified statement indicating the State in which it is registered and that it is authorized to hold leases and grants on the OCS, or an appropriate reference to statements or records previously submitted to an MMS OCS office. A corporation must submit a statement certified by the corporate Secretary or Assistant Secretary over the corporate seal showing the State in which it was incorporated, and that it is authorized to hold leases and grants on the OCS, or an appropriate reference to statements or records previously submitted to an MMS OCS office (including material submitted in compliance with prior regulations), and evidence of the authority of the persons signing to bind the corporation. If MMS has qualified you to hold a renewable energy lease, RUE, or ROW in one OCS Region, it is our intent that you will be qualified to hold a renewable energy lease, RUE, or ROW in the other OCS Regions. We will provide more information in the implementation guidance that we intend to issue after the final rule is approved.

Based on comments received on the NPR and to conform with changes made to § 285.106, we added a description of the documentation that you may provide to MMS to demonstrate the technical and financial capabilities to construct, operate, maintain, and terminate/decommission projects for which you are requesting authorization.

We also added some documentation requirements for local, state, and federal entities that are comparable to those for associations and corporations.

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

If any action is filed alleging that a company, operating under these regulations, is insolvent or bankrupt, the company must notify MMS within 3 days of learning of the action.

We did not make any changes to the section.

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

This section requires you to notify MMS of any merger, name change, or change of business form. This must be done no later than 120 days after either the effective date or the date of filing the change or action with the Secretary of the State in the State of registry. You do not have to request an assignment under §§ 285.408 through 285.411 in these cases.

We did not make any changes to the section.

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

You must submit all plans, applications, reports, or notices to MMS at the address provided in this section.

We changed this section, requiring that, unless otherwise noted, applicants must submit one paper copy and one electronic copy of all plans, applications, reports, or notices required by this part.

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

This section provides that MMS may charge processing fees for applications or requests filed under this part, on a case-by-case basis. The MMS may charge processing fees if the preparation of a document or study is necessary for MMS to evaluate or process an application or request. For example, MMS may charge processing fees for the preparation of a project-specific study, EA, or EIS.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and the Office of Management and Budget (OMB) Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's (DOI) implementing policy, the Minerals Management Service (MMS) is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that accrue to the public at large. An application or request filed under this regulation conveys special benefits to recipients beyond those accruing to the general public and are subject to service fees.

There may be other authorities that MMS may use to recover costs depending on the particular circumstances of the project and the nature of the evaluation or processing needed. Such authorities may include the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR 1506.5), Public Law 99–591 (title I, section 101), and Public Law 110–161 (division F, title I, section 121).

The MMS intends to recover those costs that we incur following the decision that the document processing will have a unique processing cost. We will not charge for costs that MMS incurred before that decision was made. In cases where we may charge a case-by-case processing fee, we will provide the applicant with a written estimate of the processing costs that may include a standard overhead rate, or the closest estimate we have based on previous work, which is similar in nature. The case-by-case processing fees provided for in this rule relate to the documents that an applicant must submit to satisfy various statutory and regulatory requirements pertaining to actions authorized by this regulation. For example, MMS statutory responsibilities require that we independently review any analysis performed by an outside contractor. This review is necessary before a decision can be rendered on the application. Processing fees charged by MMS will include contract oversight and efforts to review and approve documents prepared by contractors, whether the contractors are paid directly by the applicant or through MMS. The applicant may comment on the proposed fee or request approval to directly pay a contractor for the document, study, or other activity. If warranted, based on information provided, we will re-estimate our reasonable processing costs following the procedure established in this section.

The MMS made several edits to this section. We expanded and clarified this section regarding the following issues: (1) That if a study or other document such as an EA or EIS is not required, MMS will not charge a processing fee at this time, (2) that MMS document review and approval and contract oversight will be recoverable costs, (3) that processing costs will include a standard bureau overhead rate or an estimate that will take projected costs into account, and (4) that payment instructions and terms will be provided in the final cost estimate.

Based on comments, we changed the citation for 43 CFR part 4, subpart J, to just 43 CFR part 4. The 43 CFR part 4, subpart J is ''Special Rules Applicable to Appeals Concerning Federal Oil and Gas Royalties and Related Matters.'' The 43 CFR part 4 covers all DOI appeals.

Definitions (§ 285.112)

This section provides definitions of terms used throughout the 30 CFR part 285 regulations. Some of the definitions used in this part are definitions that were established in legislation or contained in other regulations (i.e., 30 CFR part 250). For example, the definition of archaeological resource is almost identical to the definition used by MMS for oil and gas operations in the 30 CFR part 250 regulations. This definition mirrors that in the Archaeological Resource Protection Act, and was adopted in response to comments from the Advisory Council on Historic Preservation and the Departmental Consulting Archaeologist on our original rule on archaeology. It is consistent with the definitions in other Federal laws and regulations.

We received comments on various definitions in this section. We revised the following definitions to reflect the comments:

Commercial activities—we added, ''for renewable energy leases and grants,'' to the definition to clarify that this does not apply to alternate use of existing OCS facilities.

Eligible State—we revised this definition to conform with changes we made concerning revenue sharing. We clarified that eligible States must be no more than 15 miles from the geographic center of a qualified project area.

Geographic center of a project—we made minor edits to the definition to conform with the final rule's revenue sharing provisions.

Income—we made minor, grammatical edits to the definition; the original meaning of the term has not changed.

Lease—we changed the definition from an ''authorization'' to an ''agreement authorizing'' the use of a designated portion of the OCS for activities allowed under this part.

Lessee—we clarified the definition.

Natural resources— we made minor edits to the definition.

Person—we added ''Federal agency'' to the definition, since MMS may issue leases, RUEs, or ROWs to another Federal agency.

Project—we clarified the definition.

Project area—we clarified the definition.

Qualified project—this definition was removed because the term is explained in the regulations for revenue sharing.

Qualified project area—this definition was removed because the term is explained in the regulations for revenue sharing.

Revenues—we changed the meaning of revenues to clarify that it does not include administrative fees.

Right-of-use and easement (RUE) grant—we made minor edits to the definition.

Right-of-way (ROW) grant—we made minor edits to the definition.

Significant archeological resource—we made minor edits to the definition.

Site assessment activities—we removed ''physical characterization studies'' and ''baseline collection studies'' as examples of the types of site assessment activities, and we added technology testing as a type of site assessment activity. We added ''involving the installation of bottom-founded facilities,'' since surveys can be performed using an ACOE permit.

You and your—we made minor edits to the definition.

We, us and our—we made minor edits to the definition.

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

This section describes how MMS will handle data and information submitted to the MMS, including public disclosure and nondisclosure. The MMS will follow the applicable requirements of the Freedom of Information Act (FOIA) (5 U.S.C. 552) and protect data and information to the extent allowed by law. In response to comments we received regarding the protection and release of proprietary data and information, we clarified how we will protect data and information under this part and when MMS will release that data and information.

As set forth in § 285.113, MMS will not release data and information that we have determined to be exempt under exemption 4 of FOIA. However, the passage of time may erode the protections offered by exemption 4 of FOIA. To accommodate for this possibility, MMS has set forth a schedule in this section that we will follow to review such data and information, and any objections by the submitter, to determine whether release at that time would result in substantial competitive harm or disclosure of trade secrets. If MMS determines that the release of such data and information will not result in substantial competitive harm or disclosure of trade secrets, then MMS will release it. If it is determined that release will result in 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. Nothing in this section is intended to displace or supersede MMS's obligations under 43 CFR part 2.23.

Paperwork Reduction Act Statements—Information Collection (§ 285.114)

These provisions cover Paperwork Reduction Act statements and information collection requirements pertaining to this part. We revised the burden to appropriately reflect the changes due to comments.

Documents Incorporated by Reference (§ 285.115)

This section lists the industry standard documents MMS will incorporate by reference into the 30 CFR part 285 regulations.

We did not make any changes to the section. In the future, we will incorporate new documents after MMS has thoroughly reviewed them and determined that they are needed and appropriate.

Requests for Information on the State of the Offshore Renewable Energy Industry (§ 285.116)

This section allows the MMS Director (1) to request 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, and (2) to require the applicant, lessee, or grant holder to respond to a request in a timely manner. These requests could relate to the identification of environmental, technical, or economic matters that promote or detract from continued development of renewable energy technologies on the OCS. The MMS would use the information received to evaluate potential refinements to the OCS Alternative Energy Program that promote development of the industry in a safe and environmentally responsible manner, and to ensure a fair value for use of the Nation's OCS. The MMS would publish these requests for information in the **Federal Register**.

In response to comments, MMS edited this section to include ''regulatory matters'' as an additional issue that such information requests may entail. We also deleted the last sentence in paragraph (a) of this section.

Reserved Section (§ 285.117)

Section 285.117 is reserved.

What are my appeal rights? (§ 285.118)

This section describes when a decision made by MMS under this part may be appealed and who may appeal. Most decisions made under this part may be appealed according to the regulations found in 30 CFR part 290, subpart A. A bidder whose bid is rejected may apply for reconsideration by the MMS Director. If your lease is issued in order to obtain a FERC license or exemption, you may only appeal those decisions made by MMS under the authority of this subpart.

Based on comments, we changed the citation in § 285.118(b) from 43 CFR 4.21 to 43 CFR part 4, since multiple sections of 43 CFR part 4 apply to appeals.

Subpart B—Issuance of OCS Renewable Energy Leases

Overview for Subpart B

This subpart outlines a process for issuing renewable energy leases, both for commercial production activities and for assessment or technology testing activities. The process will be competitive, unless there is a determination that no competitive interest exists. In addition, this subpart describes how we will determine when to use a competitive process for issuing a renewable energy lease and identifies auction formats and bidding systems and variables that we may use when that determination is affirmative. Finally, this subpart discusses the terms under which we will issue renewable energy leases. To establish a framework, we begin with a discussion of various types of leases that a prospective renewable energy developer may consider.

Types of Leases

Leases will be required for any type of renewable energy activity on the OCS. We will issue two types: (1) Commercial leases and (2) limited leases. Although we also will convey access to areas of the OCS for research under some form of negotiated lease agreement as provided in § 285.238, this discussion of types of leases focuses on the commercial or limited leases that we will issue directly to lessees on a competitive or noncompetitive basis.

A commercial lease will provide the access and operational rights, subject to necessary approvals, to produce, sell, and deliver power on a commercial scale through spot market transactions or a long-term power purchase agreement. A commercial lease will be issued over the long term (i.e., up to approximately 30 years, with possible renewals) and will convey preferential rights to project easements on the OCS for the purpose of installing transmission and distribution systems. A commercial lease will not include a limit on the amount of energy to be produced and sold.

A limited lease will be issued for a shorter term (i.e., up to 5 years, with possible renewals). It will provide the access rights necessary to conduct activities, such as site assessment and technology testing that support production of renewable energy, and may provide the right to produce and sell power within limits set by the terms and conditions of the lease. Limited leases are not intended to authorize long-term or large-scale commercial operations. As provided in the proposed rule, operations on a limited lease may interconnect to electricity or other power distribution systems for testing and information gathering purposes. In response to comments on the proposed rule recommending authorization of the sale of power generated from limited leases to offset site assessment and technology testing expenses, we have changed relevant definitions and text in the final rule to allow limited amounts of electricity to be sold from such leases. Also, since we anticipate only small amounts of power (e.g., 5 MW) to be generated for a relatively short duration (less than 5 years), we do not propose to charge an operating fee for the sale of power from limited leases. We will charge only rentals for limited leases.

In issuing limited leases authorizing use of the OCS for hydrokinetic activity, it will be necessary to coordinate early with the FERC licensing process. For example, if MMS entertains a proposal for a limited lease a determination from FERC will be necessary as to whether an exemption or license is required. Should FERC determine that a license or exemption would not be required for such a proposal, MMS would proceed with the limited lease issuance. However, if FERC determines that a license or exemption would be required, MMS would not proceed with limited lease issuance but would instead proceed with commercial lease issuance.

As originally proposed, a limited lease will not convey any preferential rights to obtain a commercial lease to develop the leased area. Several comments on the proposed rule recommended that limited leases be set up to allow conversion to commercial leases or at least to give the lessee some sort of preference in subsequently pursuing a commercial lease for the same leasehold. Although we have not changed the text of the rule to provide an express commercial right preference, we believe that there will be ways to recognize the limited lessee in the commercial sale process under the final

rule. For example, at the time a limited lease is offered, whether competitively or noncompetitively, MMS will be able to indicate in the lease terms and conditions that acquiring a particular limited lease will give weight to the lessee in any subsequent conveyance of commercial rights. Such details will be established through the leasing process and published in the associated public notices. Also, the level of NEPA analysis for such leases will have to be commensurate with the type and scope of potential activities entailed with the lease rights conveyed. We believe that this approach for limited lessees will be best accommodated under a multiple-factor competitive process, which the rule has been revised to include as an available approach.

The MMS believes that by offering the two types of lease, commercial and limited, the rule provides a developer the flexibility to pursue a lease that will be best suited for its needs. If a developer testing a technology for demonstration purposes is uncertain as to whether full-scale commercial activities will ultimately be conducted on the lease, including long-term sale of power to the grid to generate revenues, then a commercial lease can be obtained instead of a limited lease to assure full and unlimited operational rights to produce, sell, and deliver power. In the event that the demonstration facility is not technically feasible for commercial operations, the lessee is not obligated for the full term of the lease and may relinquish the lease pursuant to § 285.435.

We continue to believe that offshore renewable energy companies generally will prefer to acquire commercial leases rather than limited leases. However, we believe that providing for the issuance of limited leases will give all companies, including smaller entities, an opportunity to pursue renewable energy activities without the commitments and expenses entailed by a long-term commercial lease. Even if the rule provided for limited leases to be issued with a preference for subsequent commercial rights, competition for those competitive rights still will be required under subsection 8(p) of the OCS Lands Act, as amended, and NEPA compliance could require some analysis of a commercial development scenario.

The most important factor for an applicant to consider in deciding whether to pursue a commercial lease or a limited lease is the assured right to full-scale commercial development of the leased site, and such right is included only in a commercial lease under the final rule. Thus, if a renewable energy project applicant is interested in demonstrating a particular renewable energy technology, but is unsure that it will ultimately lead to commercial production, we encourage that applicant to pursue a commercial lease because it reserves the full right to commercially develop the OCS site. Technology testing can be conducted during the site assessment term of a commercial lease. Pursuing a commercial lease will not obligate the lessee to remain on a lease for the full term of the lease. As provided in subpart D, if the lessee no longer intends to commercially develop the leasehold (e.g., results of testing prove unsatisfactory), a commercial lease may be relinquished by the lessee.

Alternatively, if a company obtained a limited lease to initiate technology testing activities and subsequently determined that full-scale commercial development of the OCS area is possible, that company may receive some advantage in pursuing the right to develop that site commercially, for example as a consideration in a multi-factor competitive process, but the issuance of a commercial lease would be subject to the statutory requirements concerning competition. Thus, the subsequent full commercial lease right is not assured to a holder of a limited lease. For these reasons, we anticipate that most project applicants will pursue commercial leases to ensure that all necessary rights for future development are reserved should initial testing activities show that a commercial project could be viable.

The types of leases and the activities authorized are intended to provide for both long-term, large scale commercial production of renewable energy and for short-term, smaller scale activities in support of renewable energy production, such as site assessment and technology testing activities, including the limited sale of power generated.

One commenter recommended providing for issuance of combined limited and commercial leases to facilitate necessary site assessment and authorize such activities in advance of the issuance of commercial rights. We believe such an approach is possible under the rule. It will require a developer to simultaneously request both a limited lease (e.g., for a meteorological tower) and a commercial lease. We anticipate that the limited lease could be processed and issued in a relatively short time (perhaps 6 months), allowing construction and operation of the meteorological tower while the commercial lease is processed over a longer time (1–2 years). Some renewable energy interests, especially wind developers, view such a process as a more timely and efficient approach to leasing and development. We will work with project proponents and stakeholders to pursue this approach if requested, and we plan to describe it in detail in the guidance document we intend to issue after the rule is promulgated.

Issuing Leases

It is the goal of MMS to issue renewable energy leases through a simple and straightforward process and in a fair and equitable manner. The OCS Lands Act requires that leases, easements, and ROWs be issued competitively, unless after publication, MMS determines that there is no competitive interest.

We anticipate that initial leasing of renewable energy sites on the OCS may be driven by unsolicited applications from project proponents, rather than by an MMS-initiated request for interest in an area. A formal Request for Interest will be part of the process for confirming that there is no competitive interest in the area identified in the unsolicited application. The process for the issuance of OCS renewable energy leases when no competitive interest exists is based on the requirements of the OCS Lands Act and is patterned after the existing MMS process for issuing noncompetitive negotiated agreements for the conveyance of OCS sand and gravel.

Any leasing process for OCS renewable energy activity must comply with the applicable requirements of NEPA and other Federal laws. Table 1, which is presented in the discussion titled, *OVERVEW OF THE PROJECT DEVELOPMENT PROCESS*, under the *Federal Compliance for the leasing process*, describes the NEPA requirements for steps in the OCS renewable energy process, including the lease issuance step.

The competitive sale process for renewable energy leases is similar to long-standing Federal and State processes for conveying mineral rights. It provides several opportunities for input from interested and affected parties—notably State and local governments and affected Indian tribes—to develop appropriate lease sale terms and conditions including mitigation measures. The process is outlined in the following sections.

Call for Information and Nominations (Call)

Once MMS decides to initiate a competitive leasing process, which will usually occur following a Request for Interest, the first step in the sale process will be to publish in the **Federal**

Register a Call for Information and Nominations (Call). Comments are due 45 days after the Call. The Call informs the public of the area under consideration for leasing; it solicits comments from all interested parties on areas or subjects that should receive special attention and analysis; it invites potential bidders to indicate areas and levels of interest; and it invites public input regarding possible advantages and disadvantages of potential leasing and development to the region and the Nation.

Along with the Call, MMS will announce how it plans to document compliance with the requirements of NEPA. We believe that at the outset of the OCS Alternative Energy Program, it is likely that an EIS will be required for a competitive lease sale. However, it is possible, especially as the program matures, that less-costly environmental documentation, an EA, may be appropriate.

Area Identification

After the comment period for the Call closes, MMS will use the information received to develop, evaluate, and recommend options for continued environmental analysis and for consideration of leasing. This process step is known as Area Identification, and it determines the geographical area of the proposed action to be analyzed in an ensuing environmental analysis document (e.g., EIS, EA), any alternatives to the proposed action, and mitigation measures and other issues to be analyzed and considered further. The MMS will strive to resolve as many issues as possible at this step to prevent unnecessary conflicts throughout the remainder of the process. Early resolutions of such issues serve to reduce the level of public controversy and help industry and the Federal Government (and ultimately the taxpayer) focus on promising acreage and avoid needless expense.

In identifying the area to be studied in the environmental analysis, consideration is given to the level of industry interest; comments from State and local governments, Federal agencies, affected Indian tribes, environmental groups, and other interested parties; geologic and geophysical information; environmental conditions and effects of development; and other economic and social considerations. At this stage, the area considered for leasing will be more closely identified based on relevant considerations such as use conflicts. Public notice of the area identified usually will be provided with a press release and a fact sheet that includes a map of the proposed sale area.

NEPA Documentation

The MMS will prepare draft environmental documentation that includes, but is not limited to, a description of the lease sale proposal, including the renewable energy resource to be developed and a projection of the site assessment, construction, and generation activities that might occur; reasonable alternatives to the leasing proposal; a description of the existing environment; a detailed analysis of possible effects on the environment, including socioeconomic and cumulative effects; a description of the assumptions on which the analysis is based; potential mitigation measures; any unavoidable adverse environmental effects; the relationship between short-term uses and long-term productivity; any irreversible or irretrievable commitment of resources; and the records of consultation and coordination with others in preparation of the document. This document may also describe the technology assumed or deemed necessary for site assessment and commercial development and operations in the proposed lease sale area. Pertinent published and unpublished investigations from academic and other institutions and organizations and from other Federal and State agencies are reviewed during the preparation of the NEPA document. When the draft is complete, it is made available for public review. In the case of a draft EIS, the document is filed with the EPA and a Notice of Availability is published in the **Federal Register**, providing for a 60-day public comment period.

No sooner than 30 days after publication of a draft EIS, but within the 60-day comment period, one or more public hearings will be held in the vicinity of the proposed lease area for the purpose of receiving comments on the draft EIS. The MMS will announce the time and location in the **Federal Register** at least 30 days before the public hearings.

The comments and data received through the public hearings and the official review process are analyzed along with any newly acquired information and, when appropriate, are incorporated into the final EIS or EA. At this stage, new stipulations or other measures to protect sensitive areas, or biological or other types of resources, may be included after comments from affected States and affected Indian tribes are reviewed. In some cases, new deferral options are developed and incorporated into the final EIS. Under typical circumstances, 3 to 5 months after the public hearing, a final EIS is filed with EPA and a Notice of Availability is published in the **Federal Register**.

Coastal Zone Management Consistency Determination

Concurrent with the preparation of the final EIS or other NEPA documentation, a CZMA consistency review and subsequent Consistency Determination (CD) is completed by MMS relative to each affected State's federally approved coastal zone management plan. Each CD includes a review of each State plan, analyzes the potential impacts of the proposed lease sale in relation to program requirements, and makes an assessment of consistency with the enforceable policies of each State's plan.

Proposed Sale Notice

The Proposed Sale Notice is the public announcement of the terms and conditions of a proposed competitive lease sale, including the proposed provisions of the lease(s) to be issued. Generally, the Proposed Sale Notice will be issued after (1) completion of the final NEPA documentation; (2) preparation of the CD; and, (3) preparation of various in-house analyses of proposed lease sale economic terms and conditions. Information from these completed documents and analyses is consolidated in an executive decision memorandum that summarizes all proposed lease sale issues that may relate to State, local government, and/or affected Indian tribe comments and recommendations; environmental concerns; coastal zone consistency conflicts; economic benefits and costs; operational or legal constraints; multiple-use conflicts; or any other subject of concern. This memorandum also evaluates any prelease mitigation measures that are available or appropriate to resolve conflicts, issues, and concerns. On the basis of this memorandum and all supporting materials, decisions are made on the proposed terms and conditions of the sale. An attempt is made to balance the various economic, social, and environmental factors including those raised by the affected States, local governments, and affected Indian tribes, as well as other Federal agencies and the general public. A Notice of Availability of the Proposed Sale Notice is published in the **Federal Register** approximately 4 to 6 months prior to the proposed sale date. The Notice of Availability informs the public where copies of the actual Proposed Sale Notice may be obtained.

The proposed notice also assists in consultation with affected States, localities, and Indian tribes. Officials will be sent copies of the Proposed Sale Notice along with a letter explaining the rationale for the decisions made in determining the conditions of the proposed sale. The officials will have 60 days to submit comments on the proposed competitive lease sale. These comments will provide a framework for the discussion and resolution of concerns that the affected States, localities, or Indian tribes may have on a particular sale.

Final Sale Notice

After the end of the period for comments on the Proposed Sale Notice, a final decision memorandum will be prepared for the Director. If the Director decides to proceed with the lease sale after consideration of the comments and any other new pertinent information, MMS would issue a Final Sale Notice. The Final Sale Notice would include the date, time, and place of the sale; blocks available for lease; stipulations and other mitigating measures; bidding systems and lease terms; and other pertinent information. The Final Sale Notice is published in the **Federal Register** at least 30 days before the sale date.

Bid Evaluation

After the Final Sale Notice is published in the **Federal Register**, bids submitted by qualified bidders are received by MMS. The bids, including bid deposit if applicable, are checked for technical and legal adequacy as well as financial capability. They are also immediately evaluated to determine if the bidder has complied with all applicable regulations. The MMS reserves the right to reject any or all bids and the right to withdraw an offer to lease an area from the sale.

Issuance of a Lease

When a high bid is deemed acceptable by MMS, the submitter is immediately notified of the decision and is provided a set of official lease forms for execution. The successful bidder must pay within 10 days the remaining 80 percent of the bonus bid and file the required financial assurance. Upon receipt of the required payments and properly executed lease forms, a lease is issued to the successful bidder. Leases usually are effective the first day of the month following the date they are signed by an MMS official. Within 45 days after you receive the lease copies, you must pay the first 6 months rent.

Under the lease, the Federal Government conveys certain exclusive rights to the lessee and reserves other rights to the Government. The lease further spells out requirements for surety bonds, operating fee payments, rent payments, and assignment or other transfers.

Following the competitive process outlined previously, a lease sale for renewable energy activities may be held for one type of activity (e.g., wind) or for various activities (e.g., wind, wave, ocean current, etc.). We will determine the scope of competing renewable energy activities based on responses to initial public notices (Request for Information, Call for Information and Nominations, or other Federal notices) issued during the leasing process, and we will clearly state that scope (e.g., wind, wave, ocean current, etc.) early in that process and the subsequent Proposed and Final Sale Notices. If we decide to limit competition to one type of activity (e.g., ocean current), we will not consider bids for any other type of activity, and the lease will be limited to that activity. If we decide to open competition to more than one type of activity (e.g., wind, wave, ocean current, etc.), we will consider all bids for one or more of those activities, and the lease may authorize one or more of those activities.

Noncompetitive Lease Process

The MMS will first determine competitive interest in processing an unsolicited request in order to decide whether to proceed with leasing under a competitive or noncompetitive process. If we find that there is competitive interest in the lease area, we will proceed with a competitive lease process. If we determine that there is no competitive interest, then we will issue a notice of such determination. This section also states that if MMS processes a proposed lease area on a competitive basis, no unsolicited requests for leasing in that area will be considered for as long as that process is pending. Thus, once an area is subject to a lease sale process, the only way to pursue a lease within that area is through that competitive process until that process concludes. After the process concludes, and if acreage within the area that had been considered for lease remains unleased, unsolicited requests will again be considered for that acreage.

If we determine that there is a competitive interest, we will proceed with a competitive process and will apply your acquisition fee to any bid you submit. If you choose not to bid, we will not refund your acquisition fee. We believe retention of your fee in this case is appropriate in order to discourage all but serious requests and because of the costs associated with processing your original request. If you submit a qualified bid that does not win, we will refund your deposit, including the amount of the acquisition fee.

Paragraph (d) describes how MMS will proceed if it determines there is no competitive interest. Within 60 days after we issue a finding that there is no competitive interest, the prospective lessee must submit either a SAP for a commercial lease or a GAP for a limited lease. We will review the plan and conduct NEPA and other required analyses before simultaneously issuing the lease or grant and approving the SAP or the GAP.

Lease Terms

Provisions relating to the duration of leases are set forth in several sections of this subpart B as well as in subpart D. Sections 285.235 and 285.236 set finite terms for both commercial and limited leases while providing for automatic extensions only if necessary for MMS review and approval of necessary plans. The term depends on the type of lease (commercial or limited) and the award process. For example, a competitive commercial lease would have 3 terms: A 6-month preliminary term, a 5-year site assessment term, and a 25-year operations term. Sections 285.415 through 285.421 discuss suspensions that extend the term of a lease, and §§ 285.425 through 285.429 address lease renewal.

Section-by-Section Discussion for Subpart B

General Lease Information

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

We may issue OCS leases for any renewable energy source. Paragraph (a) of this section identifies the types of renewable energy leases that we will make available and describes the rights that come with a lease issued under these regulations. In general, a lease issued under this part conveys the right to install and operate facilities on a designated portion of the OCS for the purpose of conducting commercial (production) activities or limited (noncommercial) activities supporting the production of energy from renewable energy sources. All rights are subject to compliance with requirements to secure approvals of, and then comply with, applicable plans (i.e., SAP, COP, and GAP) that are set forth in subpart F.

Paragraph (a) clarifies that an MMS lessee cannot construct or operate a hydrokinetic project without a FERC-

approved license or exemption. This revision was made to conform with provisions in the April 2009 MOU signed by the Department of the Interior and FERC. Under that MOU, construction and operations of hydrokinetic projects on the OCS cannot commence without a license or exemption from FERC, except in circumstances where FERC has notified MMS that a license or exemption is not required. OCS wind energy projects are not required to obtain a FERC license.

Under paragraph (b) of this section, leases generally include the right to one or more project easements without further competition for the purpose of installing lines through the OCS (i.e., extending to the State/Federal boundary) for gathering, transmission, and distribution of electricity; as well as pipelines for transporting other energy products (i.e., hydrogen); and appurtenances on the OCS as necessary to conduct operations. These may include the OCS segment of cables, pipelines, and other structures necessary to transmit electricity or transport other energy products produced from the OCS to shore. The lessee will apply to MMS for the project easement as part of the COP or GAP. When we approve the proposed plan and project easement, an addendum covering the project easement will be incorporated in the lease. Additional project easements and revisions may be authorized through the plan revision process. One commenter recommended that easements be identified earlier in the process (i.e., in the lease or in the SAP). We believe such an approach would be premature at this stage in the process and impractical, but we will work with applicants and stakeholders as we implement the rule. Also, project easements that run through other leases or grants may be accommodated under the rule, and such situations will be addressed in the implementation guidance we intend to issue after the rule is approved.

Ancillary activities that are not associated with an OCS renewable energy lease (e.g., a transmission line or support structure located in Federal waters to support a project in State waters or a commonly shared line supporting multiple leases) will be permitted and managed as a separate ROW grant or RUE grant under subpart C.

Paragraph (c) of this section provides for phased lease development. The commercial lease framework will accommodate multi-phase project development as is commonly used for onshore utility-scale wind projects (see §§ 285.200(c) and 285.629). The lease applicant must inform us of its intent to develop a project in multiple phases and would need to lease from the outset all of the acreage necessary for the planned full build-out. If the applicant for a commercial lease phases in operations, the applicant must pay rent on the portion of the lease that is not generating electricity and operating fees on the portion of the lease that is generating electricity. We may waive the rent for the acreage on which activities are deferred, as provided by subpart E, on a case-by-case basis for any lease issued under this part. As additional acreage is developed, operating fees would be charged in place of rentals, as appropriate. If the lessee decides not to develop the additional acreage, it may relinquish that acreage, or MMS may contract the lease, as provided in §§ 285.435 and 285.436. Multi-phased project development will have to comply with NEPA, CZMA, and other applicable laws.

We did not make any changes to this section.

How will MMS issue leases? (§ 285.201)

As required by subsection 8(p) of the OCS Lands Act, MMS must issue leases, easements, or ROWs for OCS renewable energy activities on a competitive basis unless we determine after public notice that there is no competitive interest. If we determine that there is competitive interest, we will conduct a fair and open competition process. When we receive an unsolicited request for a lease, we will make a determination if a competitive interest exists by first issuing a public notice of the proposed lease. In the public notice, we may offer additional areas for leasing. After considering the comments received on the notice, as required by the OCS Lands Act, section 8(p), we will issue a determination that there is, or is not, competitive interest in the proposed lease. If two or more project proponents express interest in leasing the same area of the OCS (overlapping partially or completely), we will conclude that competitive interest exists and conduct a competitive lease sale.

We are aware that instances of partially overlapping interests may occur and requested comments on this issue. For example, if proposed Project A entails 10,000 acres for generation of 500 MW and Project B entails 2,000 acres for 100 MW, and there is an overlap of 1,000 acres, we will have to determine whether there is competitive interest in all or part of the acreage requested. The following six alternative approaches for addressing such a situation were offered for comment with the proposed rule.

(1) Offer both the Project A and Project B areas and award a lease for one or the other to the high bidder. If a cash bonus is a bid variable, it could be based on either the total or the amount per acre, and if an operating fee is a bid variable, it could be based on the total or the amount per MW of proposed capacity.

(2) Offer and award a lease through competition for only the overlapping 1,000-acre area and then follow with a noncompetitive lease issuance for the remaining 9,000 acres under Project A and 1,000 acres under Project B.

(3) Offer to lease individual tracts covering the area of interest, designated as legal subdivisions of a standard OCS lease block of 9 square miles. Bidders that value specific tracts most highly could win leases through a simultaneous tract offering, and subsequently propose operations on multiple 1/16 legal subdivisions (a 1/4 1/4 of a lease block) to obtain possible synergies.

(4) Offer the combined Project A and B areas as one lease and award the lease to the high bidder (the winning lessee could then relinquish excess acreage).

(5) Offer standard block sizes or legal subdivisions of those block sizes and allow bidders to ''package'' those blocks in a bidding unit (package bidding). Identify the various features of the auction, e.g., bidder eligibility to compete and to remain active in various rounds, information to be released between rounds, rules for ending the auction, method for choosing the provisional high bidders, restrictions on bidding in subsequent rounds, etc.

(6) Rely on coordination and consultation efforts with State and local governments to identify one preferable project area to be offered and awarded to the high bidder.

The consensus of the comments we received is that all of these approaches are reasonable. Some commenters recommended an additional approach that would give the competing project proponents the opportunity to adjust their areas of interest to eliminate overlapping proposed lease areas. We have not adopted this recommendation due to potential adverse effects on competition.

We also are aware that there will be other instances in which multiple projects could be proposed in the same general area with no actual geographic overlap, but the number of lease tracts may need to be limited based on regional or local needs and concerns. For example, a State or locality may identify a need for a certain amount of renewable energy generation from an OCS source. If the number of

prospective leases proposed for an area greatly exceeded the projected demand, we may limit the number of tracts that could be offered. Such a case could be addressed by proceeding with an intertract competition in which multiple tracts could be offered for lease in the auction formats described in the section-by-section summary (see §§ 285.220 through 285.223), but the number of tracts to be awarded would be limited. Although it would be our preference to use consultation—notably with the affected States and local communities, as well as the applicants—to identify the appropriate tract or set of tracts to be offered for sale, we have decided to preserve the option for conducting intertract competitive auctions. Such an approach is authorized under the rule, so we have not changed the regulatory text.

Generally, we believe that priority should be given to leasing tracts for commercial operations. We may consider only issuing limited leases in areas in which there is no interest in commercial leasing.

Once we make the determination about competitive interest, we will proceed with issuing leases under the appropriate process described in this subpart. The competitive process is set forth in §§ 285.210 through 285.225, and the process for issuing leases when no competition exists is set forth in §§ 285.230 and 285.231. The MMS will prepare an OCS renewable energy lease form and provide or reference such a lease form in a public notice. The approved lease form (or forms) for OCS renewable energy will be developed separately from the rulemaking and in consultation with interested and affected parties. This approach is designed to give us the flexibility to accommodate all possible renewable energy activities and adapt forms as necessary.

What types of leases will MMS issue? (§ 285.202)

This section states that MMS may issue leases for one or more types of activity relating to assessment and production of renewable energy and may issue commercial or limited leases as discussed previously in the overview of this subpart. A single-purpose lease will authorize one type of activity (e.g., wind power generation), whereas a multi-purpose lease will authorize multiple types of activity (e.g., both wind and wave power generation). A lease issued for one type of renewable energy activity will not necessarily preclude subsequent leases for other types of activities in that same area. For example, we may conduct a lease sale for a wind energy project and then conduct a lease sale for a wave energy project in that same area. While the initial lessee in such a case would be restricted to a wind energy project development, we may authorize additional types of OCS renewable energy activities in the same OCS area to the extent that such activities are compatible and do not unreasonably impede the ability of the existing wind energy project to conduct operations. Unless the original lease authorizes more than one type of renewable energy activity, expanding the authorized activities to include other kinds of renewable energy would require the issuance of a new lease or leases. We will not issue access rights for oil, gas, or any other minerals under this part.

We did not make any changes to this section.

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

As directed by subsections 8(p)(4) and (7) of the OCS Lands Act or by other relevant Federal statutory requirements (e.g., ESA and Magnuson-Stevens Fishery Conservation and Management Act (MSA)), MMS will coordinate and consult with relevant Federal agencies (including the Department of Defense and those agencies involved in planning activities that are undertaken to avoid conflicts among users and maximize the economic and ecological benefits of the OCS, including multifaceted spatial planning efforts), the Governor of any State, the executive of any local government that may be affected by a renewable energy lease, and affected Indian tribes. As provided in § 285.102(e), we may invite any Governor of an affected State or government executive of an affected local government to participate in a joint task force or other joint planning or coordination agreement if we are considering offering or issuing leases (or grants). Participation in a task force would give the parties opportunities to contribute to the planning process and access to nonproprietary information. This section has been revised to include affected Indian tribes. In response to comments, we have also revised this section to differentiate between general consultation and coordination under this rule and the consultations with Federal agencies that are mandated by other laws (e.g., ESA).

We urge project proponents that plan to pursue renewable energy activities on the OCS to conduct preliminary outreach early in the process by contacting interested and affected parties about their proposals. We believe that it is particularly important for project proponents that plan to produce and deliver electricity to existing onshore distribution systems to consult with involved States and localities to establish power generation needs and to become aware of pertinent regulatory requirements before pursuing OCS commercial development and production rights. Early communication between project proponents and the States and localities that would be most affected by any project development and that would regulate associated onshore facilities, may ensure that the project will be compatible with and support any renewable portfolio standards, policies on the location of transmission and other support facilities, and any other relevant factors.

What areas are available for leasing consideration? (§ 285.204)

We intend to consider offering for lease any area of the OCS that is appropriately platted, except areas prohibited from leasing. Subsection 8(p)(10) of the OCS Lands Act prohibits renewable energy leasing in any area of the OCS within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, National Marine Sanctuary System, or any National Monument. In administering this program, the Secretary will take into account other uses and may decide not to offer portions of the OCS for leasing under this part or may restrict operations.

The areas we actually make available for renewable energy leasing are likely to be determined through a process that assesses different types of renewable energy resources and potential environmental impacts and other relevant information on a national, regional, or more area-specific basis. The assessment process will include coordination and consultation with Federal, State, and local governments; affected Indian tribes; and other interested and affected parties and may entail the establishment of task forces as discussed previously. The MMS will consider input from the task forces—as well as other national, regional, local, and tribal planning and coordination mechanisms—in determining appropriate siting of renewable energy projects and leasing priorities. Based on such assessments, we have the discretion when making the determination whether to offer areas for leasing. We intend to use our existing system of OCS regions, planning areas, official protraction diagrams, and lease blocks to designate, delineate, and describe areas of the OCS under the OCS Alternative Energy Program.

We did not make any changes to this section.

How will leases be mapped? (§ 285.205)

This section states that MMS will prepare and use necessary leasing maps and official protraction diagrams as it does for mineral leasing on the OCS (e.g., 30 CFR part 256.8)

We did not make any changes to this section.

What is the lease size? (§ 285.206)

We will determine the size for each lease on a case-by-case basis to ensure that it is an appropriate size to accommodate the anticipated activities. The lease size will accommodate buffers or setbacks as necessary. The process for the issuance of all leases will provide public notice of the lease size. We plan to delineate leases by using mapped OCS blocks, portions of such blocks, or aggregations of such blocks. For example, a limited lease supporting a small data gathering or technology testing facility might require only a small part of a 3-mile by 3-mile OCS block. In such a case, the lessee could acquire (or retain after originally acquiring a larger area) an aliquot part as small as a quarter-quarter (i.e., 1/16) of a block. On the other hand, it is likely that a typical commercial-scale renewable energy project would result in the issuance of one lease encompassing several contiguous OCS blocks.

We did not make any changes to this section.

Reserved Sections (§§ 285.207 through 285.209)

Sections 285.207 through 285.209 are reserved.

Competitive Lease Process

How does MMS initiate the competitive leasing process? (§ 285.210)

This section establishes a process for us to solicit proposals to develop the renewable energy potential on the OCS. We may use a general Request for Interest to gauge interest in renewable energy leasing anywhere on the OCS or a specific Request for Interest to assess interest in specific areas after receiving an unsolicited leasing proposal. Any Request for Interest will be published in the **Federal Register**.

Depending on the level and extent of interest and review of comments, we may formulate a nationwide or regional program schedule of lease sales, or we may initiate individual competitive lease sales on a case-by-case basis without an overarching program schedule. Once a determination is made to offer an area(s) for leasing, we would initiate a renewable energy lease sale process.

We did not make any changes to this section.

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

This section lays out the discrete steps we propose to follow in preparing for and holding a lease auction and issuing leases. These steps include a Call for Information and Nominations (Call), an Area Identification, a Proposed Sale Notice, and a Final Sale Notice as explained in the description of the competitive leasing process presented previously.

We received several comments recommending that we provide for accepting the results of competitive processes conducted by States and utilities to select developers of offshore wind generation projects. Notably, during the time that MMS has been promulgating this rule, the States of Delaware, New Jersey, and Rhode Island have conducted competitive processes and have selected companies to develop wind resources on the OCS. We believe that the pre-existing State processes are relevant to the competitive processes that MMS is required to conduct following approval of this rule. We intend to do so by using a competitive process that considers, among other things, whether a prospective lessee has a power purchase agreement or is the certified winner of a competitive process conducted by an adjacent State. We also may consider a similar approach to recognize the winners of competitions held by States in the future. There is additional discussion of this issue in our explanation of multiple-factor bidding provided in the next section.

In response to a comment pointing out a typographical omission from the proposed rule, we have revised § 285.211(b)(2) to say, ''* * * human, marine, and coastal environments * * *''

We have also added time periods for the steps in the competitive lease issuance process, and we have cited affected Indian tribes in paragraph (b).

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

This is a new section MMS added in response to comments that we clarify what will happen in the competitive sale process if competitors withdraw. If, before the Final Sale Notice is issued, MMS has reason to believe that competitors have withdrawn and competition no longer exists, we may decide to end the competitive process. We will issue a public notice of Request for Interest and consider comments received to confirm that there is no competitive interest. If, after we have issued the public notice, we determine that there is no competitive interest in the lease area, and one party wishes to acquire a lease, we will discontinue the competitive process and will proceed with the noncompetitive process set forth in §§ 285.231(d) through (i), and the acquisition fee as specified in § 285.502(a) must be submitted with the SAP or GAP. However, if MMS determines that competitive interest in the lease area continues to exist, we will continue with the competitive process set forth in §§ 285.210 through 285.225.

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

This section describes the type of information we seek from potential lessees in response to a Request for Interest or a Call. We may issue a broad request for interest to be used as a basis for developing a national or regional schedule of renewable energy lease sales, or we may issue a tract-specific request to be used to determine competitive interest in a particular area that has been proposed for leasing. We will issue a Call as the first step in a competitive lease sale process to elicit information from all interested and affected parties concerning proposed leasing activities and the existing conditions that may affect or be affected by those activities. In all cases—responding to a general or specific Request for Interest or a Call—we will require prospective lessees to submit the same types of information. That information will include: The area of interest for a possible lease; a general description of objectives and the facilities needed to achieve those objectives; a general schedule of proposed activities, including those leading to commercial production or other approved operations; available and pertinent data and information concerning renewable energy resources and environmental conditions in the area of interest, including energy and resource data and information used to evaluate the area of interest; devices and infrastructure involved; anticipated power production and likely purchasers; a statement that the proposed activity conforms with State and local energy planning requirements, initiatives or guidance, as appropriate; documentation showing that the applicant is qualified to hold a lease;

and any other information specifically requested in the **Federal Register** notice.

We believe that this information is necessary for MMS in developing leasing schedules, determining competitive interest for unsolicited proposals, and proceeding with renewable energy lease sales. We also believe that such information should be readily available from prospective lessees and that this requirement poses no undue burden. In cases where a prospective lessee has already submitted the required information, we will not require it to be submitted subsequently. For example, if a project proponent responds to a broad or specific Request for Interest for an area that MMS subsequently decides to offer in a lease sale, that project proponent will not have to resubmit information in response to the Call for that sale. Only those that have not previously expressed interest and submitted information will be expected to provide the required information in response to the Call.

In addition to the items listed, we believe that information relating to potential power markets that could be served, and proposed conventional and renewable energy projects that are located onshore and offshore and could serve those markets, is important. Also, environmental, technical, and economic information on similar projects elsewhere in the world that may be relevant to your proposed area(s) may be necessary for our deliberations.

Some comments indicated that this section meant that MMS may require a response to a Request for Information or a Call. Clearly, MMS cannot mandate such responses, but we can specify the information we need from those who opt to respond and participate in the leasing process. We believe the respondents should recognize that it is also in their best interest to submit complete and accurate information about their leasing intentions to enable proper consideration by MMS.

We have made two changes to this section. We added to § 285.213(d) a statement that we will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA. Also, we deleted § 285.213(e) and renumbered subsequent sections because we can expect affected State(s), rather than the prospective lessee, to submit information communicating the State perspective on proposed projects and associated leasing.

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

This section states that we will use the information we receive to identify lease areas, develop options for conducting environmental analysis and adopting lease provisions, and prepare documentation to satisfy relevant Federal requirements, such as NEPA, CZMA, ESA, and MSA.

For purposes of Federal consistency, we will treat renewable energy competitive lease sales as Federal agency activities and follow the requirements of subsection 307(c)(1) of the CZMA. That means we must determine if the effects to any land or water use or natural resource of a State's coastal zone from the competitive lease offering are reasonably foreseeable and comply with the appropriate Federal consistency regulations in 15 CFR part 930, subpart C.

We did not make any changes to this section.

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

Under this section, the areas we will offer for lease will be those identified pursuant to § 285.211(b). However, the offered area could be subsequently reduced through the lease sale process. This section also states that no further nominations for a lease sale will be accepted after the Call for Information and Nominations closes. Comments on this provision asked for clarification that such areas will be available for nomination in subsequent nomination and leasing processes. We believe that, as written, this section should be understood to mean that nominations are required to be submitted during the comment period following a Call for a particular lease sale process. After that particular lease sale process concludes, parties may submit unsolicited nominations for areas that were within the scope of that sale, and MMS will give them full consideration under the processes outlined.

We did not make any changes to this section.

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

We will publish Proposed Sale Notices and Final Sale Notices in the **Federal Register** for each lease sale. Proposed Sale Notices and Final Sale Notices will provide information pertaining to:

- The area offered for leasing;
- Proposed and final lease terms and conditions including lease size, lease term, payment and financial assurance requirements, performance requirements, and site-specific lease stipulations;
- Auction details including bidding procedures and systems, the bid variable and minimum bid, the bid deposit, the place and time for filing bids, and the place, date, and hour for opening bids;
- The official MMS lease form to be used or a reference to that form;
- Bid evaluation criteria we will use and how the criteria will be used in decision-making for awarding a lease;
- Award procedures including how and when we will award leases and how we will handle rejected bids or applications;
- Procedures for appealing the lease issuance decision; and
- Execution of the lease.

The Proposed Sale Notice will invite comments from all interested and affected parties. We expect that the use of such a notice in the process of offering leases for development of OCS renewable energy sources will provide a valuable opportunity for us to consult on the selection of appropriate competitive leasing procedures and the formulation of the details of the leases to be issued. After considering comments on the Proposed Sale Notice, we will revise and publish a Final Sale Notice. The final steps in the leasing process will be conducting the auction and awarding the leases.

We received comments recommending that we should delete the regulatory reference to minimum bids and provide additional guidance as to the bid evaluation criteria MMS might announce and apply. We have decided to retain the regulatory reference. The MMS will set a minimum bid to inform auction participants of the smallest bid amount that could be accepted in a sealed bid auction or to set the level for opening bids in an ascending bid auction. Potential lessees should find this information helpful when making financial preparations prior to participating in an auction. Further, minimum bids can serve as a deterrent to speculative bidding from companies who either are less financially sound than is desirable, do not plan to undertake investments in an expeditious manner, or whose main goal is to make a profit by re-selling the property rights. We will address bid evaluation procedures generally in implementation guidance that we intend to issue after the rule is approved, and we will publish the details of bid evaluation criteria in the sale notices.

We did not make any changes to this section.

Reserved Sections (§§ 285.217 Through 285.219)

Sections 285.217 through 285.219 are reserved.

Competitive Lease Award Process

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

This section, as well as the following two sections, describes the auction formats and bidding systems that will be available to MMS for awarding renewable energy leases on a competitive basis. In the proposed rule, we set forth three auction formats: Sealed bidding, ascending bidding, and two-stage bidding. In response to comments, we have added a fourth auction format that considers multiple factors relating to proposed OCS renewable energy projects. This additional format is described in detail in the next section. The concept of package bidding, introduced in § 285.220 and applicable to all the auction formats described in this section, is also detailed in this section.

The sealed bidding format is mandated for oil and gas lease sales by subsection 8(a) of the OCS Lands Act. In contrast, no particular auction format is required for renewable energy lease sales conducted under subsection 8(p) of the OCS Lands Act.

For each auction, we will establish a sale area or sale areas based on information received in response to Request for Interest and Call notices, and establish a bid variable, a minimum acceptable bid, and the criteria for bid acceptance. We will include specific details of the selected auction format in notices published in the **Federal Register** including the Proposed Sale Notice and the Final Sale Notice. The sale notices will include details on the bidding process, such as the auction format, bidder eligibility, bidder deposits, bid variable, minimum bid amounts, bid increments, criteria for ending or continuing the auction, method for determining the provisional winning bidder(s), and bid adequacy considerations. A general description of the four auction formats from which we propose to choose follows.

Sealed Bidding will consist of a single round of bidding and provide for each lease sale participant to submit a single bid by post or email, after which we will publicly announce the high bidder. We will specify in the Call either a cash bonus or an operating fee rate for the bid variable. This auction format is administratively compatible with the application of a ranking and filtering procedure to identify the set of highest bids per tract before MMS decides which of those tracts to lease. This ranking of high bids can serve as a bid adequacy mechanism for determining which high bids to accept. It also has the advantage of creating competition for lease rights across tracts when competition for individual leases is absent. This procedure is known as ''intertract competition.''

Ascending Bidding involves multiple rounds of bidding and provides for participants to submit increasing sequential bids over a specific time period. Again, we will specify either a cash bonus or an operating fee rate for the bid variable. Bids may be submitted orally or electronically (e.g., internet). If bidding activity continues until the deadline, the time period for bidding may be extended if warranted by additional bidding activity.

Two-stage Bidding combines the previous two formats, sealed and ascending bidding. Generally, we will require interested bidders to offer a minimum cash bonus to join the auction. In the most likely process formulation, participants are expected to submit ascending bids (e.g., operating fee rate, cash bonus, etc.) in the first stage until all but two bidders drop out or more than one bidder offers to pay the maximum bid amount specified by MMS. The auction will then move to the second stage, where the remaining participants typically will offer a sealed bid on a bid variable not employed in stage one. However, we reserve the option to conduct the two-stage auction using sealed or ascending bidding in either or both stages, and to select the bid variables in each stage.

Multiple-factor Auction may be employed to rank proposals, resulting in a lease award to the bidder making what MMS perceives is the best offer. Single or multiple financial bid variables may be considered (e.g., rental rate, operating fee, variable cash bonus, or combination). Nonmonetary variables may also be considered including technical merit, timeliness, financing and economics, the environment, public benefits, consistency with State and local needs and requirements, or other factors.

Subject to the bid adequacy requirements referenced in § 285.222, typically the qualified bidder offering the highest cash bonus or the highest fee rate, depending on which deciding bid variable is used, will win the lease. When there are multiple leases, intertract competition could be used to decide which of the high bids to accept under the category of bid adequacy.

We received numerous comments on this section of the rule, many recommending more subjective lease issuance processes. We revised the rule at §§ 285.220 through 285.224, and § 285.501, to accommodate a multiple factor auction format for competitive lease award. A method of assessing multiple factor bids may be employed to rank proposals, resulting in a lease award to the bidder making what MMS perceives is the best offer. Single or multiple financial bid variables may be considered along with nonmonetary variables, such as technical merit, timeliness, financing and economics, the environment, public benefits, consistency with State and local needs and requirements, or other factors. While we have included the multiple factor auction format as an option, we are concerned that this format would not meet the objective under the mandate of subsection 8(p)(3) of the OCS Lands Act (43 U.S.C. 1337(p)(3)), which is to issue renewable energy leases through a simple and straightforward process in a fair and equitable manner. This auction format is likely to be less transparent to the public and more susceptible to favoritism and manipulation by selected parties than other auctioning formats. However, MMS is willing to work with States and other interested organizations to develop a procedure that would meet the OCS Lands Act mandate.

Some entities submitted a preference for sealed bidding rather than ascending bidding. In their view, a single round of bidding is a more equitable process than ascending bidding and is the simplest, most straight forward method. One comment related a sealed bidding auction format as proposed by MMS to procedures for placing a bid in response to a request for proposal (RFP). Another comment explained that, to the extent there is competitive interest, ascending bidding will assure MMS that it is receiving the maximum amount each of the participants is willing to bid for a lease and help satisfy MMS's concerns regarding a ''fair return.'' Other commenters criticized the sealed bid process because of the risk that one of the bidding parties will offer an unnecessarily high bonus bid, depriving that entity of important capital that it will need to develop the lease and potentially other leases. We recognize that under certain conditions, a sealed bid auction may yield better results than an ascending bid auction. It is also true that if different conditions prevail, an ascending auction may maximize the public's expected revenue. The MMS will make a determination regarding the

type of auction to be used based on whether the choice would encourage companies to participate in the auction and result in leasing to developers that have the financial and technical means to successfully develop a renewable energy project. The MMS will review information received in response to a Request for Interest and a Call before announcing a sale design and auction format in a Proposed Sale Notice.

On the issue of package bidding, the general consensus of the comments supported such an approach, although there were some concerns expressed about its complexity. This approach was possible under the rule as proposed, and MMS believes that package bidding should be available under the final rule. Package bidding used in the auction formats described in this section would allow project proponents to identify possible synergies between tracts, then delineate a lease area comprised of those tracts, and bid the value of those tracts based on the development potential of the overall proposed project. Before making the decision to hold an auction that featured the option to submit package bids, MMS would analyze information submitted in response to the competitive lease process given in §§ 285.210 through 285.215 to determine if it was in the public's interest. If utilizing such an approach is beneficial and selected, MMS may choose among different approaches to implement package bidding. For example, a simultaneous ascending auction could be held, where MMS believes that package bidding would provide the best means by which bidders may compete for leases they need for project development. Bidders would submit a bid consisting of multiple lease blocks whereby the bid value would represent the total value of those lease blocks. The determination of winning packages can be made through the application of a software algorithm that maximized the sum of the package bids submitted in successive rounds. As a simpler, alternate approach, a bidder's choice ascending auction could be held in which the high bidder in each round earns the right to choose one tract, or multiple tracts to form a logical development unit, from all tracts offered.

We did not make any changes to this section other than the addition of the multiple-factor auction format.

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

A bidding system is composed of various elements, the most important of which are the bid variable(s) and the payment requirements. The bid variable is generally subject to a minimum bid level and potentially to a reservation price, both established by MMS. The minimum bid level represents the entry level of the bid, i.e., the smallest bid amount that MMS would consider acceptable. Usually the same minimum bid level will be set across certain classes of tracts. The reservation price is a tract-specific measure that represents an estimate of the underlying value of the tract when used for a specific purpose. In cases where sufficient competition is deemed to exist, a reservation price typically will not be needed to ensure that a fair return is obtained in the auction for the individual tract. For a renewable energy lease, we will choose from six different bid systems:

(1) A cash bonus with a constant fee rate (decimal);

(2) A constant operating fee rate with a fixed cash bonus;

(3) A sliding operating fee rate with a fixed cash bonus;

(4) A cash bonus *and* a constant operating fee rate;

(5) A cash bonus *and* a sliding operating fee rate; or

(6) A multiple-factor combination of nonmonetary and monetary factors.

The fee rate in this context is analogous to a royalty rate used in oil and gas leasing. If a cash bonus is the bid variable, the operating fee each year will be based on the formula in subpart E. If the fee rate is the bid variable, the cash bonus will be fixed, and the operating fee will be calculated using the fee rate offered by the winning bidder as a part of the formula in subpart E of this regulation. The two-bid variable systems, cash bonus and operating fee rate, either constant or as a sliding scale, will be used only in a two-stage auction.

The resulting annual operating fee in these two-stage bidding auctions will be derived from the formula established in subpart E of this part which is based, in part, on megawatts of installed capacity and the prevailing market rates for electricity sold in the consuming region targeted by the lease. Values for the formula components, excluding the fee rate when it is used as the bid variable, will be established in the Final Sale Notice or in the final public notice in the case when no competitive interest exists for a proposed lease.

For limited leases, the cash bonus will be the only permissible bid variable. The MMS imposes no operating fee for limited leases because such leases could produce and sell power only within limits set by the terms and conditions of the lease; limited leases will not authorize long-term or large-scale commercial operations. Since we anticipate only small amounts of power (e.g., 5 MW) being generated for relatively short duration (less than 5 years), we do not propose to charge an operating fee for the sale of power from limited leases. We will charge only rentals for limited leases. This also means we will not be using a two-stage auction format for issuing limited leases.

One renewable bidding system that we considered but rejected in the proposed rule is a multiple-factor system. Such a system consists of many different bid variables as factors, both quantitative and qualitative, in determining the winning bid in a competitive process. This is the approach used in Denmark, which has the most developed offshore wind program in the world and issues licenses based on multiple factors (e.g., project design, operator experience, etc.).

However, we received numerous comments recommending that we reconsider the multiple-factor approach, and based on those comments, we revised the rule at §§ 285.220 through 285.224, and § 285.501, to accommodate a multiple-factor auction format for competitive lease award. The multiple-factor auction format may be employed to rank proposals, resulting in a lease award to the bidder making what MMS perceives is the best offer. Single or multiple financial bid variables that may be considered include a rental rate and operating fee, with a fixed or variable cash bonus or a fixed entry fee. Nonmonetary variables may also be considered including technical merit, timeliness, financing and economics, the environment, public benefits, consistency with State and local needs and requirements, or other factors.

Under the multiple-factor auction format, MMS will publish criteria for winning bid determinations in the Final Sale Notice. A panel made up of members selected by MMS, or members from MMS, would assess and rank the proposals. Possibly, a quantitative framework may be devised that would weigh the importance of each factor and provide a rating scheme for bids placed on the factors. Further, it is possible that a negotiation stage may be included in the bid assessment criteria, to be used if it becomes necessary to modify a proposal prior to acceptance. The MMS will coordinate with States and other stakeholders, as appropriate, to establish procedures that are best designed to assure that the winning proposal will result in the selection of the most

worthy offer and provide a fair return to the public.

Multiple factor bidding may be useful if MMS identifies a market failure in a purely monetary auction format. In certain circumstances, nonmonetary factors involving important public policy matters may not be reflected in auctions where a fiscal term measure is applied to determine the winning bidder. Examples of such market failure include situations where public benefits could accrue from innovative research and technology development or situations where public benefits could accrue from the abatement of existing or potential carbon emissions.

In the first example, two or more project proponents want to prove a new project concept using technology that is not available on a commercial scale. The expected value of this type of project is marginal; so the proponents would seek the minimal initial cost of obtaining access rights, perhaps to a level even lower than the cost of obtaining a lease when no competition exists, in order to have more capital for facility expenses. When more than one project proponent indicates an interest in acquiring leases to develop resources in the same area, MMS might hold a multiple-factor auction to encourage the advancement of the technology. The MMS could design the bidding factors specifically for the type of project proposed, giving consideration to the estimated resource potential. It is possible that MMS could give the winning bidder, in a multiple-factor auction, an opportunity to prove the project concept and profitability before requiring payment of a significant share of the cash flow. The Government would take on the role of supporting a promising project concept impeded by financing difficulties for public policy reasons. While MMS originally chose to exclude this option from the proposed rule, comments indicated that this method of lease award may advance the development in wave energy technology, and so it has been added to the auction format regulations in this rule.

In the second example, MMS may choose to use a multiple-factor auction to advance the synchronization of State and Federal regulatory processes that have different but compatible conceptual goals, e.g., a State administered RFP to supply electricity under a power purchase agreement in conjunction with an MMS competitive renewable energy commercial lease offering. This situation may arise when a State announces an RFP for a power purchase agreement that would help a utility company meet growing demand for electricity within its customer base. Proposals would be assessed based on factors such as technical merit, timeliness, financing and economics, the environment and public benefits, or other factors. The RFP could specifically state that consideration in awarding leases would be given to potential emission reduction benefits to the public and could request that bidders submit a lease bonus bid payable to MMS for its preferred site in any proposal to develop an OCS renewable energy project. The lease bonus bid would be one of the multiple factors published in the RFP, to be assessed by the State and MMS jointly to determine the winning proposal. A primary concern would be that the interests of the Federal Government might not coincide with that of the power purchaser and the State, resulting in a bid factor weighting and assessment process that does not lead to a fully satisfactory selection process. In such cases, the proposal receiving the highest ranking may not be the proposal that is the highest valued, thus negatively impacting the return to the United States and the State(s) when revenues are shared. The MMS will coordinate with States and interested organizations to establish procedures that assure competition and a fair return to the United States.

Several commenters expressed concerns about inviting possible sham bidding and speculation, especially with the use of bidding systems based on fee rate as the variable. We understand these concerns and agree that a combination of bonus, rental, and operating fee payments should be balanced in a way that encourages participation by serious project proponents. We will analyze energy market conditions through the competitive lease process, beginning with the analysis of information available after a request for interest is published, and continuing through the Call and the Proposed Sale Notice. We will endeavor to hold auctions that will tend to award leases to bidders who value the tracts the most. We anticipate that renewable energy lease sales will be focused on sites where the resource potential can be assessed with a relatively high level of certainty before the auction. This could allow MMS to set the minimum bid at a level that potential bidders who do not have the financial and technical capability to develop a lease would not be willing to pay. As a result, speculative bidders should not be able to compete effectively for renewable energy leases against legitimate project proponents. However, to provide additional assurance, MMS intends to defer from using bidding systems incorporating the fee rate, as used in the formula found in § 285.506, until the technology for the development of the given renewable energy source has been commercially proven.

What does MMS do with my bid? (§ 285.222)

The MMS will open 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. However, we will not accept or reject any bids at that time. We will determine whether to accept a high bid as a winning bid based on the following factors.

With sealed bidding, bid acceptance criteria typically rely on (1) minimum bid levels we establish, with bids above that level being acceptable if there is a sufficient level of competition or if the lease area is not considered to be viable, or (2) assessments of the adequacy of the high bids for a specific lease area in comparison to calculated reservation prices for the property rights that are the object of the bidding. Whereas a minimum bid reflects a publicized level below which bids are not deemed satisfactory or competitive and thus will not be considered, the reservation price reflects an unpublished estimate of the value of the tract, and thus generally the lowest bid level at which we would award the lease. In this context, the term ''reservation price'' could also refer to the lowest operating fee at which we would award the lease, if the operating fee is used as the deciding bid variable. The calculation of the reservation price compensates for insufficient market competition, so if enough competition for the tract materializes, there is less of a need to rely on a reservation price. However, when there is little competition for specific acreage, the reservation price becomes critical if the absence of competition is known to the potential bidder. An additional factor we may consider in calculating the reservation price is the value of other uses of the area that are incompatible with the renewable energy project.

Due to the competitive aspects of the ascending bidding procedure, bid acceptance ordinarily would be less dependent on application of a reservation price and instead would rely solely on the bidding results to ensure receipt of fair market value. The ascending bid framework has been used by the BLM for allocating the property ROWs for wind energy projects. If we conclude that ascending bidding is the preferred auction format for many proposed renewable energy leases, then

sale procedures for ascending auctions could differ substantially from the customary OCS sealed bid model.

With a two-stage auction format, the bid acceptance considerations are the same as those that apply to the format for the final stage that was used (i.e., sealed and/or ascending bidding).

One way to reduce reliance on a calculated reservation price in sealed bidding or two-stage bidding could be to apply the auction format to multiple areas employing intertract competition. Intertract competition may be needed in areas with high industry interest in a number of OCS leases, but where expected demand per tract is limited or constrained. In addition to enhancing competition, the object of intertract competition would be to provide signals through the bids, which serve to assist us in leasing areas providing access to the most valuable sources of energy.

Our goal is to accept or reject all sealed bids within 90 days after the sale date, although we may extend that time if necessary. In the case of ascending bidding, we may be able to determine the winning bidder once we confirm that the high bidder is a qualified bidder. Nevertheless, we reserve the right to reject any and all bids, regardless of the amount offered or bidding system employed. We will send a written notice to each high bidder, accepting or rejecting the bid or informing the bidder of tied high bids.

One comment on this section recommended that a 30-day deadline for acceptance or rejection of the high bid be set for MMS. This commenter and others also recommended revisions to establish meaningful bidder competence requirements. They suggested that the proposed § 285.222(b) be changed to provide that MMS review the high bidders' qualifications as they relate to the bidders capabilities to make productive use of renewable energy leases. This review should take place prior to awarding the lease and should substitute for conducting a bid adequacy review. The commenter further stated that MMS's authority under this section to nullify an auction, because the competitively determined value of a lease falls short of a minimum value that MMS has placed on it, is misguided.

We have decided to establish a bidder competence requirement in § 285.107. To ensure a fair return, MMS intends to rely primarily on area-specific minimum bid levels and auction designs that encourage competitive bids. Where competition clearly prevails, MMS expects to make high bid acceptance and rejection decisions within 30 days following the sale, absent the presence of unusual bidding patterns. This amount of time may be necessary to ensure that MMS has selected the proper allocation of leases to high bidders when (1) package bidding is employed, (2) one or more package bids overlap, and (3) determination of the appropriate set of winning packages requires application of a software algorithm.

The 90-day postsale evaluation period is generally intended to apply in those unusual cases where bid adequacy procedures must be used. Bid adequacy considerations will be used where bidding evidences certain anomalies that indicate anti-competitive, illegal, or unauthorized behavior, where bidding is expected to be sparse, or when bids submitted for a tract are otherwise not a good indicator of true market competition. Legal bids would be bids submitted in compliance with the MMS regulations at 30 CFR part 285 and the Final Sale Notice. Anti-competitive or unauthorized behavior includes any form of collusion, or attempts to manipulate MMS auction rules to obtain an improper advantage over competitors. In cases where there are multiple tracts of interest but few bidders per lease, MMS may choose to employ intertract competition to assess bid adequacy. Under this approach, the high bids would be ranked, and a subset of those high bids would be accepted subject to the bid adequacy conditions that applied. If MMS decides that a tract should undergo evaluation to determine if fair value has been received, or there is a wide variation among bids, a reservation price may be calculated. A wide variation in bidder values could be caused by asymmetric information concerning the resource potential on a tract or tracts, or dissimilar bidding strategies. Bid adequacy would be used if MMS has reasonable confidence in its ability to accurately estimate project value in conjunction with the bids for the project.

Several commenters took issue with our proposed approach to determining and assuring fair return for renewable energy rights. Some commenters stated that our approach misapplies elements of the approach taken to determine fair market value for oil and gas resources. We agree that there are significant differences among the market conditions for oil and gas exploration and development and renewable energy siting and development, but we believe that a competitive lease process is compatible with assuring that the United States receives a fair return for issuance of a renewable energy lease. Conceptually, the MMS renewable energy lease program will be different from an oil and gas lease program due to resource risk considerations. We anticipate that renewable energy lease offerings will be focused on sites where the resource potential can be more accurately assessed before the auction than during typical oil and gas lease offerings. Further, costs to measure renewable energy resource potential are relatively low in comparison to the cost of oil and gas exploratory drilling. While it is not known whether oil and gas accumulations exist on most oil and gas tracts offered in MMS sales, there is a significant amount of OCS renewable energy resource information available to the public. In light of these differences, renewable energy developers should not need to assemble the type of extensive lease portfolios typical of an oil and gas exploration company in order to identify a site suitable for development. As a result, the minimum bid set by MMS could more closely relate to the value of the tract to the project proponent, than, for example, the value to an investor that hoped to re-sell the lease rights on the secondary market. This factor could make it more difficult for speculative bidders to compete effectively for renewable energy leases against legitimate project proponents.

We have made changes to this section relating to the addition of the multiple-factor approach and the rationale for rejecting bids.

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

In response to comments objecting to the proposed approach of breaking ties by lot, we have revised the text of § 285.223(a) to authorize an additional round of bidding when more than one bidder on a lease submits the same high bid amount. If the highest bids are tied, we will notify the tied bidders. The winning bidder will be determined from the tied bidders by a final round of ascending or sealed bidding. This section does not apply to bids at the end of stage one of a two-stage bidding format.

One commenter suggested that creditworthiness be considered in breaking ties. We did not adopt this approach because it would introduce unnecessary complexity into the determination of a winner by requiring MMS to establish a measure to differentiate one bidder from another through the analysis of financial information that may not be readily accessible to MMS.

What happens if MMS accepts my bid? (§ 285.224)

This section explains the responsibilities of the successful bidder.

Our acceptance notice will include three copies of the lease to be executed by the bidder. The proposed rule required execution of the lease, payment of the first 6 months' rental, payment of the balance of the winning or fixed bonus, and filing of required financial assurance within 10 business days. Numerous commenters recommended increasing this 10-day timeframe. We believe this timeframe is reasonable for lease execution, payment of the balance of the bonus bid, and filing of financial assurance, and we have retained it for those actions. Also, we may extend this deadline upon request if we find a delay is due to events beyond the control of the successful bidder.

Based on experience with our interim policy for issuing limited leases, and in response to comments on the proposed rule, we have increased to 45 days the timeframe for providing the first 6 months' rental. This will give lessees the opportunity to relinquish unwanted acreage before having to pay a rental that is based on the total amount of acreage under lease. While the rental requirement will be deferred for 45 days, the payment will cover the first 6 months of the lease, beginning on the effective date of the lease.

After three executed copies of the lease are returned to MMS, we will execute the lease on behalf of the United States and send one fully executed copy to the lessee. If the bidder fails to execute the lease or otherwise fulfill requirements, the bidder's deposit will be forfeited, and no lease will be issued.

If, before the lease or grant is executed on behalf of the United States, the offer to the lease is withdrawn or restricted from leasing, we will not issue a lease and will refund the deposit. We reserve this right to rescind a lease offering in situations where new environmental or other concerns about the prospective area, operation, or need for the facility surface after the lease sale. If the awarded lease or grant is executed by an agent acting on behalf of the bidder, the bidder must submit with the executed lease evidence that the agent is authorized to act on behalf of the bidder.

We also made changes to this section to accommodate addition of the multiple-factor approach.

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

This section explains what options a bidder has if we reject the apparent high bid. We will provide a written statement of reasons and refund any money deposited with the bid. The bidder may then petition the MMS Director for reconsideration, in writing, within 15 business days of bid rejection. The Director will send the bidder a written response either affirming or reversing the rejection. Denial of a bid reconsideration by the Director is a final agency action. It is not subject to review by the Interior Board of Land Appeals, but is judicially reviewable.

We did not make any changes to this section.

Reserved Sections (§§ 285.226 Through 285.229)

Sections 285.226 through 285.229 are reserved.

Noncompetitive Lease Award Process

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

Anyone qualified to hold an OCS lease under § 285.106 may request a renewable energy lease from us at any time, except in areas otherwise proposed for competitive lease offerings or excluded by statute from leasing. Such an unsolicited request for a lease may be submitted to conduct either commercial or noncommercial activities authorized in this part. To be valid, the request must include information equivalent to that required under § 285.213 in response to a Call for Information and Nominations. Specifically, the unsolicited request must contain a depiction of the area requested for lease; a general description of the objectives of the project and the facilities that would be used; a general schedule of proposed activities, including those leading to commercial production or other approved operations; available and pertinent data and information concerning renewable energy resources and environmental conditions in the area of interest; a statement that the proposed activity conforms with State and local energy planning requirements, initiatives, or guidance, if any; and documentation that you are qualified to be a lessee as specified in § 285.107. In response to comments, we have changed § 285.230(e) to refer to a statement rather than certification in order to eliminate any confusion that this provision is alluding to CZMA compliance.

In addition, your request must include an acquisition fee of $0.25 per acre for the area requested as required by § 285.502. This fee is at a level intended to be high enough to discourage speculation but low enough not to inhibit interest, allowing lessees to establish a low ratio of lease acquisition costs to total project costs.

We have revised this section by adding to paragraph (d) a statement that we will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA.

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

Paragraphs (a), (b), and (c) of this section state that MMS will first determine competitive interest in processing an unsolicited request in order to decide whether to proceed with leasing under a competitive or noncompetitive process. If we find that there is competitive interest in the lease area, we will proceed with a competitive lease process. If we determine that there is no competitive interest, then we will issue a notice of such determination. This section also states that if MMS processes a proposed lease area on a competitive basis, no unsolicited requests for leasing in that area will be considered for as long as that process is pending. Thus, once an area is subject to a lease sale process, the only way to pursue a lease within that area is through that competitive process until that process concludes. After the process concludes, and if acreage within the area that had been considered for lease remains unleased, unsolicited requests will again be considered for that acreage.

If we determine that there is a competitive interest, we will proceed with a competitive process and will apply your acquisition fee to any bid you submit. If you choose not to bid, we will not refund your acquisition fee. We believe retention of your fee in this case is appropriate in order to discourage all but serious requests and because of the costs associated with processing your original request. If you submit a qualified bid that does not win, we will refund your deposit, including the amount of the acquisition fee.

Paragraph (d) describes how MMS will proceed if it determines there is no competitive interest. Within 60 days after we issue a finding that there is no competitive interest, the prospective lessee must submit either a SAP for a commercial lease or a GAP for a limited lease. We will review the plan and conduct NEPA and other required analyses before simultaneously issuing the lease or grant and approving the SAP or the GAP. As explained in the preamble discussion of plans in subpart F, a combined SAP and COP may be submitted for commercial leases. For hydrokinetic projects early coordination with the FERC licensing process will be necessary, but no COP will be required.

Our process for conveying OCS sand and gravel by negotiated noncompetitive lease under Public Law 103–421 is a relevant model for the process for issuing renewable energy leases when no competitive interest exists. The sand and gravel process starts with a request to MMS for a noncompetitive lease. If we determine that the request has potential, we require a NEPA analysis (EIS or EA). We inform the requestor of the type of environmental analysis required and provide an estimated schedule for completing the analysis and making the decision on whether or not to issue a lease. As part of the NEPA analysis, we undertake or participate in endangered species consultations with NOAA and the FWS. We may ask the requestor to fund the NEPA analysis. After the NEPA analysis is completed, we decide whether or not to issue a lease. If the decision is made to issue a lease, the specific terms and conditions (e.g., mitigating measures, size and length of lease) are discussed with the requestor and included in the noncompetitive agreement (lease) that we offer. The requestor must sign that agreement to complete acquisition of the lease.

We will follow the requirements of subsection 307(c)(3)(A) of the CZMA and 15 CFR part 930, subpart D, as shown in Table 1 for noncompetitive lease issuance and SAP or GAP. Under the CZMA and its implementing regulations, an OCS plan is any plan for the exploration or development of, or production from, any area leased under the OCS Lands Act that is submitted to the DOI, which describes in detail Federal license or permit activities. The SAP or GAP cannot qualify as an ''OCS Plan'' under the CZMA implementing regulations for leases issued when no competitive interest exists, because the lease and the SAP or GAP will be processed simultaneously. For leases issued competitively, the SAP or GAP would be submitted and processed after the lease has been issued, and in those instances, the SAP or GAP would be processed as an ''OCS Plan'' (as defined by 15 CFR 930.73), following the requirements of subsection 307(c)(3)(B) of the CZMA and 15 CFR part 930, subpart E.

In response to comments, we have added provisions to this section that address public notification and participation in the noncompetitive leasing process. We also have revised this section by adding procedures and timeframes for executing leases issued noncompetitively that are analogous to those for competitive leases.

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

This is a new section that describes the process that MMS will follow to consider issuing a lease noncompetitively, if an area of interest was submitted by only one interested party, in response to the Request for interest or Call. The MMS may inform you that there does not appear to be competitive interest and ask if you wish to proceed with acquiring a lease. If you wish to proceed with acquiring a lease, you must submit your acquisition fee as specified in § 285.502. After receiving the acquisition fee, MMS will follow the process outlined in §§ 285.231(b) through (i).

We added this section in recognition that §§ 285.230 and 285.231 of the proposed rule did not explicitly address situations in which a Request for Interest or Call for Information and Nominations results in no overlapping or otherwise competing indications of interest. The new section clarifies that in such a situation the prospective lessee may pursue the leasing process set forth in § 285.231, leading to either competitive or noncompetitive lease issuance.

Reserved Sections (§§ 285.233 Through 285.234)

Sections 285.233 through 285.234 are reserved.

Commercial and Limited Lease Terms

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

This section describes the duration terms for a commercial lease. Commercial leases issued competitively would have three separate phases of lease activity: Preliminary term, site assessment term, and operations term. For commercial leases issued competitively, the preliminary term extends for the initial 6 months during which the lessee must submit a SAP or a combined SAP/COP in accordance with subpart F. If the commercial lease is issued when no competitive interest exists, there is no preliminary term because lease issuance and SAP or SAP/COP approval occur simultaneously. The site assessment term for all commercial leases would begin on the date that we approve the lessee's SAP or SAP/COP and extend for a term of 5 years in most cases to allow the lessee to conduct the approved activities proposed in the SAP. Unless the lessee has submitted a SAP/COP and received MMS approval, the lessee is required to submit a COP, in form and content satisfactory to us, before the end of this 5-year term to keep the lease in effect. A commercial lease would expire at the end of the site assessment term unless the lessee submits a COP, in form and content satisfactory to us, before the end of the 5-year term. The preliminary and site assessment terms are automatically extended as necessary to allow review and approval of plans.

The operations term will follow, beginning on the date that we approve the lessee's COP, and will be for a period of 25 years to allow development, construction, and ultimately commercial production activities. If you submit a COP, your operations term begins on the date we approve it. If you submit a SAP/COP, your operations term begins 5 years after we approve it or when fabrication and installation commence, whichever is earlier. An operations term longer than 25 years could be established if applicable parties determine that such a term is warranted (e.g., the lessee and project proponent negotiate a power purchase agreement with a 30-year term before the lease is issued). While we revised the timing of the operating fee requirement in response to comments (see subpart E), this change does not alter the lease terms that originally were proposed. As provided in subpart D, the operations term may be renewed.

For hydrokinetic commercial leases the COP in the previous discussion would be replaced with a FERC license application. In cases where a combined SAP/license application is submitted, MMS would review, approve, and regulate the SAP activities, and FERC would review, approve, and regulate the license activities. The preliminary and site assessment terms will be the same for all commercial leases, but the operations term for commercial hydrokinetic leases will coincide with the term of the FERC license.

The MMS revised this section to clarify that the term of a lease renewal will be the same as the original term of the lease, unless a longer term is negotiated by applicable parties.

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

Limited leases issued competitively will have two phases: Preliminary term and operations term. For limited leases issued competitively, the preliminary term will be the initial 6 months during which the lessee must submit a GAP in accordance with subpart F. If the limited lease is issued when no competitive interest exists, there is no

preliminary term because lease issuance and GAP approval occur simultaneously. The operations term for all limited leases will begin on the date that we approve the GAP and continue for a term of 5 years to allow the lessee to conduct the approved activities proposed in the GAP.

For hydrokinetic activity MMS will only issue limited leases if FERC determines that a license or exemption is not required. If a FERC license or exemption is required, MMS will issue a commercial lease.

We did not make any changes to this section.

What is the effective date of a lease? (§ 285.237)

This section describes how we will determine the effective date of a lease. A lease issued under this part must be dated and become effective on the first day of the month following the date a lease is signed on behalf of the lessor. However, if the lessee submits a written request and we approve, a lease may be dated and become effective on the first day of the month within which it is signed on behalf of the lessor.

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

This section describes how renewable energy research activities might be conducted on the OCS. This provision was developed following discussions with Department of Energy (DOE) officials who cited a need for an offshore research area or areas patterned after the European Marine Energy Center, an offshore wave and tidal energy technology testing site in the United Kingdom. This section describes the process for MMS to issue leases, ROWs, and RUEs to Federal agencies and States for testing all types of offshore renewable energy technology, after giving public notice and determining that there is no competitive interest in the area and complying with all relevant Federal statutes (e.g., ESA, NEPA, MSA, etc.). In response to comments from States recommending that they be allowed to establish and manage OCS renewable energy research areas, we have broadened this provision to apply to States and other Federal agencies in addition to DOE.

We believe that such research areas should not preempt potential commercial development and should be only offered to a Federal agency or a State if there is no competitive interest. The purposes, issue process, and terms of this kind of lease or grant may be established by MMS and a Federal agency or a State on a case-by-case basis, or pursuant to a framework established by a Memorandum of Agreement. These leases or grants would not be available to private project proponents seeking to conduct either commercial or noncommercial activities. Leases and grants issued to a Federal agency and a State for research activities are different from the limited leases issued for renewable energy activities through the competitive or noncompetitive process. In further response to comments, we have clarified this section.

When FERC determines that any OCS-sited hydrokinetic research activities will not require a license or exemption, the MMS has the discretion to authorize such research activities under this section. This is consistent with the April 2009 MOU which provides that when FERC has determined that a license or exemption is not required, MMS may authorize hydrokinetic construction and operation activities related to noncommercial projects. It is anticipated that FERC could find hydrokinetic research activities do not require a license or exemption and therefore the lessee must comply with the requirements of § 285.238. However, if FERC determines that a license or exemption is required for a research project, then MMS would not consider that project to be a research activity under this section and would initiate the commercial leasing process.

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

Overview

Applicability

Subpart C addresses issuing ROW grants and RUE grants for OCS to support renewable energy activities associated with onshore projects, State leases, or an MMS-issued renewable energy lease. Renewable energy leases include the rights to project easements for cables, pipelines, and other facilities associated with projects on OCS leases as discussed in subparts B and F; so in most cases a ROW grant or RUE grant will not be needed for an OCS renewable energy lease. However, there may be some cases when it makes more sense for an OCS renewable energy leaseholder to receive a ROW grant or RUE grant instead of a project easement. An example of this would be when multiple OCS renewable energy lessees want to share a ROW for a transmission cable or a RUE for a substation. In this case, it may make more sense for the lessees to use an ROW or RUE grant. Additionally, a transmission company may want to request an ROW grant for a transmission cable to support an OCS renewable energy project or multiple projects. It is important to distinguish the grant authority under this part with grant authorities of MMS under other regulations, such as those in 30 CFR part 250. The following two examples are helpful to illustrate the types of activities, not associated with an OCS renewable energy lease, MMS will authorize with a ROW grant or RUE grant issued under subpart C.

Example 1: The MMS will issue a ROW grant under this part for activities involving the placement and maintenance of a transmission cable that crosses the OCS and transmits energy produced from renewable energy resources onshore or in State waters. The proposed Juan de Fuca Cable Project—which will install, on the OCS, a cable several-hundred-miles-long to transport electricity from renewable energy sources in the northwest to the San Francisco area—is a good illustration of an activity requiring a ROW granted under this subpart.

Example 2: The MMS will issue a RUE grant under this part for activities involving the placement and operation of a facility on the OCS that supports a renewable energy project located on State submerged lands.

The provisions include general requirements for ROW grant and RUE grant applicants, as well as application and issuance procedures. These provisions are similar to the provisions for issuing OCS renewable energy leases.

The MMS will not issue ROW grants and RUE grants for installing site assessment facilities (e.g., meteorological towers) on the OCS. If a company intends to install site assessment facilities, it must acquire a lease under this part.

Commenters raised questions concerning the issuance of ROWs for transmission lines that mix electricity generated from renewable energy sources and nonrenewable energy sources. After serious consideration, MMS has decided the following: (1) MMS will authorize renewable energy ROWs for transmission of energy from sources other than oil and gas; (2) MMS will not authorize renewable energy ROWs that solely support the transmission of energy from oil or gas sources; and (3) MMS will consider, on a case-by-case basis, renewable energy ROWs supporting the transmission of energy from oil or gas sources that is combined with energy from sources other than oil or gas, provided that renewable energy generated from sources other than oil and gas is primarily what is being transmitted.

Competitive and Noncompetitive Processes

As required by subsection 8(p) of the OCS Lands Act, MMS must issue ROW grants and RUE grants through a competitive process unless MMS determines after public notice that there is no competitive interest. This subpart provides for public notice of applications for ROW grants and RUE grants to allow potential competitors and other interested and affected parties to comment on proposals and possibly compete for the ROW grants and RUE grants. However, due to the nature of potential operations on ROW grants and RUE grants, as well as the areal requirements involved, it is unlikely that there will be much, if any, competition. It appears that, in most cases, even separate geographically overlapping proposals for ROWs and RUEs will not be mutually exclusive. It is therefore unlikely that MMS will conduct an auction of ROW grants or RUE grants. The noncompetitive process for granting ROWs and RUEs will be similar to the noncompetitive leasing process described in subpart B, except there is no acquisition fee, and a GAP is required in lieu of a SAP.

In the unlikely event that MMS did determine there is competition for a ROW or RUE, we will follow the process outlined in subpart B for competitive issuance of leases, with the ultimate terms and conditions of the grant established in a Final Sale Notice. As noted in the discussions of subparts A and B, we have changed the qualification requirements for lessees and grantees to discourage nuisance indications of interest. Also, in instances where a competitive process for the issuance of an ROW or RUE is pursued, MMS may choose to recognize companies selected by State or utility competitions in developing the terms and conditions of the auction and the grant, as explained in the subpart B discussion. While the rule provides the means necessary to conduct fair and efficient competitions for ROWs and RUEs, we continue to believe it is more likely that we will receive unsolicited proposals that will be processed after a public notice and determination that no competitive interest exists. As explained previously in the discussion of subpart B, because of the competition requirement set forth in section 8(p) of the OCS Lands Act, MMS decided to authorize transportation and other ancillary activities associated with an OCS renewable energy lease through the issuance of a project easement as part of the lease rather than providing for separate grants of ROWs and RUEs.

Data and Information

Subpart C requires the submission of data and information associated with ROW grant and RUE grant proposals. Subpart A discusses how MMS will handle such data and information, including procedures for withholding trade secrets and proprietary information from public disclosure to the extent allowed by law.

Coordination and Consultation

The MMS must coordinate and consult with other Federal, State, and local governments and affected Indian tribes as directed by sections 8(p)(4) and (7) of the OCS Lands Act and by other relevant Federal statutory requirements (e.g., ESA and MSA). As in subpart B, subpart C provides for coordination and consultation with affected Federal agencies, the Governors of affected States, and the executives of affected localities, including possible participation of State and local governments in task forces or other joint planning agreements with MMS.

CZMA Compliance

For purposes of Federal consistency, MMS will treat ROW grants and RUE grants issued through a competitive process as direct Federal agency activities and follow the subsection 307(c)(1) procedures of the CZMA. The MMS will determine if the ROW grant or RUE grant is reasonably likely to affect any land or water use or natural resource of a State's coastal zone and comply with the appropriate Federal consistency regulations under 15 CFR part 930 subpart C.

The MMS will treat ROW grants and RUE grants issued noncompetitively as Federal licenses or permits, which will follow requirements of CZMA subsection 307(c)(3)(A) and 15 CFR part 930 subpart D. For ROW grants and RUE grants issued noncompetitively, MMS requires the applicant to submit a proposed GAP simultaneously with the application for the ROW or RUE grant. The GAP is a Federal license or permit under current CZMA regulations since it will describe activities and operations proposed to be undertaken in areas of the OCS that are not under a lease; and therefore, does not qualify as an OCS plan (as defined by 15 CFR 930.73).

Areas Available for ROW Grants and RUE Grants

As with OCS renewable energy leases, ROWs and RUEs may be granted on any appropriately platted area not located within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, National Marine Sanctuary System, or any National Monument.

ROW and RUE Sizes

The size of an ROW will encompass 200 feet (61 meters) in width, the full length of the cable, pipeline, or other facilities, and adjacent areas reasonably necessary for accessory facilities, such as power stations for electricity or pumping stations for other energy products (i.e., hydrogen). The size of a RUE grant will be determined by MMS on a case-by-case basis to include the site of facilities, associated structures, and the areal extent of anchors, chains, or other equipment.

ROW and RUE Term

An ROW grant or RUE grant is in effect for as long as it is properly maintained, continues to support the activities for which it was granted, and is used for the purpose for which it was granted, unless otherwise stated on a case-by-case basis. Since ROW grants and RUE grants are tied to specific activities and purposes, MMS believes that, in most cases, it will be appropriate to link their term to those activities and purposes rather than setting specific independent terms. However, MMS may set specific independent terms when appropriate.

Other ROW and RUE Provisions

The ROW grants and RUE grants will be issued on forms approved by MMS and will become effective on the date of the grant or as specified in the grant instrument. Financial assurance and rental requirements are provided in subpart E. Additional provisions relating to the administration of ROW grants and RUE grants are set forth in subpart D.

Section-by-Section Discussion for Subpart C

ROW Grants and RUE Grants

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

This section explains what ROW grants and RUE grants authorize, which includes activities relating to the production, transportation, or transmission of electricity or energy from any renewable energy resource that is not produced or generated on an OCS renewable energy lease issued under this part. It further clarifies that you do not need a ROW grant or RUE grant for a project easement authorized under subpart B of this part however, there may be cases when a ROW grant or RUE grant is more appropriate than a project.

The MMS changed this section to allow the holder of a ROW grant 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 both on the OCS and not on the OCS. We made this change to avoid excluding possible beneficial uses of ROW grants for renewable energy projects on the OCS.

Section 285.301 What do ROW grants and RUE grants include?

This section provides a detailed description of ROW grants and RUE grants, including their dimensions, boundaries, and limitations based on factors such as locations of associated and accessory facilities. This does not cover RUE grants issued for the alternate use of existing facilities, which are covered in subpart J of this part.

We did not make any changes to this section.

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

This section cites the regulation pertaining to lease and grant holder qualifications in subpart A. It then describes that the rights to be granted with a ROW or a RUE will not prevent the granting of other rights by the United States. Further, other users may be granted the right to use or occupy any part of the ROW grant or RUE grant not actually occupied or required for any necessary operations as long as they do not unreasonably interfere with the activities approved or impede existing operations.

We did not make any changes to this section.

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

This section states in general terms the duration of ROW grants and RUE grants.

We did not make any changes to this section.

Reserved Section (§ 285.304)

Section § 285.303 is reserved.

Obtaining ROW Grants and RUE Grants

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

This section addresses how to apply for a new or modified ROW grant or RUE grant. A separate application is required for each ROW grant or RUE grant requested. It lists the information the application must contain, including the area requested, objectives, facilities projected to achieve those objectives, a general schedule of proposed activities, and environmental conditions in the area of interest.

We did not make any changes to this section.

What action will MMS take on my request? (§ 285.306)

This section explains how MMS will process requests for ROW grants and RUE grants based on whether or not competitive interest is determined. It cites the competitive process outlined in § 285.308 and describes the noncompetitive process. The noncompetitive ROW grant and RUE grant process is similar to the noncompetitive lease issuance process, requiring a determination of no competitive interest, negotiation of terms and conditions between grantee and grantor, as well as submission and approval of a GAP.

We did not make any changes to this section.

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

This section outlines how MMS will determine whether or not there is competitive interest by publishing a public notice (Request for Interest) of the proposed ROW grant or RUE grant. The public notice will describe the parameters of a project and give potential competitors an opportunity to express their interest. The MMS will make a determination of competitive interest based on comments received in response to the notice. If competitive interest is determined, MMS will initiate the process outlined in § 285.308. If no competitive interest is determined, MMS will follow the process outlined in § 285.306.

We did not make any changes to this section.

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

This section describes how an auction will be held if MMS determines there is competitive interest for ROW grants and RUE grants. The grant auction process is similar to the auction process for leases.

We did not make any changes to this section.

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

This section describes the circumstances under which MMS will issue a grant. The MMS will issue a grant if we approve your GAP and you accept all terms and conditions of the grant.

We did not make any changes to this section.

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

The effective date of an ROW grant or RUE grant is established by MMS in the ROW grant or RUE grant.

We did not make any changes to this section.

Reserved Sections (§§ 285.311 Through 285.314)

Sections 285.311 through 285.314 are reserved.

Financial Requirements for Row Grants and Rue Grants

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

This section cites the deposit requirements of § 285.501 pertaining to ROW grant and RUE grant auctions, and provides for the return of your deposit when a bid is rejected. It also states that a written statement of reason will be provided if the high bid is rejected.

We did not make any changes to this section.

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

This section lists the payments required in order for MMS to issue the ROW grant or RUE grant. It states the balance on an accepted high bid and the first year annual rental as specified in § 285.507 (the greater of $5 per acre per year or $450 per year), must be paid before MMS will issue the ROW grant or RUE grant.

We did not make any changes to this section.

Subpart D—Lease and Grant Administration

Overview

Subpart D addresses noncompliance with regulations pertaining to a lease or grant; assignment and designation of operator; and suspension, renewal, termination, relinquishment, and cancellation of leases and grants. We received numerous comments recommending that we prescribe time limits on MMS to complete actions under this subpart. We have declined to add such time limits to the rule, but we will include target timelines for actions under this subpart in the guidance document we intend to issue after the rule is published.

Noncompliance

The requirements that the lessee or grantee must meet to maintain a lease or grant in effect include plan and

reporting requirements (subpart F); payment obligations (subpart E); and procedures for conducting, stopping, and resuming operations or receiving appropriate suspensions from MMS (subpart D). In an instance of noncompliance, MMS may issue a notice of noncompliance that will specifically cite how you failed to comply and will prescribe corrective action. In an instance of noncompliance that poses an imminent threat, MMS may issue a cessation order directing the lessee or grantee to cease an activity or activities. Likewise, failure to take corrective action prescribed in a noncompliance order may lead to the issuance of a cessation order. A cessation order does not lengthen the term of the lease or grant or relieve any payment obligations. Also, noncompliance may lead to the assessment of civil or criminal penalties. The MMS believes the noncompliance provisions, in conjunction with the regulatory requirements, are essential to ensure prompt, efficient, and responsible renewable energy activities on a lease or grant.

Designation of Operator

The provisions governing designation of an operator to perform activities on a lease or grant are patterned after the regulations at 30 CFR 250.143 through 250.146.

Assignment

The provisions governing assignment of leases or grants are patterned after the regulations at 30 CFR 256.62, including assignor and assignee responsibilities, procedures for filing transfers, and the effects of an assignment on a particular lease or grant. The MMS believes such requirements are appropriate for all OCS renewable energy leases and grants.

Suspension

The rule provides for lease or grant suspensions that will lengthen the duration of the lease or grant to allow completion of activities or continuation of operations. Extensions relating to MMS technical and environmental review of required plans will be automatic. The lessee or grant holder could request suspensions for other purposes, and these will be subject to Director approval.

Renewal

The rule provides that a lessee or grantee may request a renewal to conduct activities substantially similar to those that were originally authorized, and MMS, at its sole discretion, may approve such requests. The renewal provisions also provide timeframes and information requirements associated with renewal requests, as well as guidance on making payments and suspending activities while a renewal request is pending. The length of a renewal will be set by MMS on a case-by-case basis. As explained previously in the discussion of lease term provisions in subpart B, MMS retains discretion relating to lease terms and renewals in order to ensure the efficient use of OCS resources.

Termination, Relinquishment, and Cancellation

The MMS may cancel leases or grants for failure to comply with the OCS Lands Act and other applicable laws, regulations, and lease requirements; for fraudulent acquisition; and for a continuing and undiminished threat to marine life, property, natural resources, national security or defense, or the marine, coastal, or human environment. Provisions governing terminations and relinquishments of a lease or parts of a lease are also included.

Section-by-Section Discussion for Subpart D

Noncompliance and Cessation Orders

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

This section states that MMS can take appropriate corrective action if you fail to comply with applicable provisions of Federal law, the regulations in this part, other applicable regulations, or MMS orders. The MMS may issue you a notice of noncompliance if it has determined there has been a violation. A notice of noncompliance will tell you how you failed to comply, and will specify what you must do to correct the noncompliance and when you must act. This section also states that if you do not follow a notice of noncompliance, or any other regulation of this part, MMS may issue a cessation order, cancel your lease or grant, and assess civil penalties. In addition, you may be subject to criminal penalties.

The MMS received a comment requesting that we consider reducing civil penalties for small businesses regulated under this part. If a civil penalty is assessed, the company may submit a request to modify the payment schedule to the Office of Financial Management, within MMS's Mineral Revenue Management program. We will include information on the Small Business Regulatory Enforcement Fairness Act and payment schedules in the guidance document we intend to issue after the rule is published.

We did not make any changes to this section.

When may MMS issue a cessation order? (§ 285.401)

This section specifies that a cessation order may be issued if you fail to comply with any law or regulation under this part. The cessation order will have a timeframe for you to correct the noncompliance and set forth what measures you are required to take in order to resume activities on your lease or grant.

We did not make any changes to this section.

What is the effect of a cessation order? (§ 285.402)

This section gives details of what you must do when you receive a cessation order. You must cease all activities on your lease or grant for the specified period, and you must continue to make all required payments while a cessation order is in effect. A cessation order does not extend the term of your lease or grant for the period you are prohibited from conducting activities. If MMS determines that the circumstances giving rise to the cessation order cannot be resolved within a reasonable time period, your lease or grant may be cancelled. We received a comment recommending that MMS specify lease or grant activities covered by a cessation order and allow other activities to proceed. We prefer the discretion afforded in the rule, which allows us to issue an order to cease all activities, perform necessary reviews, and then decide which, if any, activities will be allowed to proceed. After issuing a cessation order to a lessee or grantee, we will provide instructions as to which activities are authorized to continue.

Another commenter asked that the process for lifting a cessation order be specified in the rule. We believe this is already addressed in the previous section of the rule, which states that a cessation order will indicate the actions that lessees or grantees must take to resume ceased activities.

Reserved Sections (§§ 285.403 Through 285.404)

Sections 285.403 through 285.404 are reserved.

Designation of Operator

How do I designate an operator? (§ 285.405)

Under this section, you must identify the operator in your specific plan (SAP, COP, or GAP) if you intend to designate an operator who is not the lessee or grant holder. Once approved in your plan, the designated operator is

authorized to act on your behalf and authorized to perform activities necessary to fulfill your obligations under laws and regulations in this part. This section requires you to keep MMS informed if there is any change of status with your designated operator. If you are the designated operator, you must comply with all regulations governing those activities and are responsible for any noncompliance. Designation of an operator does not relieve the lessee or grantee of its obligations. We received a comment recommending we provide a timeframe for notification of a change in designated operator rather than requiring one immediately. We have revised paragraph (e) to provide 72 hours for such notification.

Another commenter asked for clarification of the information that must be included in a written change of designated operator. We have revised paragraph (e) to require that written notification be provided on a form approved by MMS that will specify the information required.

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

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. If your designated operator fails to fulfill any obligations under this part, MMS may require you or any or all of your co-lessees or co-grantees to fulfill those obligations.

We did not make any changes to this section.

Reserved Section (§ 285.407)

Section 285.407 is reserved.

Lease or Grant Assignment

May I assign my lease or grant interest? (§ 285.408)

Under this section, you can assign all or part of your lease or grant interest. To assign interest, an assignment application must be sent to MMS. The assignment application includes various detailed requirements outlined in this section (*i.e.,* location identification, qualifications, contact information, etc.). The assignment takes effect on the date MMS approves your application. We received a comment requesting clarification on whether mergers and acquisitions will require assignments. We added a statement about mergers, name changes, and changes to business forms to clearly state that you do not need to assign your lease or grant interest in these cases. Another comment asked whether subletting would be possible under the rule. We consider subletting to be synonymous with assigning.

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

This section contains additional details of the assignment requirements.

We did not make any changes to this section.

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

You are liable for all obligations that accrued under your lease or grant before MMS approves your assignment. If your assignee fails to perform any obligation, you may be responsible for corrective action.

We did not make any changes to this section.

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

The assignee is liable for all obligations once MMS has approved the assignment. The assignee will be responsible to comply with all lease or grant terms and conditions, as well as all applicable regulations.

We did not make any changes to this section.

Reserved Sections (§§ 285.412 Through 285.414)

Sections 285.412 through 285.414 are reserved.

Lease or Grant Suspension

What is a lease or grant suspension? (§ 285.415)

A suspension is an interruption of the term of your lease or grant. You may request, or MMS may order, a suspension. A suspension extends the term of your lease or grant for the length of time the suspension is in effect. Activities may not be conducted on your lease or grant during the period of a suspension unless otherwise directed by MMS.

We did not make any changes to this section.

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

To request a suspension, you must submit a request to MMS containing the details explained in this section.

We did not make any changes to this section.

When may MMS order a suspension? (§ 285.417)

Under this section, MMS may order a suspension to comply with judicial decrees prohibiting some or all activities under your lease or when continued activities pose an imminent threat of serious or irreparable harm or damage to natural resources, life (including human and wildlife), property, etc. This section also states that if you have a suspension from an imminent threat, you may be required to conduct a site-specific study to resume activities. One commenter stated that the possible requirement to conduct such a study could be interpreted to require automatic preparation of a NEPA or National Historic Preservation Act (NHPA) study. The requirements of NEPA or NHPA would not automatically be invoked if a site-specific study was required to resume activities. The same commenter also requested that the final rule specify the process for review of a site-specific study. We believe that flexibility in our approach to such studies is important and have not added the requested specifications. We will address this issue in the implementation guidance that we intend to issue after the rule is published.

We did not make any changes to this section.

How will MMS issue a suspension? (§ 285.418)

The MMS may initially issue a suspension order orally, but will follow up with a written order. The written explanation will describe the effect of the suspension order on your lease or grant and any associated activities. The order may also include authorization of certain activities during the period of the suspension.

We did not make any changes to this section.

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

You must take action to comply fully with the terms of a suspension order upon receipt.

We did not make any changes to this section.

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

You must make all payments on your original term obligations until MMS authorizes/orders the suspension. Once the suspension has been issued, MMS may waive your payments during the suspension period. We received a comment recommending an automatic waiver of payment obligations for a suspension requested by a lessee or grantee, or in the absence of such a waiver, the criteria on which MMS will base decisions about payment obligations under such suspensions. We do not believe that automatic waivers should be granted for a suspension requested by a lessee or grantee because

a suspension may be necessitated by circumstances created or significantly contributed to by the lessee or grantee. It is important that MMS have discretion in deciding the circumstances under which payment obligations will continue under suspensions; therefore, we have not added criteria on which to base such decisions in the text of the rule.

We did not make any changes to this section.

How long will a suspension be in effect? (§ 285.421)

A suspension will be in effect for a period specified by MMS. However, if you request a suspension, MMS will not approve a suspension request longer than 2 years. We received a comment recommending an increase in the maximum suspension period to 5 years. In the interest of avoiding delays in lease development, we have retained the maximum suspension period at 2 years.

We did not make any changes to this section.

Reserved Sections (§§ 285.422 Through 285.424)

Sections 285.422 through 285.424 are reserved.

Lease or Grant Renewal

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

The MMS may approve a renewal request to conduct substantially similar activities that were authorized under the original lease or grant. The MMS will not approve a renewal request that involves development of renewable energy not originally authorized in the lease or grant. We received several comments recommending automatic renewals. We have not adopted those recommendations because we are concerned that continuation of inefficient or obsolete operations could result.

We also received a recommendation to adopt the following criteria for considering lease renewals that were offered for comment in the proposed rule:

(1) Design life of existing technology;

(2) Availability and feasibility of new technology;

(3) Environmental and safety record of the lessee;

(4) Operational and financial compliance record of the lessee; and

(5) Competitive interest and fair return considerations.

We have adopted these criteria in § 285.429 along with an additional criterion suggested by the commenter. Application of these criteria will be addressed in the implementation guidance that we plan to issue after the rule is published.

Specific procedures detailing how an entity operating a FERC-licensed hydrokinetic project on an MMS-issued lease may obtain a lease renewal will need to be developed, and will be proposed at a later time. In accordance with the terms of the April 2009 DOI/FERC MOU, the MMS and FERC will work together to establish an efficient process to allow lessees to obtain such renewals.

We did not make any changes to this section.

When must I submit my request for renewal? (§ 285.426)

This section specifies when you must request a renewal. You must submit your request for a renewal no later than 180 days before the termination date of your limited lease or grant, and no later than 2 years before the termination date of the operations term of your commercial lease. We received a comment requesting clarification that a lessee would be allowed to upgrade equipment and apply for a lease renewal much earlier (e.g., 15 years into the lease). This approach is possible under the rule and will be addressed in the guidance document that we intend to issue after the rule is published.

We did not make any changes to this section.

How long is a renewal? (§ 285.427)

The MMS will set the term of a renewal on a case-by-case basis not to exceed the original term of the lease or grant. We received a comment recommending that the renewal term be shorter. Shorter terms are available under the rule. Another commenter called for providing a longer term in particular circumstances. We have revised this section to provide for renewal of a commercial lease for a duration not to exceed the original term or for a longer term negotiated by applicable parties. We have retained the same term for limited leases, and we have clarified that renewed grants will continue indefinitely unless otherwise stated.

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

If you request a renewal, you must continue all payments and may continue to conduct your approved activities until your lease expires, or until we make a determination on your request. We received a comment requesting clarification that a lessee or grantee who has requested a renewal will be able to continue operating after lease or grant termination while the request is pending decision by MMS. We have revised paragraph (a) to make this clarification.

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

As described previously, this section was added to provide criteria that MMS will consider in processing a lease or grant renewal request.

Reserved Sections (§§ 285.430 Through 285.431)

Sections 285.430 through 285.431 are reserved.

Lease or Grant Termination

When does my lease or grant terminate? (§ 285.432)

Your lease or grant terminates upon the expiration of the applicable term, cancellation by the Secretary, or approval of your relinquishment. We received a comment recommending that this section provide for leases continuing while renewal requests are pending. We have revised paragraph (a) to include such a provision.

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

After your lease or grant terminates, you must make all payments due and perform any other outstanding obligations under the lease or grant (including decommissioning). We have changed the timeframe in subsection (b) to 2 years to conform to our revision of § 285.902(a), which now calls for meeting decommissioning requirements within 2 years following lease or grant termination.

Reserved Section (§ 285.434)

Section 285.434 is reserved.

Lease or Grant Relinquishment

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

To surrender a lease or grant, you must submit a relinquishment application to MMS. The application will include the information required in this section such as identifying information and contact information. You are responsible for all payment obligations until the relinquishment is in effect.

We did not make any changes to this section.

Lease or Grant Contraction

Can MMS require lease or grant contraction? (§ 285.436)

The MMS may review your lease or grant area, at intervals no more frequent than every 5 years, to determine whether the lease or grant area is larger than needed to develop the project and manage activities in a manner that is consistent with the provisions of this part. The MMS will notify you of our proposal to contract the lease or grant area and give you the opportunity to present, orally or in writing, information demonstrating that you need the area in question to manage lease activities consistent with these regulations. Prior to taking action to contract the lease or grant area, MMS will issue a decision addressing your contentions that the area is needed. We received several comments expressing concern that MMS might act arbitrarily or overreach in applying this section. We believe this section appropriately safeguards the rights of lessees and grantees by providing notification and opportunity to challenge contraction decisions.

We did not make any changes to this section.

Lease or Grant Cancellation

When can my lease or grant be canceled? (§ 285.437)

The Secretary may cancel your lease or grant if you obtained it fraudulently; if you fail to comply with laws and regulations; if it is required for national security reasons; or if your activities cause serious harm or damage to natural resources, life, property, etc. In the proposed rule, we stated that, in certain circumstances, the Federal Government may provide compensation if your lease is cancelled. Section 285.437(c) in the proposed rule provided that, in the event that we cancelled a lease or grant under (b)(3) or (b)(4) of § 285.437, compensation would be provided as appropriate to the extent funds are authorized and appropriated for such purposes. This provision was removed because the compensation as a result of such a cancellation under paragraphs (b)(3) or (b)(4) of this section would have to be determined on a case-by-case basis. Consequently, the proposed provision provided no guarantees to lessees or grantees and might have created unrealistic expectations.

Two commenters stated that the rule should expressly provide for affected States and Federal agencies to recommend cancellation. We believe that any interested or affected party may approach MMS with a recommendation to cancel a lease or grant under the rule. Another commenter requested that compensation for cancellation be specified in the rule.

We made the changes described previously to this section.

Subpart E—Payments and Financial Assurance Requirements

Overview

This subpart provides the payment structure for renewable energy leases that implements subsection 8(p)(2) of the OCS Lands Act (43 U.S.C. 1337(p)(2)) which directs the Secretary to establish royalties, fees, rents, bonuses, or other payments to ensure a fair return to the United States for any lease, easement, or ROW granted for renewable energy activity on the OCS. This also applies to leases, easements, and rights-of-way issued for FERC-licensed hydrokinetic projects. We intend to ensure a fair return through a combination of payments. In addition to up-front acquisition fees or bonus payments for renewable energy leases, we will charge acreage-based rents for technology assessment activities on limited leases. On commercial leases we will charge acreage-based rents for the pre-development phases of renewable energy production ventures and their ancillary facilities, and a share of revenues from the renewable energy production phase in the form of an operating fee. You can find a detailed summary of how MMS selected our approach to payments in the NPR. For commercial leases issued for FERC-licensed hydrokinetic projects, the operating fee will be determined on a case-by-case basis.

Financial Assurance Requirements

This portion of subpart E is intended to minimize the risk of financial loss to the Federal Government if lessees, operators, and grant holders default in fulfilling their obligations under this rule and other applicable laws or regulations. The final rule will fulfill that purpose in two ways: (1) Through the prequalification of lessees, operators, and grant holders, and (2) by requiring the provision of sufficient financial security to assure that lessee, operator, and grant holder obligations can be fulfilled by a third party in the event of default. The rule anticipates different requirements for ranges of activities for commercial production leases, limited leases, ROW grants, and RUE grants.

The financial assurance portion of the rule is divided into four general areas:

(1) Basic financial assurance requirements for commercial leases;

(2) Financial assurance for limited leases, ROW grants, and RUE grants;

(3) Requirements for financial assurance instruments; and

(4) Changes in financial assurance.

Basic Financial Assurance Requirements for Commercial Leases

The financial assurance requirements for commercial leases ensure the performance of the following lease obligations:

(a) Rents and other payments due the Government over the next 12 months;

(b) Any past due rents and/or other payments;

(c) Other monetary obligations; and

(d) Project decommissioning and lease cleanup.

Before MMS will issue a commercial lease, the prospective lessee must provide either a lease-specific $100,000 bond; alternative financial assurance that the Regional Director determines protects U.S. interests to the same extent as the bond; or evidence that your designated lease operator has provided commensurate financial assurance.

Additional bonds/financial assurance are required before MMS will approve a SAP or a COP. The amount of this additional bond/financial assurance will be determined by MMS and will be based upon the type and number of facilities to be used in your planned activities.

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

The final rule requires that when you obtain a limited lease, ROW grant, or RUE grant, you must post a lease or grant-specific bond or other approved financial assurance in the amount of $300,000. Unlike commercial leases, further financial assurance is not automatically triggered by applications for activity such as the SAP and the GAP. However, MMS may require you to increase your level of financial assurance as activities progress on your limited lease or grant.

Requirements for Financial Assurance Instruments

This portion of the final rule sets forth the requirements for the financial instrument you use. The financial instrument must be payable to MMS upon demand, on a form approved by MMS, and guarantee compliance with all terms and conditions of the lease or grant. Surety bonds must be issued by a surety listed in the current Department of the Treasury Circular 570.

This portion of the final rule also provides guidance on the types of financial instruments that MMS will accept.

Changes in Financial Assurance

This portion of the final rule sets forth additional financial assurance requirements such as termination or reduction of financial assurance instruments and reduction of required bond amounts. Also included are requirements such as forfeiture of bonds and supplemental bonds.

Revenue Sharing

This portion of the final rule addresses the requirements related to section 8(p)(2)(B) of the OCS Lands Act (43 U.S.C. 1337(p)(2)(B)), which describes how revenues received by the Federal Government as a result of payments from renewable energy projects or alternate uses of existing facilities are to be shared, in some cases, with affected States. Sections 285.540 through 285.543 set forth a process for implementing revenue sharing from renewable energy projects.

We will share 27 percent of revenues from a project that is within 3 miles of State submerged lands with all States within 15 miles of the geographical center of the project. The proportion of revenues to be shared by an eligible State depends on the distance from the geographical center of the qualified project area to the nearest point of the State's coastline. The MMS will base State revenue sharing eligibility and proportionate shares due the eligible States on the objective measure of the lease area active at the end of the fiscal year in which MMS collects the sharable revenue. The configuration of the area on the last day of the fiscal year will be used to determine eligible State payments for that year regardless of when during that year a change may have occurred in the dimensions of the lease or grant. This procedure combines the objective basis for revenue sharing with the need to make adjustments due to changes in project area over the life cycle of a project. The fiscal year-end is an administratively efficient point for establishing revenue shares from all renewable energy projects.

At the time MMS published the NPR, we had not fully resolved whether a State was eligible for revenue sharing if part of the project area is located within 3 nautical miles of the seaward boundary of that coastal State but the nearest point on that State's coastline was more than 15 miles from the geographical center of the qualified project area. Although the proposed regulatory text stipulated that in this scenario such a State would be eligible for revenue sharing, we included a question in the NPR asking whether our interpretation of the statutory language in subsection 388 of the EPAct was reasonable and provided the most equitable distribution of the revenue to coastal States. In response to this question, MMS received one comment requesting clarification on the provisional MMS interpretation that a State farther than 15 miles from the geographic center of the qualified project area would be eligible for revenue sharing.

We have re-examined the statutory language in subsection 388 of the EPAct and have concluded that allowing a State to be eligible for revenue sharing when its nearest coastal point is farther than 15 miles from the geographic center of the project area would not be consistent with the statutory language. Accordingly, we have revised the final rule to reflect a more literal reading of the statute. Therefore, revenues from a project will not be shared with a State if the nearest point on its coastline is not within 15 miles of the geographic center of a qualified project area, even if a portion of the qualified project area is located within 3 nautical miles of that State's seaward boundary.

A project is qualified (its revenues may be shared with States) if the project is located wholly or partially within the area extending 3 nautical miles seaward of State submerged lands. The MMS will determine and announce the project area (for each qualified project) and its geographic center at the time it grants or issues a lease, easement, or ROW on the OCS for the purpose of a specific qualified project. The distance between the closest point on a State's coastline to the geographic center of the qualified project area is the sole determinant of whether or not a State or any State is eligible for sharing the revenues from that qualified project. States having the nearest point along their coastlines within 15 miles of the geographic center of the qualified project area will be eligible for revenue sharing, while those States not satisfying this criterion will not be eligible. Consideration of whether or not a qualified project area extends into a State's 8(g) zone will not be used to determine a State's eligibility for revenue sharing. Location within 3 miles of some State's submerged lands is only relevant to determining if a project is subject to revenue sharing under subsection 388 of the EPAct 2005.

Areas granted for transmission cables and other off-lease infrastructure on project easements will not be considered part of the project area for purposes of determining the geographic center of the project or whether the project is within 3 miles of State submerged lands. However, revenues from project easements will be shared as revenues of the qualified project to which they appertain. Only proximity of a State's coastline to the geographic center of the qualified project area would be a factor in allocating revenues among eligible States, should more than one State be eligible. If a qualified project area changes in size or shape as a result of contraction or modification of the lease or grant, MMS will re-determine the geographic center of the project area to re-determine eligibility and to adjust the allocations among States.

We received a number of comments with respect to disproportionate effects due to activity on a given lease. The MMS considered, but rejected, the option of defining a special project area that differs from the lease area to try to account for situations when proximity might not be a good surrogate for effects that could be compensated by revenue sharing payments. The MMS rejected this idea because the statute requires us to base the allocation formula solely on proximity to the project. To respond to such situations, we will adjust lease acreage as the project evolves, re-determine the geographic center of the project area, identify eligible States, and determine the eligible State proportionate shares in a timely manner.

We received comments indicating that the inverse distance formula does not equitably distribute revenue among eligible States as additional factors other than proximity should be used to determine the impact the lease's project would have on States. However, subsection 388 of the EPAct requires that equitable distribution of revenues among States be determined by a formula that is based on the proximity of the eligible States to the project.

The MMS also received comments recommending that mitigation costs, such as civil penalties for environmental damages, be considered as revenue eligible for distribution as part of State revenue sharing. The rule provides that MMS collect payments in the form of bonuses, acquisition fees, rentals, and operating fees to ensure the receipt of fair value for the acreage that MMS leases to generate power from renewable energy resources on the OCS.

As a commenter suggests, it is possible that the leaseholder or operator may provide a State or other entity compensation for impacts; however any agreement would not be facilitated by the DOI, and the funds would not be subject to revenue sharing. The revenue resulting from these payments under section 8(p)(2)(A) of the OCS Lands Act are the types of receipts that qualify for

State revenue sharing. Other types of revenues, not constituting payment for the use of Federal property, such as the proceeds from forfeiture of a surety bond or other form of financial assurance, cost recovery fees, and civil penalties, are not subject to revenue sharing. The MMS may assess civil penalties as authorized under the OCS Lands Act and referenced in § 285.400(f) of this regulation. However, any civil penalties levied for noncompliance of lease obligations, including civil penalties for environmental damage, are excluded under the State revenue sharing provisions since they are not revenue from payments under section 8(p)(2)(A) of the OCS Lands Act. Accordingly, we have added language to the definition of ''revenues'' in § 285.112 to clarify this distinction between payments that do and do not qualify for State revenue sharing.

As a commenter suggests, it is possible that the leaseholder or operator may provide a State or other entity compensation for impacts; however, any such compensation would not be revenues received by the DOI subject to revenue sharing.

Section-by-Section Discussion for Subpart E

Payments

How do I make payments under this part? (§ 285.500)

This section explains how persons would submit application and filing fees, as well as payments due under the provisions of leases, easements, and ROW grants. Some payments will be made electronically through the Pay.Gov Web site at: *https://www.pay.gov/paygov/*. Other payments will be made directly to the Minerals Revenue Management office in Denver, Colorado. We plan to promulgate subsequent regulations to describe specific payment procedures for the Alternative Energy and Alternate Use Program.

Depending on the method of award we select for issuing a lease or grant, project proponents that seek a lease, easement, or ROW on the OCS for renewable energy activities may be required to submit a bonus or other up-front cash payment for a lease or grant issued competitively, or an acquisition fee for a lease or grant issued noncompetitively. Lessees will pay rent during the preliminary and site assessment terms. During the operations term, after commercial generation begins, commercial leaseholders would pay operating fees or a rent. We are not requiring operating payments for limited leases, easements, and ROW grants because they would not be issued for the purposes of commercial generation. Only rent would be paid by limited leaseholders for each year of a specified lease term, and would be paid by grantees for as long as an easement or ROW is in effect.

We did not make any changes to this section.

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

This section provides the deposit requirements for persons submitting a bonus or other cash payments on a competitive lease, ROW grant, or RUE grant. Sealed bids would be offered with a deposit of 20 percent of the bid amount, unless otherwise specified in the Final Sale Notice. Bidders participating in ascending auctions would deposit a cash payment as established in the Final Sale Notice. Procedures for submitting the balance owed on accepted high bids would also be established in the Final Sale Notice. We require a 20 percent deposit on sealed bids submitted in oil and gas sales to assure bids are genuine, but through the lease sale process, we will consider proposals for setting a different deposit requirement for renewable energy lease sales as they are scheduled. Successful bidders that fail to execute the lease within the prescribed time will forfeit their deposits. The MMS is implementing a similar requirement for renewable energy competitive auctions.

We did not make any changes to this section.

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

Developers may submit unsolicited applications for renewable energy leases. The MMS is required by law to give the public notice of such applications, and determine if other parties are interested in competing for the lease rights. We will require an acquisition fee payment when applying for a noncompetitive lease. We will not require an acquisition fee payment when applying for a noncompetitive ROW grant or RUE grant. In cases where there is no competitive interest, we may issue a lease to the applicant. We set the acquisition fee of $0.25 per acre for noncompetitive leases, unless otherwise set by the Director. For example, an application to lease a single OCS block of 25 square miles in area, or 16,000 acres, would be submitted with an acquisition fee of $4,000. In the event we do not issue a noncompetitive lease to you, we will refund your acquisition fee.

If, after public notice we make the determination that there is competitive interest, a lease or grant sale would be held. If the applicant submits a qualified bid, the acquisition fee would be applied to the applicant's bid for the lease. If the applicant does not bid for or acquire the lease, we would not refund the acquisition fee.

We will not require an acquisition fee payment when applying for a noncompetitive ROW grant or RUE grant.

We did not make any changes to this section.

What are the rent and operating fee requirements for a commercial lease? (§ 285.503)

This section provides a rent rate of $3 per acre per year for a commercial lease, unless we specify a different rate in the Final Sale Notice for leases issued on a competitive basis. When we issue a commercial lease noncompetitively, the elements of the rent and any adjustments to it would be stated in the lease instrument. Rent for the first 6 months, or preliminary term, would be due 45 days after we issue your lease. Rent for the next 12 months and for each subsequent year during the site assessment term would be due at the beginning of the year for the entire lease area until commercial generation begins under an approved COP, which begins the operations term and when the obligation to pay operating fees would begin. We will apply an interest charge to late rent from renewable energy leases as we do to other late payments under 30 CFR 218.54.

We may specify the payment of rent during part, or all, of the operations term, instead of or in addition to operating fees, in the Final Sale Notice for leases issued on a competitive basis. We reserve this right partly to make any adjustments that may be needed in connection with the operating fee structure in § 285.506.

For example, when a lease is developed in phases, both rent and operating fees may be due on different parts of the commercial lease during the same time period. Rent would be paid on portions of the lease not authorized for commercial development, and operating fees could be required for the portion of the lease with commercial operations.

A variety of considerations are behind our baseline $3-per-acre rent value, subject to change in the Final Sale Notice for competitively issued leases. In general, a rent payment serves several purposes. It provides a fair return to the United States for the opportunity cost of precluding other incompatible uses of

the OCS area. Also, it serves as a holding cost that encourages the lessee to expedite development of the project on the area. Under some circumstances, we may determine that charging progressively higher rents over time would be desirable to obtain a fair return and to encourage diligent operations. In those cases, we may adopt a rent rate schedule instead of a constant rent rate.

The baseline commercial renewable energy lease rent rate of $3 per acre is less than ½ of the rental rate of $6.25 per acre for oil and gas leases in shallow waters of the Gulf of Mexico issued in 2007. Rents, as well as operating fees, in these regulations for commercial renewable energy leases are lower than those for other uses of the OCS, such as oil and gas development, in part to encourage industry to invest in offshore renewable energy technology. Another reason for setting lower payment rates is the lower environmental costs of generating electricity with renewable energy, rather than fossil fuels such as oil, gas, and coal, as discussed in the Overview to this part. Since external costs of electricity generated from renewable energy are much lower than external costs of electricity generated from fossil fuels, we provide for relatively lower payments by renewable energy developers to encourage investment.

Based on comments MMS received, we modified this section to require that the payment of the operating fee starts when commercial generation begins, instead of with the approval of the COP.

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

This is a new section that we added to clarify how developing your lease in phases would affect your payments.

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

This section provides a $3-per-acre per year rent rate for a limited lease, unless a different rate is specified in the Final Sale Notice for leases issued on a competitive basis. When we issue a limited lease noncompetitively, the rent and any adjustments to it would be established in the lease instrument. Rent for the first 6 months will be due when MMS issues the lease. Rent for the next 12 months and for each subsequent year will be due at the beginning of the year for the entire lease area through the end of the lease term. We will apply an interest charge to late rents from renewable energy leases as we apply under 30 CFR 218.54. These rent requirements are equivalent to those on a commercial renewable energy lease during the preliminary and site assessment terms, before commercial generation begins. We also have added a statement that no operating fee will be charged for the authorized sale of power from limited leases.

We renumbered this section to accommodate a new section, § 285.504. We did not make any other changes to this section.

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

This section provides that the annual operating fee payments for commercial renewable energy leases will be determined by a formula related to the anticipated, rather than actual, gross value of the electricity generated on the lease. Upon commencement of electricity production for commercial projects under an approved COP, rent payments will cease. We will apply a production charge in the form of a capacity-based operating fee payment. This operating fee will not apply to limited leases because those leases do not allow commercial production of energy. Operating fee payments will be due on a schedule established in the Final Sale Notice and lease. We will also apply an interest charge to late operating fees from renewable energy leases as we do under 30 CFR 218.54. The following is the formula for determining the annual operating fee:

$$F\ (\text{annual operating fee}) = M\ (\text{nameplate capacity}) * H\ (\text{hours per year}) * c\ (\text{capacity factor}) * P\ (\text{power price per unit of production}) * r\ (\text{operating fee rate})$$

The operating fee rate r, like a royalty rate, is one element in the formula. The other elements serve as reasonable and easily observable proxy measures of the output and price related to a specific operation.

Based on the comments that we have received regarding the timing of the operating fee payment, the operating fee rate will be set at 2 percent for each year of the operating term, beginning at the time that the generating facility starts generating electricity commercially, unless we specify otherwise in the Final Sale Notice for competitively issued leases. We may set a time limit as to when the rent payments, following approval of the COP, would cease and the operating fee payment would commence, and/or we may increase the rental fee during this time in order to ensure that the construction and commercial operations specified in the lessee's approved COP are done in a timely manner. For example, we may fix a date of 2 years after the time when the COP would have likely been approved under normal circumstances, when the operating fee would commence regardless of whether the generating facility actually begins producing electricity. Alternatively, we may not set a time limit but rather provide that the rent fee escalate for each year of construction, such that the rent fee rate would be $3/acre/year in the first year after the COP is approved, $6/acre/year in the next year, etc. Any adjustments to the rent fee and/or the inclusion of a fixed date when operating fees would commence will be specified in the Final Sale Notice or the lease. We will establish initial values for the other elements in the formula, such as the power price and capacity factor, in the lease and provide for the periodical revision of the initially selected values based on new information. When we issue a commercial lease noncompetitively, the elements of the operating fee and any adjustments will be set forth in the lease.

Using these payment terms, lease revenues for a commercial lease in any given year would depend on the phase of the project and the relevant prices as designated by MMS for electricity in the State. The lease rent and operating fee payments can be illustrated with the following example for wind energy. An offshore wind lease, issued noncompetitively, on 12,000 acres of the OCS would be required to pay $36,000 annually based on a charge of $3 per acre in rent during the site assessment term under § 285.503. Once we approve the COP and the generating facility begins generating electricity commercially, the operating fees will be payable. For a lease with an installed capacity of 200 MW and an operating capacity factor of 0.38, i.e., 38 percent, the operating fee would be $666,000 annually if the applicable wholesale power price was $50 per megawatt hour. Additionally, if the approved project

plan has easements covering 2,000 acres, an additional $10,000 in rents ($5.00 per acre) would be collected per year under § 285.506.

Although a number of comments we received recommended that a production-based operating fee be used, we were not persuaded with such arguments and did believe a change from the proposed capacity-based operating fee was warranted. During the production phase of a project, a capacity-based operating fee, rather than a production amount or value-based fee, has several advantages. The capacity-based fee avoids detailed audits of production sales accounts and lessens the likelihood of subsequent disagreements and legal challenges.

The MMS believes that there are good reasons for requiring a higher rental rate or operating fee higher during the operating period than the charges imposed during the preliminary and site assessment period. First, a lease with proven resource potential is likely more valuable and should command a higher payment. Second, the lessee will be using the leased area more intensively during the construction work phase. While there is no depletion of a public asset, as there is with oil or gas, they are causing increased disturbances of the seabed.

Prior to holding a lease sale, a high level of uncertainty may exist in the estimation of the amount of energy a given facility may generate based upon the resource potential and technology. In the interest of reducing uncertainty and stimulating investment in renewable energy projects, we may initially use a 2-percent fee rate for commercial renewable energy leases. However, although there is a baseline 2-percent fee rate in the regulation subject to revisions in the Final Sale Notice, we reserve the right to adjust the rate.

For leases issued competitively, a renewable energy lease on the OCS may be issued, depending on the bidding system, with a constant or sliding operating fee rate. However, in response to the number of comments received recommending deferral of more complex bidding system, we will likely use a bidding system that is relatively simple and straightforward for the first lease sales, such as using a cash bonus as the bid variable and setting a constant operating fee rate. If the operating fee rate is constant, it may only vary from one year to the next if MMS approves a request for reduction or waiver.

With a sliding fee rate, the operating fees may automatically change over the life of a lease according to a sliding scale schedule specified in the Final Sale Notice and/or lease. The term sliding in this context applies generally to any change in the operating fee rate over time or other increment. A sliding fee rate may provide for future adjustments based on the analysis of either market data or actual project data. It may also provide that the fee rate used to calculate the operating fee changes in a specific manner at predetermined time intervals. If a sliding operating fee rate is used as a bid variable in an auction, MMS would specify a mathematical function to determine changes to the value of the operating fee over time, and the function variable which would be bid. The sliding operating fee in any year would be the amount derived from this function in conjunction with the operating fee formula.

We received comments expressing concern that MMS would make unilateral adjustments to the components of the operating fee formula, which would result in increased uncertainty for project proponents. Adjustments maybe made to the power price and capacity factor components of the operating fee formula without a reduction or waiver application, as specified in § 285.510. We will specify how the adjustments will be made in the Final Sale Notice and the lease instrument.

Based on the number of comments that we have received recommending the use of the wholesale power price for the State where the transmission makes landfall in the operating fee formula, we have accepted that recommendation and made the appropriate changes in the final rule. The power price component will be adjusted on an annual basis using publicly available information from an independent outside source, the Department of Energy, Energy Information Agency (EIA), to reflect prevailing conditions. However, we retain the authority to adjust that published value to reflect variations by State within a region, as well as current market conditions that may be better captured in the published retail power price. For example, if the published wholesale power price for a State is 2 years old, we may use the retail power price, which may be just a year old, to scale the wholesale power price for that State. We also retain the flexibility to use more timely or disaggregated wholesale power price indices.

We reserve the right to review relevant capacity factor information as it relates to the formula, established in subpart E, and adjust the value used in the operating fee formula accordingly. Upon the completion of the first year of commercial operations on the lease, MMS may adjust the capacity factor (representing 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) to reflect operating experience during that first production year. The MMS may also retain the initial capacity factor if it is determined to be a reasonable value, and defer an adjustment of the capacity factor to a subsequent year. Thereafter, MMS may adjust the capacity factor no earlier than every 5 years from the most recent year that MMS adjusts the capacity factor. The process by which MMS will adjust the capacity factor, including any calculations, will be specified in the lease instrument. For example, a generating facility may have an initial capacity factor set at 35 percent in the lease, but at the end of the first full year of operations, the actual capacity utilization for the generating facility was 34 percent. The MMS may adjust the capacity factor and lower it to 34 percent for the next 5 years in order to reflect more accurately future production of the generating facility in the annual operating fee formula. Alternatively, if MMS determines that the existing capacity factor is a better representation of future use than was evidenced by actual utilization in year one, then MMS may leave the original capacity factor in place for a number of years, say in this example for 4 years. Following the end of that year, the process is repeated in 5-year intervals thereafter, with MMS choosing whether to keep the existing capacity factor in place, or to rely on experience during the most recent 5-year period.

If MMS chooses to rely on actual experience, it must select the rolling average capacity utilization of the most recent experience between the timing of price adjustment decisions. To facilitate the adjustment of the capacity factor, the lessee will be required to submit to MMS the gross annual generation of electricity by the generating facility on the lease, using the appropriate form provided by EIA to collect the generation information or a form otherwise required by MMS. In either the case of a competitively or noncompetitively issued lease, we may reduce or waive fee rates under the process given in § 285.510.

We would establish operating fees for activities not related to the generation of electricity, such as the generation of hydrogen, on a case-by-case basis through the lease sale process. Operating fees and other payment requirements for activities conducted as an alternate use of an OCS facility, such as an oil and gas platform, previously authorized under the OCS Lands Act,

are explained in subpart J of these regulations.

We would establish operating fees for hydrokinetic activities requiring a FERC license on a case-by-case basis. This would give MMS the flexibility to adjust the operating fee rate for these projects, taking into consideration that hydrokinetic technologies are in a nascent stage of development and that FERC may require payments from the project developer as well.

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

This section provides an annual rent rate of $5 per acre for project easements, or a minimum of $450 per year, which will be due initially upon approval of the COP or GAP. Subsequent payments will be made on an annual basis, probably in conjunction with payments due under § 285.505, unless we specify otherwise in the lease for the associated commercial project. The width of the area covered by a project easement for a cable or pipeline would be 200 feet. The area covered by an installation, outside of the cable or pipeline corridor, would be limited to the areal extent of anchor chains, other devices, or facilities associated with the installation.

We grant ROW easements for electrical cables and pipelines under the existing oil and gas program, similar to project easements under the Alternative Energy Program. Rent rates for grants issued through the oil and gas program are specified by regulation and provide a precedent. The level of compensation due to the government for grants issued under the oil and gas program is an appropriate analog for uses under the program. Accordingly, we will charge project easement holders a constant rent rate equal to $5 per acre, commencing with our approval of your COP or GAP and continuing until lease termination.

We renumbered this section to accommodate a new section, § 285.504. We did not make any other changes to this section.

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

This section provides the rent rates for ROW grant and RUE grants. Rent rates for renewable energy ROWs parallel rents considered fair and reasonable for oil and gas ROWs, and will be due in the amount of $70 per statute mile that a ROW crosses. For sites outside the main corridor, MMS will charge an additional rent of $5 per acre, or a minimum of $450 per year. Likewise, rent rates for a renewable energy RUE parallel those for oil and gas RUEs, and will be charged at an annual rent rate of $5 per acre, or a minimum of $450 per year. The first rent payment will be due when the ROW or RUE request is filed. Subsequent payments must be made on an annual basis, for a 5 year period or for multiples of 5 years. We apply the same interest charge to late rents due on ROW grants or RUE grants for renewable energy projects as we do to late payments from oil and gas ROWs and RUEs under 30 CFR 218.54.

ROW authorizations approved under the oil and gas program are granted for electrical cables and pipelines, and similar requests will also be approved under the Alternative Energy Program. The value of compensation due to the government for ROW grants issued under the oil and gas program, which also appears to be an appropriate analog for renewable energy activities, forms a useful precedent. As discussed in the last paragraph of the preceding section on project easements, the rent requirements for a renewable energy RUE are related to the payment requirements for oil and gas RUEs.

We renumbered this section to accommodate a new section, § 285.504. We did not make any other changes to this section.

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

For each lease, easement, ROW or RUE, one person, designated as payor, will be responsible for making all payments. All lessees and the payor must maintain auditable records in accordance with regulations in subpart A. We may also issue guidance related to recordkeeping.

We renumbered this section to accommodate a new section, § 285.504. We did not make any other changes to this section.

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

This section provides that the MMS Director has the authority to reduce or waive a rent or operating fee, including components of the operating fee such as the fee rate or capacity factor, when necessary to encourage continued or additional activities. Applications to modify lease payment terms must include information that demonstrates that continued or additional activity would not be economic without the reductions or waiver requested. No more than 6 years of your operations term will be subject to a full waiver of the operating fee.

It is our intent to use relevant electricity market and operating information to set the initial values for the power price and capacity factor of the operating fee formula, and to revise the same parameters after a lease is issued, as discussed in §§ 285.506(c)(2) and (3). Beyond that mechanism for revising payment requirements, the Director may consider a reduction or waiver of payments. In practice, we anticipate that most requests for reduced payments would involve a reduction in the fee rate of the operating fee formula. The Director may authorize such reductions if an applicant can show that market or operating conditions have changed significantly in a way that reduces project cash flows to uneconomic levels.

We renumbered this section to accommodate a new section, § 285.504. We did not make any other changes to this section.

Reserved Sections (§§ 285.511 Through 285.514)

Sections 285.511 through 285.514 are reserved.

Financial Assurance Requirements for Commercial Leases

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

Before MMS will issue a commercial lease, the applicant must provide either a $100,000 basic lease-specific bond or another MMS-approved financial assurance. You may also satisfy this requirement by providing proof that your designated lease operator provided the bond or approved financial assurance.

We changed the word ''security'' to ''financial assurance.'' We did not make any other changes to this section.

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

Minimum financial assurance requirements for each stage of lease development are presented in this section. A $100,000 basic bond or other financial assurance is required at lease issuance. A second bond or pledged financial instrument, in an amount determined by MMS, is due before the MMS will approve your SAP. And a third bond or pledged financial instrument, in an amount determined by MMS, is due before the MMS will approve your COP or before FERC issues a license for a hydrokinetic project.

As the rule was proposed, the COP supplemental bond would cover all obligations on a lease accrued after the approval of the COP, including decommissioning costs. However, based on comments, we modified this provision to add a separate bond

specifically to cover decommissioning costs. Before you install facilities under your approved COP or FERC license, you must provide a decommissioning bond or other approved assurance. The amount of the decommissioning bond will be based on the anticipated decommissioning costs. The MMS may allow you to provide the decommissioning bond in stages, based on the schedule for facility installation. The MMS must approve the schedule for providing this bond.

We made conforming changes throughout this section to reflect FERC's role in regulating hydrokinetic activity.

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

The MMS will determine the amount required for each bond by considering projected amounts of rents and other payments due the government over the next 12 months; any past due rents or other payments; and the costs of lease abandonment and cleanup. You may increase an existing bond or use a combination of existing bonds and other approved forms of financial assurance to satisfy your requirements.

We made minor edits to this section, including conforming changes to reflect FERC's role in regulating hydrokinetic activity.

Reserved Sections (§§ 285.518 Through 285.519)

Sections 285.518 through 285.519 are reserved.

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

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

Before MMS will issue a limited lease, ROW grant, or RUE grant, the applicant must provide either a $300,000 basic limited lease or grant-specific bond or another MMS-approved financial assurance. The basic bond for a limited lease or grant is higher than the basic bond on a commercial lease because we anticipate that obligations on a limited lease or grant will begin to accrue sooner, but will not be as extensive as the obligations on a commercial lease. With the commercial lease, we have established periods to reassess the bond amount (i.e., before approving the SAP or the COP). We do not have these automatic reassessments under a limited lease or grant. Also, a limited lease has a short term, only 5 years, and we do not anticipate reassessing the bond amount unless the applicant proposes significant or complex facilities. You may also satisfy this requirement by providing proof that your designated limited lease or grant operator provided the bond or approved financial assurance.

We revised parts of this section to conform with changes we made to bonding requirements in §§ 285.526 through 285.529.

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

The MMS may require you to provide additional financial assurance as activities on your lease progress to cover projected liabilities of rents and other payments due the government over the next 12 months; any past due rents or other payments; and the costs of lease abandonment and cleanup increase.

We revised paragraph (a)(4) to make it consistent with § 285.517. We also added a new paragraph to add the option for a separate decommissioning bond or other form of financial assurance, as we did with commercial leases.

Reserved Sections (§§ 285.522 Through 285.524)

Sections 285.522 through 285.524 are reserved.

Requirements for Financial Assurance Instruments

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

All bonds and other forms of financial assurance must be payable to MMS upon demand and be in a form approved by MMS. Your surety bonds must be issued by a certified surety listed in the current Treasury Circular 570. This section also provides instructions on executing your bond and when your surety must notify you and the MMS due to changes in its Treasury certification status, insolvency, or bankruptcy.

We did not make any changes to this section.

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

You may utilize alternative financial assurance instruments when MMS determines that they protect the interests of the U.S. Government to the same extent as a bond. If using an alternative financial assurance instrument, you must monitor its value and must provide the authority for MMS to sell it and use the proceeds if the MMS determines that you have failed to satisfy any lease obligation.

Based on comments that we received, requesting more financial assurance options, MMS added options for:

- Negotiable U.S. Government, State, and Municipal securities or bonds;
- Investment-grade rated securities; or
- Insurance.

These security instruments must protect MMS to the same extent as a surety bond.

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

The MMS added a new section to allow you to demonstrate financial strength and reliability, instead of a bond or other form of financial assurance, to meet the financial assurance requirements under this part. This section was added based on comments we received requesting such an option. This section details the requirements for demonstrating financial strength and reliability.

May I use a third-party guaranty to meet the financial assurance requirement for lease or grant activities? (§ 285.528)

The MMS added this section to allow use of a third-party guaranty to meet financial assurance requirements. This section was added in response to comments requesting more options to meeting the financial assurance requirements under this part. The section details the requirements for using a third-party guaranty.

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

The MMS may authorize you to establish a decommissioning account in a federally insured institution with certain limitations to satisfy that portion of your financial assurance obligation that is for decommissioning. Funds may not be withdrawn without prior MMS approval, and must be pledged to meet your decommissioning and site clearance obligations. This section also discusses how interest paid on the account must be treated and when we may allow the use of Treasury Securities to satisfy the obligation to make payments into the account.

We did not make any changes to the regulatory text of this section; however, we renumbered this section from § 285.527 to § 285.529 to accommodate new sections.

Changes in Financial Assurance

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

This section discusses the steps you must take if your surety loses Treasury certification, becomes insolvent, or has its charter suspended, or if your approved financial assurance expires. You must promptly notify MMS and provide new financial assurance.

We did not make any edits to this section.

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

This section requires that additional financial assurance be provided whenever the value of the current assurance falls below the required amount.

We did not make any changes to this section.

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

This section describes the liabilities that accrue during a period of liability and provides requirements that a surety must follow when requesting to terminate the period of liability under its bond.

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

The MMS will release a bond or allow a surety to cancel a bond only when all obligations covered by the bond have been completed satisfactorily or MMS accepts a replacement bond or alternative form of financial assurance that covers the existing liabilities from the period covered by the bond to be cancelled. This section describes when your period of liability ends, when your financial assurance will be released by MMS, and how the MMS may approve a reduction in the amount of your approved financial assurance if portions of your lease obligations have been satisfactorily completed.

We did not make any changes to this section.

When may MMS cancel my bond? (§ 285.534)

This section presents a comprehensive table which displays the different types of bonds required in this subpart, and when the period of liability ends. The table further displays when the bond will be released under a variety of circumstances.

We did not make any changes to this section.

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

The MMS may call for forfeiture of your bond if you default on any of the conditions under which you accepted your bond or refuse or fail to comply with any term or condition of your lease or grant.

We did not make any changes to this section.

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

This section specifies that you and your surety will be notified in writing of the call for forfeiture and will be provided the reasons for the MMS action. The MMS will also advise you and your surety in writing of the actions you must take within 10 days to avoid forfeiture.

We did not make any changes to this section.

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

This section explains that you and any co-lessee or co-grant holders are jointly and severally liable for the full cost of corrective actions on your lease or grant, even if they exceed the amount collected under your bond. The MMS may take or direct action to recover all costs in excess of the forfeited bonds.

We did not make any changes to this section.

Reserved Sections (§§ 285.538 Through 285.539)

Sections §§ 285.538 through 285.539 are reserved.

Revenue Sharing With States

Sections 285.540 through 285.543 of this rule describes the factors MMS will consider in determining how to equitably distribute revenues among eligible States.

How will MMS equitably distribute revenues to States? (§ 285.540)

This section provides the procedure for calculating the State shares of revenue. To determine each eligible State's share of the 27 percent of the revenues received by the Federal Government for a qualified project, MMS will use the inverse distance formula, based on the shortest distance between State coastlines and the geographic center of the qualified project area. This is the formula used for the same purpose under the Coastal Impact Assistance Program administered by MMS.

We made minor changes to this section to clarify that revenues do not include administrative fees such as service fees and those assessed for civil penalties and forfeiture of bond or other surety obligations.

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

This is a new section that describes what projects qualify for revenue sharing purposes. A qualified project for the purpose of revenue sharing with eligible coastal States consists of lease acreage that is wholly or partially located within the area extending 3 nautical miles seaward of State submerged lands.

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

This is a new section that describes how MMS will determine if a State is 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 qualified project area. A State is not eligible for revenue sharing if all points on 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 no State's coastline is located within 15 miles from the announced geographic center of the qualified project area, and thus no State would share revenues from the project.

Example of How the Inverse Distance Formula Works (§ 285.543)

This is a revised section that illustrates several examples of how the inverse distance formula works.

Example (a). A qualified project area is located partially within the zone extending 3 miles seaward of State A's submerged lands. The geographic center of the qualified project area is more than 15 miles from the coastline of any State. In this scenario, no State would be eligible for payment of Federal revenues from that qualified project. This is the case because the distance from the geographic center of the qualified project area to the nearest point on each of the States' coastline is greater than 15 miles, which is the only determinant as to whether or not a State is eligible for payment of revenues.

Example (b). A qualified project area is located partially within the zone extending 3 nautical miles seaward of State A's submerged lands. The geographic center of the qualified project area is within 15 miles of State B's coastline, but is farther than 15 miles from State A's coastline. In this scenario, State B would receive the entirety of the 27 percent of revenues to be shared from the project. This is the case because State A's proximity to the

geographic center of the qualified project area is greater than 15 miles, even though the qualified project area is located partially within the zone extending 3 miles seaward of State A's submerged lands. Again, the location of the project area within 3 nautical miles of a State's submerged lands is only used to determine if a project is subject to revenue sharing (i.e., is a qualified project) and is not used to determine any State's eligibility for payment of revenue from a qualified project.

Example (c). A qualified project area is located partially within the zone extending 3 nautical miles seaward of State C's submerged lands. The geographic center of the qualified project area is within 15 miles of both State A's and State B's coastline, but is farther than 15 miles from any other States' coastline, including State C. In this scenario, State A and State B would split the 27 percent of revenues to be shared from the project. The sharing between these two States would be based on their proximity to the geographic center of the qualified project area. To elaborate, assume that the geographic center of the qualified project area lies 12 miles from the closest point on State A's coastline and 4 miles from the closest point on State B's coastline. Pursuant to the inverse distance formula, eligible States with coastlines that are farther from the geographic center of a qualified project area would get proportionally lower revenue shares from the project.

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

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

Therefore, State B, being three times closer than State A to the center of the qualified project's area, would receive a share that is three times larger than State A's share.

Eligible States share the 27 percent of the total revenues from the qualified project as mandated under the EPAct. Hence, if the qualified project generates $1,000,000 of revenues in a given year, the Federal Government would distribute the States' 27 percent shares as follows, rounded to the nearest whole dollar:

State A's share = $270,000 × 1/4 = $67,500.

State B's share = $270,000 × 3/4 = $202,500.

Subpart F—Plans and Information Requirements

Overview

Subpart F describes the types of plans and information requirements for commercial leases, limited leases, ROW grants, and RUE grants for renewable energy activities. The subpart outlines the timing of submission, content requirements, and necessary MMS approvals for each of the plans. The types of required plans are described in the next section. The lessee, grant holder, or operator must submit the appropriate plan to MMS for review and approval before beginning any activities covered by that plan.

Types of Plans

Three types of plans are required, depending on the type of instrument held and the activity to be conducted:

(1) Site Assessment Plan (SAP),

(2) Construction and Operations Plan (COP), and

(3) General Activities Plan (GAP).

The SAP and the COP will be used for commercial leases, while the GAP will be used for limited leases and grants.

As originally proposed, MMS would not allow a lease or grant holder to conduct *any* activities on the OCS without proper plan submittal and MMS approval. Based on comments received on the proposed rule, MMS has determined that geophysical and geological surveys, hazards surveys, archaeological surveys, and baseline collection studies (e.g., biological) conducted for the purpose of preparing SAPs, COPs, and GAPs may be permitted under the authority of the U.S. Army Corps of Engineers (ACOE). In many instances, these types of activities may be verified under the ACOE's Nationwide Permit program. We have revised the regulation to remove the requirement for MMS approval of these types of surveys and the requirement to describe the survey designs in a SAP, COP, or GAP. Companies may now conduct these surveys pre- or post-lease/grant, subject to ACOE verification under the Nationwide Permit program or other appropriate authorization and other applicable Federal law. However, MMS strongly encourages applicants to coordinate any pre- or post-lease/grant survey activities with MMS and the ACOE prior to their conduct to ensure that the activities being proposed meet the conditions of the Nationwide Permits. Certain Nationwide Permits require that an applicant notify the ACOE and receive verification that an activity is covered under a Nationwide Permit prior to start of construction. Applicants will be required to submit the results of their surveys as part of their SAP, COP, or GAP. The data collected from these surveys must meet the technical requirements that MMS will set forth in guidance to be published after the promulgation of this rule. By making this change, MMS believes that applicants will be able to complete their plans more efficiently. Any construction activities (e.g., installation of a meteorological tower, a meteorological buoy) or the testing of technology devices needs to be proposed in the SAP, COP, or GAP. We have changed the text of the rule to reflect these changes.

Based on comments, we have reduced the number of NEPA and CZMA reviews for a commercial lease issued competitively from three to two by combining the lease sale and site assessment activities into one review. This, in combination with the elimination of MMS approval of surveys (e.g., geophysical, geological, archaeological, and biological), should greatly reduce the review time for commercial leases issued competitively. The MMS will prepare a NEPA document and a consistency determination to cover the lease sale and site assessment activities. The MMS may review the effects of geophysical, geological, archaeological, and biological surveys in the NEPA documentation for the lease sale, as well.

Also based on comments received on the proposed rule, we will now include technology testing as an activity that may be conducted under a SAP or a GAP. We have changed the definition of *site assessment activities* to ''those initial activities conducted to characterize a site on the OCS, such as resource assessment surveys (e.g., meteorological and oceanographic) or technology testing.''

Prior to conducting site assessment activities on a commercial lease, a lessee will be required to submit a SAP. The SAP describes the activities (e.g., installation of meteorological towers, meteorological buoys) a lessee plans to perform for the characterization of their commercial lease, including the project easement, or to test technology devices. The 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). If you propose to construct a facility or combination of facilities, which MMS determines to be complex or significant, you must also comply with the requirements of subpart G.

A COP will be required before a lessee may begin construction and/or operations on a commercial lease, including a project easement. The COP describes the construction, operations, and conceptual decommissioning activities the lessee plans to undertake.

A GAP will be required before a lessee or grantee may begin activities on a limited lease (including a project easement, as applicable) or ROW grant or RUE grant. The GAP describes the site assessment and/or development activities. The GAP must describe: (1) Resources assessment surveys (e.g., meteorological and oceanographic data collection); (2) technology testing; and (3) construction activities, operations, and conceptual decommissioning plans for all planned facilities. The GAP must include the data from: (1) Physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys); (2) baseline environmental surveys (e.g., biological, archaeological, or socioeconomic surveys); and (3) construction activities, operations, and conceptual decommissioning plans for all planned facilities.

The rule requires two plans for a commercial lease (SAP and COP) and one plan (GAP) for limited leases and ROW grants or RUE grants. We chose this approach for a commercial lease because there are two distinct phases for commercial development for renewable energy projects: (1) A site assessment phase, where a lessee may install a meteorological or marine data collection facility to assess renewable energy resources; and (2) a generation of power phase, which includes construction, operations, and decommissioning. As described previously, physical characterization studies (e.g., geological and geophysical surveys, hazard and archaeological surveys) and baseline collection studies (e.g., biological) may be permitted under the ACOE Nationwide Permit program and other applicable Federal law. Therefore, the survey designs will not need to be included in a SAP, COP, or GAP, nor will they need to receive approval from MMS prior to implementation.

Limited leases are limited to resource measurements or technology testing and are not for the commercial generation of power. Therefore, only one phase exists, and only one plan, a GAP, is required for this phase. Having only one plan for one phase allows for a simple process to conduct resource evaluation or technology testing. The same reasoning was used for ROW grants and RUE grants—these grants do not involve commercial power generation activities on the OCS.

Overview of Required Plans

The two plans for commercial development are a SAP and a COP. These plans should clearly describe the general approach to the project and include detailed technical and environmental information. The two-plan approach for commercial activities sets two defined times for conducting NEPA analysis and CZMA reviews. These plans must include all the information needed to conduct appropriate NEPA analysis and for compliance with other Federal laws. Based on comments received on the proposed rule, we have revised the rule to clarify the CZMA reviews for SAPs, COPs, and GAPs. For purposes of Federal consistency, MMS will treat plans (COPs and GAPs) associated with competitively-issued commercial and limited leases as OCS plans which must comply with requirements of CZMA subsection 307(c)(3)(B) and 15 CFR part 930, subpart E. The applicant must submit one copy of their CZMA consistency certification with each plan. The MMS will prepare a consistency determination for a competitive lease sale and site assessment activities.

The MMS will treat SAPs and GAPs associated with noncompetitively-issued commercial and limited leases as Federal licenses and permits which must comply with requirements of CZMA subsection 307(c)(3)(A) and 15 CFR part 930, subpart D. The applicant will be required to prepare a consistency certification and concurrently submit it to the affected State's CZM agency and MMS along with the proposed SAP or GAP and all supporting information required in 15 CFR part 930, subpart D. The details of the CZMA process are described under ''CZMA Compliance for Plans.'' This approach includes a predictable schedule for development and milestones for plan submittals.

The SAP covers resource, other data gathering activities (e.g., meteorological, oceanographic), and the testing of technology devices that would be conducted to gather information needed to develop the project. The SAP includes the results and data collected from physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys) and baseline environmental surveys (e.g., biological and archaeological surveys) conducted prior to the preparation of the SAP and under the authority of the ACOE and other Federal laws. However, MMS strongly encourages applicants to coordinate any pre- or post-lease/grant survey activities with MMS and the ACOE prior to their conduct. Applicants will be required to submit the results of their surveys as part of their SAP, COP, or GAP. The data collected from these surveys must meet the technical requirements that MMS will set forth in guidance to be issued after the rule is final. The data gathered under the SAP would be used to develop the COP for the project. The site assessment activities may include resource assessment surveys (e.g., meteorological and oceanographic data collection), and the testing of technology devices. Additionally, a SAP may include the construction of simple facilities for data collection, such as meteorological towers. However, if you are constructing a facility or a combination of facilities deemed by MMS to be complex or significant, you must comply with the requirements of subpart G and submit a Safety Management System. The SAP expires when MMS approves the COP. To conduct site assessment type activities after a COP is approved, the applicant would need to include those activities in the COP.

To facilitate development of a commercial lease, an applicant may choose to submit to MMS a COP with the SAP. In this case, the NEPA analysis, CZMA review, and compliance with other relevant laws would be done at one time. If the applicant decides to submit the COP and SAP simultaneously, then sufficient data and information must be submitted with the COP for MMS to conduct needed technical, NEPA, and other required reviews. If new information becomes available after the applicant completes the site assessment activities, then the COP may require revision. Furthermore, MMS may need to conduct additional reviews, including NEPA, CZMA, and other Federal reviews, on any new information.

The COP describes the construction and operations for the project itself, covering all planned facilities, including onshore and support facilities, and all anticipated project easements needed for the project. It also describes the actual activities related to the project including construction, commercial operations, maintenance, and decommissioning. The COP does not need to repeat information that was previously submitted in the SAP, but should reference such material. The COP includes the results of the activities conducted under the SAP. The COP must demonstrate to MMS that the operator has planned and is prepared to conduct the proposed activities in a manner that conforms to their responsibilities under these regulations. It also must demonstrate that the project:

- Will conform to all applicable laws, implementing regulations, lease provisions and stipulations, or conditions of the commercial lease;
- Is safe;
- Does not unreasonably interfere with other uses of the OCS, including

those involved with national security or defense;

- Does not cause undue harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment;
- Does not cause undue harm or damage to sites, structures, or objects of historical or archaeological significance;
- Will use best available and safest technology, will use best management practices, and will employ properly trained personnel.

Limited leases, ROW grants, and RUE grants will require approval of a GAP. The GAP includes components of both the SAP and the COP. However, we expect that limited leases, ROWs, and RUEs would involve less extensive activities than those planned for a commercial lease. The applicant may include multiple scenarios in the GAP to address the potential outcome of the site assessment activities, so that multiple locations would be evaluated as part of the NEPA analysis. If, after evaluating the site, the initially planned location of a facility needs to be relocated, additional NEPA would not be required since alternative locations were evaluated in the NEPA for the GAP.

Site Assessment Plan (SAP)

The SAP describes the activities (e.g., installation of meteorological towers, meteorological buoys) a lessee plans to perform for the characterization of their commercial lease, including testing technology devices. These activities would take place during the site assessment term of a commercial lease. The data obtained during site assessment is used to develop a COP and is included in the COP. The activities proposed in a SAP may include the installation of facilities (including vessels) attached to the sea floor, such as meteorological towers to measure winds, radars to assess avian resources, or marine data collection facilities to measure waves or currents; or the testing of technology devices. The MMS expects that the applicant would conduct physical characterization surveys and baseline environmental surveys prior to the preparation of the SAP, and include the results and supporting data from those surveys in the SAP. Information contained in the SAP must provide sufficient detail for MMS to adequately assess the proposed activities and ensure compliance with NEPA and other relevant Federal laws.

The MMS must approve the SAP before the operator can begin conducting any proposed activities. If MMS approves the SAP, the operator may begin conducting activities, including the installation of facilities. However, if you are constructing a facility or a combination of facilities deemed by MMS to be complex or significant, you must comply with the requirements of subpart G and submit a Safety Management System before construction may begin.

When MMS receives the applicant's COP for technical and environmental review, MMS may extend the site-assessment term during the review period, if necessary. The SAP expires when MMS approves the COP. Therefore, if an applicant anticipates conducting site assessment activities anytime during the COP period, those activities must be described in the COP, and the applicant must receive MMS approval of the COP before conducting the activities.

Subpart F outlines what issues the applicant must address in the SAP such as legal requirements, safety, other uses of the OCS, environmental protection, technology, best management practices, and the use of properly trained personnel. The provisions also outline the information that the applicant must submit with the SAP as well as additional information that must be submitted if the SAP includes activities that require the installation of bottom-founded facilities. The MMS envisions that most such facilities would be relatively simple and temporary. However, if an operator proposes to install a facility that the MMS determines is significant or complex, additional information would be required. If MMS makes such a determination, you must submit a Facility Design Report and a Facility Fabrication and Installation Report, as described in subpart G, and a Safety Management System, as described in subpart H, before any construction may begin. The Facility Design Report provides MMS with a detailed description of the proposed facility or facilities and locations on the OCS. The Fabrication and Installation Report describes the lessee/operator's or grant holder's plans for both the facility's fabrication and installation process. The MMS will review these reports prior to each stage of these operations.

One commenter suggested that applicant preparation and MMS review and approval of the Facility Design Report and Fabrication and Installation Report should proceed in parallel with MMS's preparation of the EIS and review of the COP. The commenter suggested that proceeding in parallel could reduce the overall project development timeline by 4–6 months. The regulations bind the Facility Design Report and the Fabrication and Installation Report to the approved COP. This is necessary to ensure that these two reports cover the activities and facilities as approved. As written, the regulations do not prevent an applicant from submitting the Facility Design Report or the Fabrication and Installation Report with the COP. However, we envision that there will be changes to the COP during its review and that such changes could result in revisions to the Facility Design Report and the Fabrication and Installation Report. If that situation occurs, the applicant would have to revise and resubmit the two required reports. We do not see that submittal of the Facility Design Report and Fabrication and Installation Report with the COP saves much, if any, time leading up to the installation of facilities, but we will not prevent an applicant from doing so.

For commercial leases acquired noncompetitively, you must submit the SAP within 60 days after the MMS determination of no competitive interest. The MMS will not issue the lease until the SAP is approved. If you acquired a commercial lease competitively, you must submit the SAP within 6 months of the date of lease issuance. A commenter raised the concern that these time periods may not provide enough time to conduct the needed assessments and incorporate them into a plan. We believe that the time period is adequate to prepare a SAP. However, if more time is needed, the lessee may request a suspension under § 285.416(c) after acquiring the lease. We will conduct technical and environmental reviews. In this case, the NEPA and CZMA reviews would be completed at the lease sale stage. However, if new information from the SAP submittal showed changes in impacts identified at the lease sale stage, the SAP could be subjected to further environmental review. If the lease was obtained noncompetitively, the applicant will be required to prepare a consistency certification and concurrently submit it to the affected State's CZM agency and MMS along with the proposed SAP or GAP, as well as all supporting information required in 15 CFR part 930, subpart D. After the reviews are complete, MMS would approve, disapprove, or approve with modifications the SAP. Based on comments received on the proposed rule, we have revised the rule to clarify our process for when a State objects to the consistency certification. When a State objects to the consistency certification, MMS will not approve the plan if: (1) Consistency has not been

conclusively presumed; or (2) the State objects to the applicant's consistency certification, and the Secretary of Commerce has not found that the permitted activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security.

In response to a comment asking how MMS will determine ''affected States'' for CZMA purposes, MMS will coordinate with the appropriate CZMA agencies and consult with regional task forces. The MMS will specify the terms and conditions of the approval, and you must incorporate these into your SAP. If the SAP is approved or approved with modifications, the applicant must conduct all site assessment activities in accordance with the provisions of the approved plan. The MMS may require the applicant to certify compliance with certain of the terms and conditions as identified by the MMS. If MMS does not approve the SAP, we will provide an explanation of our disapproval, and the applicant may modify and resubmit the revised SAP.

One commenter asked us to identify the type of document MMS will issue as its final decision on a SAP or COP. The MMS will issue decision letters for a SAP, COP, and GAP. In addition, where an EIS is prepared, a ROD will be issued. In cases where an EA is prepared, either a Finding of No Significant Impact would be prepared (in addition to the decision letter), or, depending on the outcome of the environmental review, an EIS could be prepared.

One commenter stated that the proposed rule is unclear as to the process available to States or other stakeholders to address and remedy disagreements arising from the content of the SAP, GAP or COP, other than that offered by the comment review process. The commenter stated that this process is particularly important where a ROW easement crosses the State territorial sea. The commenter recommends that MMS develop language to include such a process. The MMS will work closely with affected States and local governments to coordinate and consult on such activities to ensure that related issues and concerns are addressed. For competitive leases, MMS addresses potential impacts from a subsea cable route through State waters in the lease sale, COP, and GAP NEPA documentation. The MMS may consider performing this assessment with an affected State in a joint environmental document. Since MMS's authority is limited to the OCS (outside of State waters), the affected State would have full authority to decide on access issues within State waters.

If you want to conduct activities not directly addressed in the approved SAP, you must provide MMS with a written description of the proposed activities and receive approval from MMS before conducting the activities. We will determine whether the activities are within the scope of the approved SAP or if the SAP needs to be revised. If MMS determines that you must revise the SAP, then MMS must approve the revised SAP before you can conduct the activities.

Construction and Operations Plan (COP)

The COP describes the construction, operations, and conceptual decommissioning plans for the operations term of any project under a commercial lease, including your project easement. Your plan should describe all operations and facilities (onshore and offshore) that would be installed and used to test, gather, transport, transmit, or generate and distribute energy from the lease. The COP should include:

- Nominations of CVAs for MMS approval or request of an exemption, where required;
- Preliminary plans for project design, facility fabrication and installation, and production transportation and transmission;
- Plans for safety management, inspection, maintenance, and monitoring systems; and
- The decommissioning concept.

The rule outlines the process for preparing, submitting, processing, and implementing a COP or a combined SAP/COP. The MMS must approve the COP or the combined SAP/COP before you can construct any facilities for commercial operation.

As with the SAP, the provisions of the rule outline what a COP must contain and demonstrate, as well as how the COP is submitted, processed, and authorized. The MMS may require additional specific information for submittal with the COP, to aid in the appropriate reviews of the project by external agencies and to assist in compliance with all relevant Federal laws and regulations (e.g., NEPA, CZMA, ESA, and MMPA). We may request additional information if the information provided is insufficient. However, the COP does not need to repeat information that was previously submitted in the SAP, but should reference such material.

For commercial leases acquired noncompetitively and competitively, you must submit a COP within 5 years after MMS approves your SAP. The MMS will extend the term of the SAP, if necessary, while conducting the technical and environmental reviews of your COP. We will conduct these technical and environmental reviews of your COP, including NEPA analysis, and, for leases issued competitively, will forward the plan, your consistency certification and information required pursuant to 15 CFR part 930, subpart E to affected States for CZMA review. For leases issued in a noncompetitive process, you will be required to prepare a consistency certification and concurrently submit it to the affected State's CZM agency and MMS along with the proposed COP and all supporting information required in 15 CFR part 930, subpart D. After the reviews are complete, MMS would approve, disapprove, or approve with modifications the COP. Based on comments received on the proposed rule, we have revised the rule to clarify our decision process when a State objects to the consistency certification. When a State objects to the consistency certification, MMS will not approve the plan if: (1) Consistency has not been conclusively presumed; or (2) the State objects to the applicant's consistency certification, and the Secretary of Commerce has not found that the permitted activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security. The MMS will specify the terms and conditions of the approval, and they would be incorporated into your COP. If MMS approves the COP or approves the COP with modifications, the applicant must conduct all of the proposed activities in accordance with the provisions of the approved plan and certify compliance with those terms and conditions identified by the MMS. If MMS does not approve the COP, we will provide an explanation of our disapproval, and the applicant may modify and resubmit the revised COP.

If MMS approves your project easement, we will issue an addendum to your lease specifying the terms of the easement. The project easement will provide for areas off the original lease areas for cable, pipeline, or associated facilities. Areas for cable and pipelines may 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. For associated facilities, the area is limited to the area reasonably necessary for power stations for electricity or

pumping stations for other energy products such as hydrogen.

You may propose in your COP to develop your lease in phases. You must clearly provide details as to the portions of the lease that will be initially developed for commercial operations, and the portions of the lease that will be reserved for subsequent phased development.

If MMS approves your COP, you must commence construction by the date given in your construction schedule, as stated in the approved COP. The MMS may approve a deviation from this schedule. However, before you may construct and install facilities under the approved COP, you must submit to MMS a Facility Design Report and a Fabrication and Installation Report. You may commence commercial operations 30 days after the CVA or project engineer has submitted the final Fabrication and Installation Report to MMS. The activities described in these two reports must fall within the scope of the approved COP, or you will be required to submit a revision to the COP for approval before commencing the activity.

A COP may require further revisions and potentially require additional or new environmental and regulatory reviews. You must notify MMS in writing before you conduct any activities not described in your approved COP, describing in detail the activities you propose to conduct. The MMS will determine whether the proposed activities may be conducted under your existing COP or will require a revision to the COP. We may request that you provide additional information to us to make this determination. The MMS will periodically review an approved COP and may determine, based on the significance of any changes in information and environmental conditions affecting activities, that revisions are necessary. The revisions may require new environmental and technical reviews.

Any time you cease commercial operations without an MMS approved suspension, you must notify MMS. The MMS may cancel your lease, and you must start the decommissioning process if you cease commercial operations for a period longer than 6 months.

When you complete the commercial operations under your approved COP, you must start the decommissioning process described in subpart I of this part.

General Activities Plan (GAP)

The GAP describes the operator's planned activities for a limited lease, ROW grant, or RUE grant. It includes information similar to what is required in a SAP, as well as additional information concerning planned activities throughout the term of the lease or grant. As with the SAP, the GAP must be submitted within 6 months of competitive issuance of a lease or grant or within 60 days after the determination of no competitive interest for a lease or grant being pursued noncompetitively. In some cases, a GAP would describe activities that are analogous to those covered in a COP for a commercial lease, i.e., if you are proposing a facility deemed by MMS to be complex or significant. Review, approval, and revision of a GAP will be subject to requirements and procedures similar to those applied to SAPs and COPs.

NEPA Compliance for Plans

The MMS action on the SAP, COP, and GAP would require the preparation of appropriate NEPA documentation. We anticipate that, initially, all commercial development projects will require an EIS for the COP. Also, we anticipate that limited leases and RUE and ROW grants will initially require an EIS. After the impacts and related mitigation of renewable energy activities on the OCS are better understood, it is possible that projects may require an EA. As the program matures, MMS will review the impacts from the program and make a determination whether we can recommend categorical exclusions for certain activities to the Council on Environmental Quality. For competitively issued commercial leases, MMS will prepare a lease sale and site assessment NEPA review to include the SAP activities. The applicant must provide MMS with the data necessary to complete the required NEPA documentation for other types of plans. This would include a description of those resources, conditions, and activities that could be affected by your proposed activities, or that could affect the activities proposed in your plan, including associated construction and decommissioning activities. An applicant may reference information that was included in the MMS NEPA review prepared for the lease. The required information would include, but is not limited to, information on the following:

- Hazard information including meteorology, oceanography, or manmade hazards;
- Water quality including turbidity and total suspended solids from construction;
- Biological resources including benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, plankton, barrier islands, beaches, dunes, wetlands, seagrasses and plant life;
- Threatened or endangered species including critical habitats, as defined by the Endangered Species Act of 1973;
- Sensitive biological resources or habitats including essential fish habitat, refuges, preserves, special management areas identified in coastal management programs (CMPs), sanctuaries, rookeries, hard bottom habitats, chemosynthetic communities, and calving grounds;
- Archaeological resources including historic and prehistoric archaeological resources to meet the requirements of the National Historic Preservation Act of 1966, as amended, and associated regulations;
- Social and economic information, including 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;
- Coastal and marine uses including military activities, vessel traffic, and mineral exploration or development; and
- Other resources, conditions, and activities as identified by MMS.

The MMS may decide to use a third party to prepare the NEPA document. However, you may ask for our approval to perform, or to directly pay a contractor for, the NEPA document (see subpart A, § 285.111).

One commenter suggested that in order for States and local governments to use the MMS NEPA document for their ''equivalent'' environmental process, several analyses and information needs would need to be included. The MMS will work closely with affected States and local governments to coordinate and consult on activities proposed under this program to ensure efficient preparation of environmental reviews. These reviews may be conducted jointly by MMS and other appropriate agencies or separately.

The MMS received numerous comments regarding cumulative impacts. It was stated that, as more renewable energy projects are developed on the OCS, the cumulative effects of those projects may compound individual effects and put an additional strain on the ecology of the marine environment. The MMS shares the concerns of the commenters regarding cumulative effects. We will work closely

with Federal agencies, affected States, local governments, and other stakeholders to coordinate and consult on activities proposed under this program and to identify critical issues including their cumulative effects. Cumulative effects will be assessed at each stage of environmental review of projects, including lease sales, in order to identify such effects and to recommend appropriate mitigation measures and monitoring.

One commenter requested that MMS incorporate the requirement of adaptive management into the rule. We designed the structure of the regulations to reflect the approach of adaptive management. Operating companies are required to demonstrate and validate their performance. The MMS will set forth terms and conditions to be incorporated into plans and will determine when to require adjustments to mitigation and monitoring activities based on operating experience. Lessees are required to certify compliance with certain of those terms and conditions. Also, refer to the preamble discussion in subpart H.

CZMA Compliance for Plans: Based on comments received on the proposed rule, we have clarified the rule with respect to CZMA compliance. For purposes of Federal consistency, MMS will treat plans (COPs, and GAPs) associated with competitively-issued commercial and limited leases as OCS plans which must comply with requirements of CZMA subsection 307(c)(3)(B) and 15 CFR part 930, subpart E. The MMS will treat COPs associated with noncompetitively-issued commercial leases as OCS plans which must comply with requirements of CZMA subsection 307(c)(3)(B) and 15 CFR part 930, subpart E. The plans must describe all federally licensed or permitted activities and operations proposed on the MMS-issued lease, ROW grant, or RUE grant. The lease or grant holder will be required to prepare a consistency certification to submit to MMS with the proposed plan. The MMS will send one copy of the plan, supporting information, and consistency certification to the affected State CZM agency. The State agency will then determine whether the supplied information is adequate for its review. When the State agency has adequate information, it will begin its consistency review and either concur with or object to the consistency certification. For SAPs submitted under a competitive lease, MMS will prepare a consistency determination that will cover the lease sale and site assessment activities.

The MMS will treat SAPs and GAPs associated with noncompetitively-issued commercial and limited leases as Federal licenses and permits which must comply with requirements of CZMA subsection 307(c)(3)(A) and 15 CFR part 930, subpart D. The applicant will be required to prepare a consistency certification and concurrently submit it to the affected State's CZM Agency and MMS along with the proposed SAP or GAP and all supporting information required in 15 CFR part 930, subpart D. The State agency will then determine whether the supplied information is adequate for its review. When the State agency has adequate information, it will begin its consistency review and either concur with or object to the consistency certification.

The MMS will treat a combined COP and SAP associated with a noncompetitive commercial lease as a Federal license and permit which must comply with requirements of CZMA subsection 307(c)(3)(A) and 15 CFR part 930, subpart D.

Subsequent consistency reviews for revisions for SAPs, COPs, and GAPs are not required unless MMS determines that the revisions: (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.

For CZMA compliance purposes, when a State objects to the consistency certification, MMS will not approve the plan if: (1) Consistency has not been conclusively presumed; or (2) the State objects to the applicant's consistency certification, and the Secretary of Commerce has not found that the permitted activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security.

NEPA and CZMA Compliance for Additional Reports and Approvals

The NEPA and CZMA compliance for a project will be addressed in the MMS decision process for the SAP, COP, or GAP. The reports and applications that are required relating to facility design, fabrication, installation, and decommissioning are intended to provide MMS with specific technical details on the project as approved in the SAP, COP, or GAP. If these documents present activities that fall outside the scope of your approved SAP, COP, or GAP, then you will be required to submit a revision to your SAP, COP, or GAP. Additional NEPA or CZMA review may be required if the revisions for facility design, fabrication, installations, or decommissioning:

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

(2) Require any additional authorizations; or

(3) Propose activities not previously identified and evaluated.

Frequency of NEPA/CZMA Reviews Based on the Type of Lease or Grant

The number of NEPA and CZMA reviews that would be conducted on your lease or grant is determined by the type of lease or grant that you hold (Table 2). For a competitive, commercial lease, MMS would conduct two NEPA and two CZMA reviews—one NEPA and CZMA review for the lease sale action, *and* the SAP activities, and one NEPA and CZMA review for the COP. We reduced the number of reviews we identified in the proposed rule from 3 to 2 in the final rule by covering SAP activities in the lease issuance reviews (e.g., lease sale or noncompetitive lease NEPA documents). This should greatly reduce the processing time for a SAP. However, if new information becomes available upon SAP submission that identifies potential impacts that were not previously identified and evaluated, additional review (including NEPA and CZMA) may be required. Applicants with competitive, commercial leases could reduce the review time and gain efficiency by submitting the COP with the SAP. The MMS received comments to allow the COP and SAP to be submitted simultaneously; however, this option was available in the proposed rule. It is an option in the final rule for those applicants that provide sufficient data and information with the COP for MMS to complete the needed technical, NEPA, CZMA, and other required reviews. For a noncompetitive commercial lease, two NEPA and two CZMA reviews would be required—one for the lease with the SAP and one for the COP. Since MMS requires the applicant to submit a SAP or a GAP within 60 days after the Director issues a determination that there is no competitive interest for the lease or grant, the SAP would be reviewed under the same review for the lease issuance. Efficiency is gained in this example because MMS can conduct reviews on the SAP and the lease at the same time. Again, the rule allows the applicant to submit a combined SAP/COP, which could result in additional efficiencies.

For limited leases, two NEPA and two CZMA reviews would be required for a competitive limited lease and one review for a noncompetitive limited lease. The reviews for the competitive limited lease would be conducted on the lease sale action and the GAP, while

the noncompetitive limited lease would have a simultaneous review of the lease issuance and the GAP.

We envision that all ROW grants and RUE grants would likely be noncompetitive. The ROW/RUE issuance action and the GAP would be reviewed under NEPA and CZMA simultaneously. In the unlikely case of a competitive ROW/RUE grant, a separate NEPA and CZMA review would be conducted on the ROW/RUE sale and the GAP.

Table 2. Frequency of NEPA/CZMA reviews based on instrument held.

Instrument Held	MMS Process	NEPA Documentation and CZMA Review
Competitive Commercial Lease	Conduct lease sale and issue decision on plans	1. Lease Sale and SAP activities EIS 2. COP*
Noncompetitive Commercial Lease	Negotiate and issue lease	1. Lease Issuance and SAP 2. COP*
Competitive Limited Lease	Conduct lease sale and issue decision on plan	1. Lease Sale 2. GAP
Noncompetitive Limited Lease	Negotiate and issue lease	1. Lease Issuance and GAP
Competitive ROW, RUE Grant	Conduct ROW, RUE sale and issue decision on plan	1. ROW, RUE Sale 2. GAP
Noncompetitive ROW, RUE Grant	Negotiate and issue ROW, RUE grant	1. ROW, RUE issuance and GAP

*Note: the review times may be reduced if the applicant submits a combined SAP/COP or a combined SAP/FERC license application. For commercial hydrokinetic leases FERC will conduct NEPA and CZMA review for license activities.

Section-by-Section Discussion for Subpart F

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

This section describes the three different types of plans that are required to be submitted to MMS for approval. The type of plan that you would submit depends on the type of instrument held and the type of activity to be conducted: SAP, COP, and GAP. The SAP and the COP are used for commercial leases, while the GAP is used for limited leases and grants. Prior to conducting site assessment activities (e.g., resource data collection, technology testing) on a commercial lease, a lessee is required to submit a SAP to MMS for review and approval. A COP is required to be submitted to MMS for review and approval before a lessee may begin construction and/or operations on a commercial lease, including a project easement. A GAP is required to be submitted to MMS for review and approval before a lessee may begin activities on a limited lease or ROW grant or RUE grant including, if applicable, a project easement.

A commenter suggested that the proposed rule was unclear when a SAP and COP or a GAP is required. The comment states, ''The SAP and the COP are used for commercial leases, while the GAP would be used for limited leases and grants. However, § 285.640(a) notes that the GAP may be applicable to the project easement.'' We believe the rule clearly states the requirements for submitting the appropriate plan for a lease, easement, or ROW. A GAP is used if your limited lease includes a project easement. In such a case, the proposed activities for the project easement associated with your limited lease would be described in a GAP.

We did not make any changes to this section.

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

The timing for the submission of your plans depends on whether your lease or grant is issued on a competitive or noncompetitive basis (refer to subpart B for leases or subpart C for grants for further discussion of these types of conveyance). The timing is as follows:

- *Competitively issued lease or grant:* You must submit your SAP or GAP within 6 months of issuance.
- *Noncompetitive lease or grant:* You must submit your SAP or your GAP within 60 days after the Director issues a determination that there is no competitive interest for your lease or grant.
- *Operations for commercial lease:* You must submit a COP or a FERC license application *at least* 6 months before the end of your site assessment term if you intend to continue your commercial lease with an operations term for your commercial lease.

The MMS allows you to submit your COP with your SAP. However, you must submit the necessary data and information with your COP to allow MMS to complete its technical and environmental reviews. In an effort to make the process as streamlined as possible, some commenters suggested that the MMS combine both the SAP and COP into one step or plan, or at least allow the environmental analysis to be completed at one time, thereby reducing the burden on project proponents. They stated that, in some cases, it may be desirable for the lessee to go through both steps, but in others, a lessee may be ready to proceed with commercial operations. It was proposed that MMS would greatly facilitate development by combining the SAP and COP and their required environmental reviews where appropriate and desirable. Section 285.601(d) states that you may submit your COP with your SAP. The NEPA analyses could be performed on both submittals simultaneously.

For hydrokinetic commercial leases you may submit your FERC license application with your SAP. Although details for joint processing of such documents have not yet been developed, MMS and FERC will strive to establish an efficient process to accomplish review and approval,

including NEPA analysis. The MMS will be responsible for regulating approved site assessment activities, and FERC will be responsible for regulating approved construction and operations activities.

We made conforming changes to this section relating to FERC's role in regulating hydrokinetic activity.

Based on comments, we have reduced the number of NEPA and CZMA reviews for a commercial lease issued competitively from three to two by combining the lease sale and site assessment activities into one review. This, in combination with the elimination of MMS approval of site assessment surveys (e.g., geophysical, archaeological, biological), should greatly reduce the review time for commercial leases issued competitively, and would allow applicants to conduct site assessment surveys sooner.

One commenter noted that it is unclear why MMS has proposed to give the applicant only 60 days to prepare the GAP/SAP and all required environmental documentation for a noncompetitive lease, while holders of competitive leases are given 6 months to produce this documentation. The commenter stated that noncompetitive lease applicants should be given at least 6 months as well, noting that the physical impacts to be evaluated in a SAP or GAP will be the same whether a project is leased competitively or noncompetitively. We believe that since an unsolicited request for a noncompetitive lease is initiated by the applicant, 60 days after the publication of a notice of no competitive interest is a sufficient time period to prepare the SAP/GAP. The applicant should have ample time to gather information prior to application for a lease and during the time it takes MMS to make a determination of no competitive interest. However, if more time is needed, the lessee may request a suspension under § 285.416(c) after acquiring the lease. No changes have been made to this section.

What records must I maintain? (§ 285.602)

You must maintain and provide to MMS upon request all data and information related to compliance with required terms and conditions of your SAP, COP, or GAP. You must meet this requirement until MMS releases your financial assurance. Also, while hydrokinetic projects will entail obligations and responsibilities relating to FERC regulation under licenses and exemptions, under the terms and conditions of the lease, you must make available to MMS upon request, data and information for all activities conducted on leases issued under this part to meet our statutory responsibilities as lessor. We did not make any changes to this section.

Reserved Sections (§§ 285.603 Through 285.604)

Sections 285.603 through 285.604 are reserved.

Site Assessment Plan and Information Requirements for Commercial Leases

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

This section describes a SAP. A SAP contains the plans for conducting data gathering and other activities, such as technology testing, to characterize a commercial lease, including the project easement. A SAP must include the results and supporting data from surveys such as physical characterization surveys and baseline surveys. It includes additional requirements for both simple and complex facilities. This section has been substantially revised. Based on comments received on the proposed rule, MMS has determined that geophysical and geological surveys, hazards surveys, archaeological surveys, and baseline collection studies (e.g., biological) conducted for the purpose of preparing SAPs, COPs, and GAPs may be permitted under the authority of the ACOE. In many instances, these types of activities may be verified under the ACOE's Nationwide Permit program. We have revised the regulation to remove the MMS approval of these types of surveys and the requirement to describe the survey designs in a SAP, COP, or GAP. Project proponents and lessees may now conduct these surveys pre- or post-lease/grant, subject to ACOE verification under the Nationwide Permit program or other appropriate approval and other applicable Federal law. However, MMS strongly encourages applicants to coordinate any pre- or post-lease/grant survey activities with MMS and the ACOE prior to their conducting such activities to ensure that the activities being proposed meet the conditions of the Nationwide Permits. Certain Nationwide Permits require that an applicant notify the ACOE and receive verification that an activity is covered under a Nationwide Permit prior to start of construction. Additionally, for competitively issued commercial leases, we will now prepare a NEPA document and a consistency determination that covers both the lease sale and site assessment activities. Applicants and lessees will be required to submit the results of their surveys and supporting data as part of their SAP, COP, or GAP. The data collected from these surveys must meet the technical requirements that MMS will set forth in guidance to be published after the rule is promulgated.

We also added language stating that MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of § 285.113. This text was added in response to commenters who were concerned about the confidentiality of certain proprietary information in their plans.

One commenter did not believe the construction of two or three identical meteorological towers should trigger additional requirements, which will add significantly to the time and expense of SAP submission, and requested that § 285.605(c) be revised. The MMS revised § 285.605(d) to clarify the requirement. This section now states that an applicant must comply with the requirements of subpart G when they propose to construct a facility or combination of facilities that MMS determines to be complex or significant.

What must I demonstrate in my SAP? (§ 285.606)

This section provides details on the requirements for a SAP. The SAP must demonstrate how a lessee will conform to all applicable laws, implementing regulations, lease provisions, and stipulations. The activities conducted under a SAP must:

- Conform to all applicable laws, implementing regulations, lease provisions and stipulations;
- Be safe;
- Not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;
- Not cause undue harm or damage to natural resources, life (including human and wildlife); property; or the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;
- Use best available and safest technology;
- Use best management practices; and
- Use properly trained personnel.

One revision was made to this section—to state that the SAP must demonstrate that the planned site assessment activities will collect the necessary information and data required for the COP. One commenter requested that MMS not require the exact language, ''Best Available and Safest Technology.'' The commenter stated that this requirement is overly

restrictive and inappropriate for a new industry where the economics are challenging, the technology is new and evolving, and there are no accepted design standards. Instead, the commenter suggested, the MMS should require use of ''reasonably available and safe technology,'' noting that these facilities will be unmanned during most of their operation. Also, the commenter stated that the proposed § 285.606(a)(2) already requires that proposed activities be ''safe,'' and this is sufficient to address safety concerns. The commenter concluded that subsection (a)(5) be omitted until and unless a sufficient record of scientific measurement studies demonstrates a need for a tighter safety standard. We kept the requirement of ''Best Available and Safest Technology,'' in § 285.606(a)(5), as it is required for activities conducted pursuant to the OCS Lands Act (43 U.S.C. 1347(b), *et seq.*).

One commenter strongly supports the use of best management practices to ensure that potential adverse impacts associated with the development of renewable energy resources on the OCS are minimized to the greatest extent practicable. We were requested to publish the applicable best management practices in a specific guidance document, which would be updated on a regular basis to reflect recent adaptive management strategies, technology development, and monitoring results. The MMS prepared a Record of Decision (ROD) in December 2007, for its Programmatic EIS on the Alternative Energy Program. The EIS identified initial mitigation measures for the new program by adopting 15 interim policies and 52 initial best management practices. The ROD is published at *http://ocsenergy.anl.gov/documents/docs/OCS_PEIS_ROD.PDF*. New measures will be identified as appropriate. The MMS will provide guidance to applicants after the promulgation of this rule. This guidance will incorporate these best management practices and interim policies.

How do I submit my SAP? (§ 285.607)

This section requires you to submit a paper copy and an electronic copy of the SAP to MMS at the address in § 285.110.

We did not make any changes to this section.

Reserved Sections (§§ 285.608 Through 285.609)

Sections 285.608 through 285.609 are reserved.

Contents of the Site Assessment Plan

What must I include in my SAP? (§ 285.610)

This section contains further detailed requirements on what information must be submitted for SAP applications, including: Identifying information, a discussion of the objectives of the site assessment or technology testing proposal, designation of operator (if applicable), general structural and project design, fabrication and installation information, deployment activities, air emissions, lease stipulations, a listing of all Federal, State, and local authorizations or approvals for projected site assessment activities, a list of entities that you have consulted with regarding the potential impacts of your project, how you will mitigate and monitor impacts, CVA nomination (if required), decommissioning procedures, a statement about other authorizations, financial assurance information, and additional information as requested by MMS. For site assessment activities that include the installation of any facilities (e.g., a meteorological tower, meteorological buoy), additional requirements are listed. They include survey results and supporting data from geotechnical, shallow hazards, archaeological, geological, and biological surveys.

This section was revised to state the requirements for survey results and supporting data and to provide descriptions of any technology testing activities. We also made conforming revisions relating to FERC's role in regulating hydrokinetic activity.

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

This section requires the applicant to submit information needed to assist MMS in preparing compliance documents related to NEPA (EIS or EA) and other relevant laws, including MSA, ESA, and CZMA, that are required for SAP approval. As stated previously, MMS will prepare a NEPA review and consistency determination to cover both the lease sale and site assessment activities. If the action proposed under a competitively issued commercial lease does not change from that described in the environmental reviews conducted for the lease sale and site assessment activities, then no further environmental review would be required for a SAP. However, if MMS determines that the action has changed to the extent that the previously conducted environmental reviews do not cover the activities, then MMS would notify the applicant that additional information and reviews would be required. In this case, and for noncompetitively issued commercial leases, this includes information on resources, conditions, and activities listed in this section that may be affected by or may affect activities proposed and approved in your SAP.

This section also requires the applicant for a noncompetitively issued lease, or if notified by MMS for a competitive commercial lease, to submit a consistency certification for CZMA. The consistency certification must state that the proposed activities covered in the SAP comply with the State(s) approved CMP and that the applicant will conduct these activities in a manner consistent with such a program. For leases issued noncompetitively, the consistency certification must also include ''information'' and ''analysis'' as required by 15 CFR part 930, subpart D.

When leases are issued competitively, the consistency certification must also include ''information'' and ''analysis'' as required by 15 CFR part 930, subpart E.

We revised this section based on comments requesting us to clarify the NEPA and CZMA requirements.

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

This is a new section that explains that processing your SAP will be dependent upon how your commercial lease was issued. When your commercial lease is competitively issued, MMS will prepare a consistency determination for the lease sale and site assessment activities. If the action proposed under a competitively issued commercial lease does not change from that described in the environmental reviews conducted for the lease sale and site assessment activities, then no further environmental review would be required for a SAP. However, if MMS determines that the action has changed to the extent that the previously conducted environmental reviews do not cover the activities, then MMS would notify the applicant that additional information and reviews would be required. When your commercial lease is noncompetitively issued, you must furnish your SAP, consistency certification, and other information and analysis required by 15 CFR part 930, subpart D, to the State CZM agency and MMS concurrently. This section was added in response to comments requesting clarification of the CZMA process.

How will MMS process my SAP? (§ 285.613)

This section describes the MMS review process for a SAP. The MMS will review the SAP and determine if it contains all of the required information needed to complete the technical and environmental reviews. Multiple commenters suggested that, in order to help prevent regulatory delays, the MMS should include language that requires the MMS to determine completeness of the GAP/SAP/COP within a specific timeframe (e.g., 30 days for the SAP/GAP and 60 days for the COP). We did not include specific timeframes in the rule, since section 8(p) of the OCS Lands Act does not require them. However, in response to comments, after the final rule is published, we will issue guidance setting target deadlines for MMS processes.

After MMS has all of the information needed for its reviews, we will prepare appropriate NEPA documentation.

We will consult with relevant Federal, State, and local agencies and affected Indian tribes and provide to other Federal, State, and local agencies and affected Indian tribes relevant nonproprietary data and information pertaining to the proposed site assessment activities, as directed by subsections 8(p)(4) and (7) of the OCS Lands Act and by other relevant Federal statutory requirements (e.g., ESA and MSA). We may request additional information during the review and approval process; if you do not provide this information, MMS may disapprove your application.

After MMS completes the technical and environmental reviews, we may approve, disapprove, or approve with modifications your SAP. When a State objects to the consistency certification, MMS will not approve the plan if: (1) Consistency has not been conclusively presumed; or (2) the State objects to the applicant's consistency certification, and the Secretary of Commerce has not found that the permitted activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security. If we disapprove your SAP, we will provide the reasons for the disapproval, and you will have an opportunity to revise and resubmit your SAP. If we approve your SAP, it will be subject to terms and conditions set by MMS. We will specify these terms and conditions, and they will be incorporated into your SAP. Examples of the types of terms and conditions we may require include, but are not limited to, terms and conditions from an ESA incidental take statement; conservation recommendations resulting from essential fish habitat (EFH) consultations; and other safety, operational, or environmental protection measures. Also, you must certify compliance with certain terms and conditions identified by MMS. The certification would include summary reports, a description of mitigation measures and monitoring, the effectiveness of the mitigation measures, and new proposed mitigation measures.

We revised this section in response to comments requesting us to clarify the CZMA process that will be followed and requests to include affected Indian tribes in our consultation process. We also renumbered this section.

Activities Under an Approved SAP

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

After MMS approves the SAP, the applicant may begin to conduct approved activities. However, if you are constructing a facility or a combination of facilities deemed by MMS to be complex or significant, as provided in § 285.613(a)(1), you must comply with the requirements of subpart G and submit your Safety Management System, required by § 285.810, before construction may begin.

This section was revised to state that a lessee may begin approved activities that are not deemed by MMS to be complex or significant following approval of the SAP. In the proposed rule, MMS did not allow site assessment activities to be performed prior to approval of a SAP. Now those surveys may be conducted under the verification of the ACOE and other applicable Federal law, as described previously. However, MMS strongly encourages applicants to coordinate with MMS and the ACOE prior to conducting any pre- or post-lease/grant survey activities. Applicants will be required to submit the results of their surveys as part of their SAP, COP, or GAP.

When may I construct OCS facilities proposed under my SAP? (§ 285.614 proposed)

The provisions of this proposed section were deleted or combined with § 285.615.

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

This section identifies the various reports and notifications that must be submitted to MMS and their timing. These include the initial survey report, an annual summary of findings from site assessment activities, notification of completion of construction and installation activities, and annual compliance certification. The compliance certification includes a listing and description of any mitigation measures and monitoring and their effectiveness. The MMS will protect the annual summary information from public disclosure, as provided in § 285.113.

Reserved Section (§ 285.616)

Section 285.616 is reserved.

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

The lessee or operator must notify MMS in writing, including a detailed description, prior to conducting any activities not described in the SAP, and we will determine if those activities require a revision to the approved SAP. We will also conduct periodic reviews of the activities being conducted under an approved SAP to ensure that they fall within the scope of the SAP. The SAP will likely be required to be revised if the applicant plans to:

- Conduct activities not described in the approved SAP,
- Change the size or type of facility or equipment used,
- Change the surface location of a facility or structure,
- Add another facility or structure not contemplated in the approved SAP,
- Change the location of the onshore support base from one State to another or to a new base requiring expansion, or
- Change the location of bottom disturbances by 500 feet (152 meters), or changes to any other activity specified by MMS.

A revision to the SAP may require NEPA, CZMA, and other reviews if MMS determines that the proposed revision could result in a significant change in impacts previously identified and evaluated; require any additional Federal authorizations; or involve activities not previously identified and evaluated.

The MMS may approve the revision to the SAP if the revision is designed to prevent or minimize adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components to the extent practicable; and if the revision is otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

We did not make any changes to this section.

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

After completing activities under the approved SAP, the lessee must initiate

the decommissioning process for any facilities built for conducting SAP activities. However, if you submit a COP to MMS, you may leave the facilities in place while MMS reviews the COP. You are not required to start decommissioning if the facilities are authorized to remain in place under your approved COP. However, if MMS determines that the facilities built for conducting SAP activities may not remain in place, then the decommissioning process described in subpart I of this part must be initiated. Upon the termination of your lease, you must initiate this same decommissioning process for all facilities authorized by your approved COP.

We made conforming revisions to this section relating to FERC's role in regulating hydrokinetic activity.

Reserved Section (§ 285.619)

Section 285.619 is reserved.

Construction and Operations Plan for Commercial Leases

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

This section provides the basic requirements for the COP. The COP describes your construction, operations, and conceptual decommissioning plans under your commercial lease, including your project easement. The COP must include the location of the operations and facilities; the land, labor, material, and energy requirements associated with such operations and facilities; and the environmental and safety safeguards. The COP must cover all proposed activities and operations, including activities associated with constructing and maintaining project easements. The MMS must approve the COP before any construction and operation can begin.

It should be noted that COPs are required only for OCS renewable energy activities other than hydrokinetic activity. Since construction and operations relating to OCS hydrokinetic activity are regulated under the FERC licensing process, the construction and operations information for hydrokinetic commercial leases will be submitted to FERC in the form of a license application.

This section was revised to include a provision that MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of § 285.113.

What must I demonstrate in my COP? (§ 285.621)

This section describes what the lessee must demonstrate in the COP. The COP must demonstrate how proposed activities conform to all applicable laws, implementing regulations, lease provisions and stipulations or conditions of the commercial lease. In addition, the COP must demonstrate that the proposed activity is:

- Safe;
- Does not unreasonably interfere with other uses of the OCS;
- Does not cause undue harm or damage;
- Uses best available and safest technology;
- Uses best management practices; and
- Uses properly trained personnel.

We did not make any changes to this section. One commenter requested that MMS not require the strict language ''Best Available and Safest Technology.'' The commenter stated that this requirement is overly restrictive and inappropriate for a new industry where the economics are challenging, the technology is new and evolving, and there are no accepted design standards. Instead, the commenter suggested, the MMS should require use of ''reasonably available and safe technology,'' noting that these facilities will be unmanned during most of their operation. Further, the commenter stated that the proposed § 285.606(a)(2) already requires that proposed activities be ''safe,'' which is sufficient to address safety concerns. The commenter suggested that subsection (a)(5) could be omitted until and unless a sufficient record of scientific measurement studies demonstrates a need for a tighter safety standard. We kept the requirement of ''Best Available and Safest Technology,'' as it is required for activities conducted pursuant to the OCS Lands Act. Best available and safest technologies are those that are economically feasible for use when failure of equipment would have a significant effect on safety, health, or the environment. We believe this is a reasonable requirement.

How do I submit my COP? (§ 285.622)

This section provides the requirements for submitting the COP and future revisions. The lessee must submit one hard copy and one electronic version of the COP to MMS. The lessee may submit information to cover the project easement with the original submission of the COP, or at a later time as a revision to the COP.

We did not make any changes to this section.

Reserved Sections (§§ 285.623 Through 285.624)

Sections 285.623 through 285.624 are reserved.

Contents of the Construction and Operations Plan

What survey activities must I conduct to obtain approval for the proposed site of facilities? (§ 285.625 proposed)

We moved the requirements proposed in § 285.625 to § 285.626, so that all of the information that is required in the COP is located together. Section 285.625 is now reserved.

What must I include in my COP? (§ 285.626)

This section lists the project-specific information that must be included in the COP. We incorporated proposed § 285.625 to this section so that all of the information that is required in the COP is located together.

Before MMS will approve the site of the commercial facilities proposed for the project, you must submit the results of the listed surveys with supporting data to MMS in your COP. The required surveys and activities include:

- Shallow hazard surveys;
- Geological surveys;
- Geotechnical surveys;
- Archaeological resource surveys;
- Biological surveys; and
- An overall site investigation.

You should conduct these surveys and activities prior to the preparation of your SAP.

This section was revised to state the requirement to include the results and supporting data from the listed surveys in your COP. Results and supporting data from any socioeconomic surveys that you might conduct should be submitted with your COP, pursuant to § 285.627, to assist MMS in complying with NEPA and other Federal laws. The COP does not need to repeat information that was previously submitted in the SAP, but should reference such material.

Additional required information includes:

- Identifying information;
- The construction and operation concept;
- Designation of an operator;
- Lease stipulation and compliance information;
- A location plat;
- General structural and project design, fabrication, and installation information; including how you will use a CVA to review and verify each stage of the project (if required);
- All cables and pipelines, including lines on project easements;

- A description of the deployment activities;
- A list of solid and liquid wastes generated;
- A listing of chemical products used;
- A description of any vessels, vehicles, and aircraft that will be used to support the activities;
- A general description of the operating procedures and systems;
- Decommissioning and site clearance procedures;
- A listing of all Federal, State, and local authorizations, approvals, or permits that are required;
- Proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts;
- A summary of information incorporated by reference;
- A list of entities with whom you communicated, or with whom you will communicate, regarding potential impacts associated with the proposed activities;
- Reference information;
- Financial assurance statements;
- CVA nominations (if required);
- Construction schedule;
- Air quality information as described in § 285.659; and
- Any other information required by MMS.

This section was revised to change the word ''consulted'' to ''communicated'' and the word ''consulting'' to ''communicate.'' This clarifies our intent to require communication, not consultation, concerning the potential impacts of your proposed activities. Previously, the air quality requirements were in subpart F, and we integrated the air quality requirements into this section. The MMS will clearly describe all plan requirements in guidance to applicants after promulgation of the rule. The MMS also plans to hold workshops to explain the provisions of the rule following publication.

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

This section discusses additional submittal requirements to assist MMS in complying with NEPA and other relevant laws, including MSA, ESA, and CZMA. The information must include the resources, conditions, and activities listed in this subpart that could be affected by proposed activities or that could affect proposed construction, operation, and decommissioning activities. A lessee may reference information that was included in the MMS NEPA review prepared for the lease. The lessee must include one copy of the consistency certification for the project to verify compliance with each State's approved CMP, including required ''information'' and ''analysis'' per § 285.627(a)(9). Also, the lessee must submit an oil spill response plan and the Safety Management System for the project.

This section was expanded in response to comments requesting more detail on the information requirements for MMS compliance with NEPA and other relevant laws. We included a new table that describes this information more clearly. Additionally, MMS will prepare guidance to applicants after the rule is promulgated and will hold workshops on the final rule. This section was also modified to clearly state that MMS will require a lessee to submit an electronic version of its consistency certification so that MMS will be able to easily provide it to State CZM agencies.

How will MMS process my COP? (§ 285.628)

This section discusses how MMS will review the submitted COP and determine if it contains the information necessary to conduct the technical and environmental reviews. The MMS will notify the applicant if the COP lacks any information needed for the reviews. We will prepare appropriate NEPA documentation and forward one copy of the COP, consistency certification, and associated data and information under the CZMA to the State's CZM agency. When appropriate, we will coordinate and consult with, and provide relevant, nonproprietary data and information to, relevant State, Federal, and local agencies and affected Indian tribes, as directed by subsections 8(p)(4) and (7) of the OCS Lands Act and by other relevant Federal statutory requirements (e.g., ESA and MSA) and Executive Orders. We may request additional information during the review and approval process; if you do not provide this information, MMS may disapprove your COP.

After MMS completes the technical and environmental reviews, we may approve, disapprove, or approve with modifications your COP. When a State objects to the consistency certification, MMS will not approve the plan if: (1) Consistency has not been conclusively presumed; or (2) the State objects to the applicant's consistency certification, and the Secretary of Commerce has not found that the permitted activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security. If we approve your COP, it will be subject to terms and conditions set forth by MMS. The lessee must certify compliance with certain terms and conditions required under § 285.633(b). If MMS disapproves your COP, we will inform you of the reasons, and you will have an opportunity to resubmit a revised plan making the necessary corrections. The MMS may suspend the term of your lease, as appropriate, to allow this to occur. If a project easement is approved, MMS will issue an addendum to the lease specifying the terms of the project easement.

We revised this section to include coordination and consultation with affected Indian tribes. We also revised the section based on comments requesting that we clearly state how MMS's decision process will take place when a State objects to a consistency certification.

May I develop my lease in phases? (§ 285.629)

In the COP, the lessee may request to develop the commercial lease in phases. To support this request, the lessee must provide details about the portions of the lease that will be initially developed for commercial operations, and those portions of the lease that will be reserved for subsequent phased development.

This option to develop a lease in phases applies only for non-hydrokinetic lease activities. Those lessees conducting hydrokinetic activities requiring a FERC license may only develop their project per the terms of their license.

We did not make any changes to this section.

Reserved Section (§ 285.630)

Section 285.639 is reserved.

Activities Under an Approved COP

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

After MMS approves the COP, the lessee must commence construction by the date given in the construction schedule, and included as a part of your approved COP, unless MMS approves a deviation from the schedule.

We did not make any changes to this section.

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

This section describes documents that must be submitted to MMS for review, before construction and installation of facilities may begin under an approved COP. This includes a Facility Design Report and a Fabrication and Installation Report for facilities proposed for commercial operations. The requirements for these reports are

found in § 285.701 and 702. The activities described in these reports must fall within the scope of the approved COP. If they are not within the scope of the approved COP, the lessee will be required to submit a revision to the COP for MMS approval, before commencing the activity.

We did not make any changes to this section.

How do I comply with my COP? (§ 285.633)

After completing the environmental and technical reviews of the COP, if MMS approves your COP, we will specify terms and conditions to be incorporated into your COP. These terms and conditions will be considered as part of the COP, and you must comply with them. Examples of the types of terms and conditions we may require include, but are not limited to: (1) Terms and conditions from the ESA incidental take statement; (2) conservation recommendations resulting from EFH consultations; and (3) other safety, operational, or environmental protection measures. You must certify compliance with certain terms and conditions identified by MMS. The certification would include summary reports, a description of mitigation measures and monitoring, the effectiveness of the mitigation measures, and new proposed mitigation measures.

We did not make any changes to this section.

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

The lessee or operator must notify MMS in writing, including a detailed description, prior to conducting any activities not described in the COP, and we will determine if those activities require a revision to the approved COP. We will also conduct periodic reviews of the activities being conducted under an approved COP to ensure that they fall within the scope of the COP. The COP will likely be required to be revised if the lessee plans to:

- Conduct activities not described in the approved COP;
- Change the size or type of facility or equipment used;
- Change the surface location of a facility or structure;
- Add another facility or structure not contemplated in the approved COP;
- Change the location of the onshore support base from one State to another or to a new base requiring expansion;
- Change the location of bottom disturbances by 500 feet (152 meters);
- Respond to structural failure of one or more facilities; or
- Make changes to any other activity specified by MMS.

A revision to the COP may require NEPA, CZMA, and other reviews if MMS determines that the proposed revision could result in a significant change in impacts previously identified and evaluated; require any additional Federal authorizations; or involve activities not previously identified and evaluated.

The MMS may approve the revision to the COP if the revision is designed to prevent or minimize adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components to the extent practicable; and the revision is otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

Commenters recommended that a distinct recovery plan to address structural failure of one or more facilities, regardless of the cause, be a mandatory component in the rule rather than a general description of operating procedures in case of emergencies. In response to this comment, the rule requires that the lessee submit to MMS a revised COP (see § 285.634(c)(7)) to describe its response to a structural failure of one or more facilities. The MMS will conduct a NEPA evaluation of the proposed revision to the COP and develop specific terms and conditions of approval for the project. The MMS requires certification of compliance with certain terms and conditions of plans.

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

The lessee must notify MMS any time commercial operations are ceased without an MMS approved suspension. We may cancel the lease if activities are ceased for an indefinite period that is longer than 6 months, and you must initiate the decommissioning process described in subpart I of this part.

We did not make any changes to this section.

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

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

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

We did not make any changes to this section.

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

For non-hydrokinetic projects (i.e., wind), the lessee may commence commercial operations 30 days after the CVA or project engineer has submitted to MMS the final report for the fabrication and installation review.

If the lessee's proposed activities require a FERC license or exemption (i.e., hydrokinetic activities), then the terms of the license or exemption govern when the lessee may begin commercial operations.

We changed the rule to now allow a CVA or a project engineer to submit the fabrication and installation review to MMS and to acknowledge FERC license requirements relating to initiation of commercial hydrokinetic operations. These revisions were in response to comments.

What must I do upon completion of my commercial operations as approved in my COP or FERC license? (§ 285.638)

After completing operations on your lease, you must initiate the decommissioning process as set forth in subpart I of this part. If your project activities are instead governed by a FERC license, then the terms of your FERC license and MMS requirements will dictate your decommissioning activities.

We made conforming revisions to this section relating to FERC's role in regulating hydrokinetic activity.

Reserved Section (§ 285.639)

Section 285.639 is reserved.

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

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

The GAP describes proposed activities and operations for the assessment and development of a limited lease or grant including, if applicable, a project easement. A GAP contains the plans for resource data gathering, operations, and the testing of technology devices to characterize a limited lease or grant. A GAP must include the results and supporting data from surveys such as physical characterization surveys and baseline surveys. It includes requirements for construction, activities, and

decommissioning plans for all planned facilities, including onshore and support facilities that you will construct and use for your project including project easements. It includes additional requirements for both simple and complex facilities, or if you intend to apply for a project easement. You must receive MMS approval of your GAP before you can begin activities on your lease or grant. For a ROW grant or RUE grant that is issued competitively, you must submit your GAP within 6 months of issuance. For a ROW grant or RUE grant issued noncompetitively, you must submit your GAP within 60 days of the determination of no competitive interest. The MMS will evaluate your request for a noncompetitive grant and GAP simultaneously.

This section has been substantially revised. Based on comments received on the proposed rule and a re-interpretation of subsection 8(p) of the OCS Lands Act, as amended, MMS has determined that geophysical and geological surveys, hazards surveys, archaeological surveys, and baseline collection studies (e.g., biological) conducted for the purpose of preparing SAPs, COPs, and GAPs are permitted under the authority of the ACOE. In many instances, these types of activities may be verified under the ACOE Nationwide Permit program. We have revised the rule to remove the MMS approval of these types of surveys and the requirement to describe the survey designs in a SAP, COP, or GAP. Project proponents may now conduct these surveys pre- or post-lease/grant, subject to ACOE verification under the Nationwide Permit program or other appropriate authorization and other applicable Federal law. However, MMS strongly encourages applicants to coordinate any pre- or post-lease/grant survey activities with MMS and the ACOE prior to their conduct to ensure that the activities being proposed meet the conditions of the Nationwide Permits. Certain Nationwide Permits require that an applicant notify the ACOE and receive verification that an activity is covered under a Nationwide Permit prior to start of construction. Lessees will be required to submit the results of their surveys and supporting data as part of their SAP, COP, or GAP.

We also added provisions in this section stating that MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of § 285.113. This text was added in response to commenters who were concerned about the confidentiality of certain proprietary information in their plans.

One commenter did not believe the construction of two or three identical meteorological towers should trigger additional requirements, which will add significantly to the time and expense of a GAP submission, and requested that proposed § 285.640(b) be revised. The MMS revised the rule to clarify the requirement. We revised § 285.645(c) to state that a lessee must comply with the requirements of subpart G if the lessee proposes to construct a facility or combination of facilities which MMS determines to be complex or significant.

What must I demonstrate in my GAP? (§ 285.641)

The GAP must demonstrate that the applicant plans and is prepared to conduct the proposed activities in a manner that:

- Conforms to all applicable laws (e.g., NEPA, MSA, ESA, and CZMA), implementing regulations, lease provisions, and stipulations;
- Is safe;
- Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;
- 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;
- Uses best available and safest technology;
- Uses best management practices; and
- Uses properly trained personnel.

We did not make any changes to this section. One commenter requested that MMS not require the strict language ''Best Available and Safest Technology.'' The commenter stated that this requirement is overly restrictive and inappropriate for a new industry where the economics are challenging, the technology is new and evolving, and there are no accepted design standards. Instead, the commenter suggested that the MMS should require use of ''reasonably available and safe technology,'' noting that these facilities will be unmanned during most of their operation. The commenter stated that proposed § 285.641(e) already requires that proposed activities be ''safe,'' and this is sufficient to address safety concerns. The commenter recommended that subsection (a)(5) be omitted until and unless a sufficient record of scientific measurement studies demonstrates a need for a tighter safety standard. We kept the requirement of ''Best Available and Safest Technology,'' as it is required for activities conducted pursuant to the OCS Lands Act.

How do I submit my GAP? (§ 285.642)

This section provides the requirements for submitting the GAP. The lessee must submit one paper copy and one electronic version of the GAP to MMS. The lessee may submit information to cover the project easement with the original submission of the GAP, or at a later time as a revision to the GAP.

We did not make any changes to this section.

Reserved Sections (§§ 285.643 Through 285.644)

Sections 285.643 through 285.644 are reserved.

Contents of the General Activities Plan

Section 285.645 What must I include in my GAP?

This section lists the project-specific information that must be included in the GAP.

This includes: Identifying information, a discussion of the objectives of the site assessment or technology testing proposal, designation of operator (if applicable), general structural and project design, fabrication and installation information, deployment activities, air emissions, lease stipulations, a listing of all Federal, State, and local authorizations or approvals for projected site assessment activities, a list of entities that you have communicated with regarding the potential impacts of your project, how you will mitigate and monitor impacts, CVA nomination (if required), decommissioning procedures, a statement about other authorizations, financial assurance information, and additional information as requested by MMS. If you are applying for a project easement, or constructing a facility or a combination of facilities deemed by MMS to be complex or significant, you must provide the following information in addition to what is required in paragraphs (a) and (b) of this section and comply with the requirements of subpart G: The construction and operation concept, all cable and pipeline plans including cables on project easements, a description of the deployment activities, a general description of the operating procedures and systems, contact information, CVA information, construction schedule, and other information as required by MMS.

For the installation of any facilities (e.g., meteorological tower, meteorological buoy, technology testing

device, anchored vessels, transmission substations), you are required to also include survey results and supporting data from: Geotechnical, shallow hazards, archaeological, geological, and biological surveys.

This section was revised to state the requirement for survey results and supporting data and descriptions of any technology testing activities.

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

This section discusses the information that must be submitted with the GAP to assist MMS in complying with NEPA and other relevant laws. For NEPA compliance, the lessee or grantee must provide information on resources, conditions, and activities listed in this section that could be affected by or could affect your proposed activities. In addition, the lessee or grantee must submit information for CZMA compliance including one copy of the consistency certification required by CZMA and required ''information'' and ''analysis'' as required in § 285.646.

This section was expanded in response to comments requesting more detail on the information requirements for MMS compliance with NEPA and other relevant laws. We included a new table that describes this information more clearly. Some commenters requested us to describe in the rule the specific requirements for baseline information. The MMS will prepare guidance to applicants after the rule is promulgated and will hold workshops on the final rule.

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

This section explains that processing of your GAP will be dependent upon how your limited lease, ROW, or RUE was issued. If your limited lease, ROW grant, or RUE grant is competitively issued, you must submit one copy and one electronic copy of your consistency certification to MMS along with other necessary information and analysis required in 15 CFR part 930, subpart E. After MMS has determined that all GAP information requirements are met and has prepared its NEPA compliance document, we will forward this information to the affected State's CZM Agency. If your limited lease, ROW grant, or RUE grant is noncompetitively issued, you must furnish your SAP, consistency certification, and other information and analysis required by 15 CFR part 930, subpart D, to the State CZM Agency and MMS concurrently. This is a new section that we added in response to comments to clarify the CZMA process.

How will MMS process my GAP? (§ 285.648)

This section discusses how MMS will review the submitted GAP and determine if it contains the information necessary to conduct our technical and environmental reviews. The MMS will review the submitted GAP and determine if it contains all the required information necessary to conduct our technical and environmental reviews. If the GAP lacks information needed for the reviews, we will notify the applicant and request the necessary information. We will prepare appropriate NEPA documentation. When appropriate, we will coordinate and consult with relevant State and Federal agencies as directed by subsections 8(p)(4) and (7) of the OCS Lands Act and by other relevant Federal statutory requirements (e.g. ESA and MSA), and provide to other State and Federal agencies relevant data and information pertaining to the proposed site assessment activities. We may request additional information during the review and approval process; if you do not provide this information, MMS may disapprove your application.

After MMS completes the technical and environmental reviews, MMS may approve, disapprove, or approve with modifications your GAP. When a State objects to the consistency certification, MMS will not approve the plan if: (1) Consistency has not been conclusively presumed; or (2) the State objects to the applicant's consistency certification, and the Secretary of Commerce has not found that the permitted activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security. If we disapprove your GAP, we will provide the reasons for the disapproval, and you will have an opportunity to revise and resubmit your GAP. If we approve your GAP, it will be subject to terms and conditions set forth by MMS. We will specify these terms and conditions, and they will be incorporated into your GAP. Examples of the types of terms and conditions we may require include, but are not limited to: (1) Terms and conditions from an ESA incidental take statement; (2) conservation recommendations resulting from EFH consultations; and (3) other safety, operational, or environmental protection measures. Also, you must certify compliance with certain of these terms and conditions as identified by MMS. The certification would include summary reports, a description of mitigation measures and monitoring, the effectiveness of the mitigation measures, and new proposed mitigation measures. If a project easement is approved, MMS will issue an addendum to the lease specifying its terms.

This section was revised in response to comments to clarify the CZMA process for a GAP.

Reserved Section (§ 285.649)

Section 285.649 is reserved.

Activities Under an Approved GAP

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

After MMS approves the GAP, the lessee may begin conducting activities that do not involve the construction of facilities on the OCS.

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

After MMS approves the GAP, the lessee may begin to conduct approved activities. However, the lessee also must comply with the requirements of subpart G and submit your Safety Management System, required by § 285.810, before construction may begin, if the lessee is applying for a project easement, or installing a facility or a combination of facilities deemed by MMS to be complex or significant as provided in § 285.648(a)(1).

Additionally, in the proposed rule, MMS did not allow site assessment activities to be performed prior to approval of a GAP. Now those surveys may be conducted under the authority of the ACOE and other applicable Federal law, as described previously. However, MMS strongly encourages applicants to coordinate any pre- or post-lease/grant survey activities with MMS and the ACOE prior to conducting such activities. Lessees will be required to submit the results of their surveys as part of their SAP, COP, or GAP. The data collected from these surveys must meet the technical requirements that MMS will set forth in guidance to be issued after the rule is promulgated.

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

For a limited lease, after MMS approves the GAP, the lessee must conduct the approved activities within 5 years unless MMS renews the term. For an ROW grant or RUE grant, the time for conducting approved activities is provided in the terms of the grant.

We did not make any changes to this section.

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

This section lists the various reports and notifications that must be submitted to MMS. These include the initial survey report, notice of completion of construction and installation activities, annual compliance certification, an annual report of findings that result from conducting the activities approved under the GAP, and an annual compliance certification of certain terms and conditions of your GAP that MMS identifies. The compliance certification includes a listing and description of any mitigation measures and monitoring and their effectiveness. If you determine that either the measures or monitoring were not effective, then you must include recommendations for new measures or monitoring methods. You must also submit an annual summary report of the findings from any activities that you conduct under your approved GAP and the results of those activities. The information from this report will be protected as provided in § 285.113.

We did not make any changes to this section.

Reserved Section (§ 285.654)

Section 285.654 is reserved.

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

The lessee or grantee must notify MMS in writing prior to conducting any activities not documented in the GAP. The MMS will determine if those activities require a revision to the approved GAP. We will also conduct periodic reviews of the activities being conducted under an approved GAP to ensure that they fall within the scope of the GAP. The GAP will likely be required to be revised if you plan to:

- Conduct activities not described in the approved GAP;
- Change the size or type of facility or equipment used;
- Change the surface location of a facility or structure;
- Add another facility or structure not contemplated in the approved GAP;
- Change the location of the onshore support base from one State to another or to a new base requiring expansion;
- Change the location of bottom disturbances by 500 feet (152 meters);
- Respond to structural failure of one or more facilities; or
- Change to any other activity specified by MMS.

Revisions to the GAP will require NEPA and other reviews if MMS determines that the proposed revision could result in a significant change in impacts previously identified and evaluated; could require any additional Federal authorizations; or could involve activities not previously identified and evaluated.

The MMS may approve the revision to the GAP if the revision is designed not to cause undue harm or damage to natural resources; or to sites, structures, or objects of historical or archaeological significance; and the revision is otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

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

The lessee or grantee must notify the MMS upon ceasing activities under an approved GAP without an approved suspension. If activities are ceased for an indefinite period that exceeds 6 months, MMS may cancel the lease or grant under § 285.437, and the lessee or grantee must initiate the decommissioning process, as set forth in subpart I of this part.

We did not make any changes to this section.

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

After completing the activities approved under the GAP, the lessee or grantee must initiate the decommissioning process, as required in subpart I of this part.

We did not make any changes to this section.

Cable and Pipeline Deviations

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

This section discusses the requirements related to the construction of cables, pipelines, and facilities so as to minimize deviations from the approved plan under the limited lease or grant.

If MMS determines that significant changes have occurred requiring an adjustment to your lease or grant before construction of a cable or pipeline, it will consider modification to your ROW grant, RUE grant, or lease addendum for a project easement in connection with your COP or GAP. This section has been revised to make clear that modifications to your grant or lease addendum would require MMS and you to agree on such modification. If MMS determines that a deviation occurred after you have constructed your cable or pipeline, you would be required to notify affected lessees or ROW/RUE grant holders, and you would be required to relinquish the unused portion of the lease or grant. Substantial deviations could result in the cancellation of the lease or grant.

We did not make any changes to this section.

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

This section was relocated from subpart H to clarify that the air quality requirements are part of the SAP, COP, or GAP. This section discusses compliance with the Clean Air Act (42 U.S.C. 7409) and its implementing regulations. The section informs the applicant of requirements if their project is located in the western Gulf of Mexico or if it is located anywhere else on the OCS. If air quality modeling is needed, the section outlines how to establish a modeling protocol. Finally, for projects located in the Gulf of Mexico, the number of copies to be submitted is stated and the types of information required.

Subpart G—Facility Design, Fabrication, and Installation

Overview

As indicated in the discussion of subpart F, your plan (SAP, COP, or GAP) would include general descriptions for project design and facility fabrication and installation. Subpart G describes the various detailed technical reports that the MMS will require lessees, operators, and grant holders to submit that address the final design, fabrication, and installation of facilities on a lease or grant. These reports will be submitted after MMS approves the SAP, COP, or GAP, as applicable.

Subpart G also describes a third-party verification process that will require lessees, operators, and grant holders to use a CVA to verify and certify that projects are designed, fabricated, and installed in conformance with accepted engineering practices and with the submitted reports. However, MMS may waive the requirement to use a CVA, under certain conditions. If you are not required to use a CVA, your project engineer will perform functions similar to the CVA.

Certified Verification Agent (CVA)

The CVA is responsible for conducting an independent assessment of the facility design and the fabrication and installation processes to ensure that facilities are designed, fabricated, and installed in conformance with accepted engineering practices and the approved plans and applications.

The CVA will also ensure that repairs and major modifications are completed in conformance with accepted engineering practices. The CVA will certify and report to the lessee, operator, or grant holder and MMS on the status of each phase included in the Facility Design Report and the Fabrication and Installation Report. The CVA must submit interim reports, as required by the Director, and a final report covering the adequacy of each phase.

The MMS received comments requesting that we either remove the CVA requirement or only require CVAs on high-impact or high-risk projects. Concerns with cost, redundancy, and the fact that most projects will be developed under a project-financing structure, with the lender providing an independent engineer to review design and construction, were cited as reasons for forgoing the CVA. In response to these concerns, MMS is including a provision that will allow the lessee, grant holders, or operators to request a waiver of the CVA requirement.

The MMS will consider waivers on a case-by-case basis. Requests for waivers must be submitted with the SAP, COP, or GAP, and we will provide a decision on the waiver, along with the decision on the SAP, COP, or GAP. However, if MMS waives the CVA requirement, the project engineer will be expected to perform the same duties and responsibilities as the CVA.

To receive a waiver, the company must demonstrate to MMS the following:

- For design of the structure, you must demonstrate that the facility will be of a standardized design that has been used successfully in a similar environment and the installation will be designed in conformance with accepted engineering practices.
- For the fabrication of your structure(s), you must demonstrate that the facility manufacturer has successfully manufactured similar facilities and the facility will be fabricated in conformance with accepted engineering practices.
- For the installation of your structure(s), you must demonstrate that the contractor has successfully installed similar facilities in a similar offshore environment and your structure(s) will be installed in conformance with accepted engineering practices.
- For repairs and major modifications of a structure, you must demonstrate that the repairs and major modifications are completed in conformance with accepted engineering practices.

Facility Design Report

This report provides MMS with a detailed description of the proposed facility or facilities and locations on the OCS. The lessee, operator, or grant holder is required to provide to MMS a complete set of structural drawings, structural loading information, detailed design criteria, and foundation information including mooring or tethering systems in the case of a floating facility. The CVA, nominated in your plan, will conduct an independent assessment of the design of the facility and ensure that it is designed to withstand the environmental and functional load conditions appropriate for the intended service life at the proposed location. The CVA must submit interim reports, as required by the Director, and a final report covering the adequacy of the design phase.

Fabrication and Installation Report

Under the final rule, Fabrication and Installation Reports will be combined. The Fabrication and Installation Report describes the plans for both the facility's fabrication (including the manufacture, assembly, and construction) and installation process. The report will include a schedule for fabrication and installation as well as detailed engineering and environmental information. The CVA, nominated in the SAP, COP or GAP, or the project engineer, will conduct an independent assessment of the fabrication and installation phases. The CVA or project engineer must use good engineering judgment and practices in conducting an independent assessment of fabrication and installation activities and ensure that these activities are conducted according to the approved applications. The CVA or project engineer must submit interim reports, as required by the Director, and a final report covering the adequacy of the fabrication and installation phase.

After fabrication and installation activities are completed, the CVA or project engineer must submit a certification statement certifying that the fabrication and installation were conducted in accordance with accepted engineering practices.

Section-by-Section Discussion for Subpart G

Reports

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

This section lists two reports required prior to installing facilities: (1) Facility Design Report; and (2) Fabrication and Installation Report. The MMS has 60 days to review these reports and notify the applicant of any objections. If MMS does not have any objections, the applicant may begin to construct and install the facilities at the end of the 60-period.

If there are any objections, MMS will notify you either verbally or in writing within 60 days of receipt. After notification of objections, MMS may follow up with written correspondence outlining its specific objections to the report and identifying certain actions necessary to resolve the agency's objections. You cannot commence activities addressed in such report until all objections are resolved to MMS's satisfaction.

The MMS did not make any changes to this section.

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

The Facility Design Report provides specific details of the design of all facilities, including cables and pipelines, outlined in your approved SAP, COP, or GAP. This report must demonstrate that the design conforms to the responsibilities of a lessee contained in these regulations. This section includes a list of required contents for the report and details the required contents of each element of the report. The report must include:

- A cover letter;
- A location plat;
- Front, side, and plan view drawings;
- A complete set of structural drawings;
- A summary of environmental data used for design;
- A summary of the engineering design data;
- A complete set of design calculations;
- Project-specific studies used in the facility design or installation;
- Description of the loads imposed on the facility;
- A geotechnical report; and
- A certification statement and location of records.

In response to comments, we added a provision to this section that clarifies that MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of § 285.113.

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

The Fabrication and Installation Report describes how facilities will be

fabricated and installed in accordance with the design criteria identified in the Facility Design Report, the approved SAP, COP, or GAP; and generally accepted industry standards and practices. The Fabrication and Installation Report must demonstrate how your facilities will be fabricated and installed in a manner that conforms to the responsibilities of a lessee contained in these regulations. This section includes a list of required contents for the report, and details the required contents of each element of the report. The report must include:

- A cover letter;
- A schedule for fabrication and installation;
- Fabrication information;
- Installation process information;
- Federal, State, and local permits (e.g., EPA, ACOE);
- Environmental information; and
- Project easement design.

In response to comments, we added a provision to this section that clarifies that MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of § 285.113. We also added a provision that will allow MMS to waive the requirement for a CVA for the Fabrication and Installation Report, based on criteria added to § 285.705.

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

This section requires a report from the lessee on major repairs and modifications to certify that the repairs and modifications to the project conform with accepted engineering practices. The report must also identify the location of all records pertaining to the major repairs or major modifications.

A major repair is a corrective action involving structural members affecting the structural integrity of a portion of or all the facility. A major modification is an alteration involving structural members affecting the structural integrity of a portion of or all the facility.

We moved this section from § 285.711, because we changed the requirement to always use a CVA for project modifications and repairs. We revised this section to state that MMS may require the lessee to use a CVA for project modifications and repairs.

Reserved Section (§ 285.704)

Section 285.704 is reserved.

Certified Verification Agent

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

This section details the responsibilities of the CVA. The CVA must ensure that facilities are designed, fabricated, and installed in conformance with accepted engineering practices, the Facility Design Report, and the Fabrication and Installation Report, and ensure that repairs and major modifications are completed in conformance with accepted engineering practices. The CVA must provide reports of all incidents that affect the design, fabrication, and installation of the project and its components.

In response to comments, we added a provision to this section that allows MMS to waive the requirement to use a CVA. The new provision describes the criteria that MMS will use to decide whether to waive the CVA; this revision was made in conjunction with those in §§ 285.701 and 285.702. In addition, we changed the title of this section from ''What is the function of a Certified Verification Agent (CVA)?'' to ''When must I use a Certified Verification Agent (CVA)?'' to reflect the changes made in the purpose of this section. Even if MMS waives the requirement that you use a CVA, the project engineer must perform the same duties and responsibilities as the CVA.

How do I nominate a CVA for MMS approval? (§ 285.706)

A CVA must be nominated in the SAP, COP, or GAP, as applicable. This section describes the process for nominating the CVA and the information that must be included in the qualifications statement. The section also requires that the verification be conducted by or under the direct supervision of registered professional engineers and prohibits a CVA from functioning in a way to create a conflict of interest.

We did not make any changes to this section.

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

The CVA must certify to MMS that the facility is designed to withstand the environmental and functional load conditions for the intended life at the proposed location. This section lists those elements of the design phase that the CVA must independently assess. These elements include:

- Planning criteria;
- Operational requirements;
- Environmental loading data;
- Load determinations;
- Stress analyses;
- Material designations;
- Soil and foundation conditions;
- Safety factors; and
- Other pertinent parameters of the proposed design.

For floating facilities, the CVA must ensure that any requirements of the U.S. Coast Guard for structural integrity and stability (e.g., verification of center of gravity, etc.) are met.

We did not make any changes to this section.

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

The CVA or project engineer must certify to the MMS that the facilities are fabricated and installed as proposed in the approved Facility Design Report and the Fabrication and Installation Report. This section details the monitoring and inspection functions of the CVA or project engineer during this phase of the project. It also requires the CVA or project engineer to inform the lessee when procedures or design specifications are changed.

For the fabrication and installation review, the CVA or project engineer must:

- Use good engineering judgment and practice in conducting an independent assessment of the fabrication and installation activities;
- Monitor the fabrication and installation of the facility;
- Make periodic onsite inspections while fabrication is in progress;
- Make periodic onsite inspections while installation is in progress; and
- Certify in a report that project components are fabricated and installed in accordance with accepted engineering practices, the approved COP, SAP, or GAP, and the Fabrication and Installation Report.

The report must identify the location of all records pertaining to fabrication and installation. The lessee or grantee may commence commercial operations or other approved activities 30 days after MMS receives the certification report, unless MMS notifies the applicant within that time period of objections to the certification report.

The CVA or project engineer must monitor the fabrication and installation of the facility to ensure that it is built and installed according to the Facility Design Report and Fabrication and Installation Report. If the CVA or project engineer finds that fabrication and installation procedures are changed or design specifications are modified, the CVA or project engineer must inform the applicant.

We made minor edits to this section to include the applicable project engineer functions.

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

The CVA or project engineer must make periodic onsite inspections while fabrication of the facility is in progress. The CVA or project engineer must verify the following items during these inspections:

- Quality control by lessee (or grant holder) and builder;
- Fabrication site facilities;
- Material quality and identification methods;
- Fabrication procedures specified in the Fabrication and Installation Report, and adherence to such procedures;
- Welder and welding procedure qualification and identification;
- Structural tolerances specified, and adherence to those tolerances;
- The nondestructive examination requirements, and evaluation results of the specified examinations;
- Destructive testing requirements and results;
- Repair procedures;
- Installation of corrosion-protection systems and splash-zone protection;
- Erection procedures to ensure that overstressing of structural members does not occur;
- Alignment procedures;
- Dimensional check of the overall structure, including any turrets, turret-and-hull interfaces, any mooring line and chain and riser tensioning line segments; and
- Status of quality-control records at various stages of fabrication.

For any floating facilities, the CVA or project engineer must ensure that any requirements of the U.S. Coast Guard for structural integrity and stability (e.g., verification of center of gravity, etc.) have been met. The CVA or project engineer must also consider foundations, foundation pilings and templates, and anchoring systems and mooring or tethering systems.

We made minor revisions to this section to include the applicable project engineer functions.

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

The CVA or project engineer must make periodic onsite inspections while installation is in progress. The CVA or project engineer must verify, survey, witness, or check the following items during facility installation:

- Loadout and initial flotation procedures;
- Towing operations procedures to the specified location, and review the towing records;
- Launching and uprighting activities;
- Submergence activities;
- Pile or anchor installations;
- Installation of mooring and tethering systems;
- Final deck and component installations; and
- Installation at the approved location according to the Facility Design Report and the Fabrication and Installation Report.

For a fixed or floating facility, the CVA or project engineer must verify that proper procedures were utilized during the loadout of the jacket, decks, piles, or structures from each fabrication site; the actual installation of the facility or major modification; and the related installation activities.

For a floating facility, the CVA or project engineer must verify that proper procedures were utilized during the loadout of the facility; the installation of foundation pilings and templates, and anchoring systems; and the installation of the mooring and tethering systems.

The CVA or project engineer must conduct an onsite survey of the facility after transportation to the approved location. The CVA or project engineer must spot-check the equipment, procedures, and recordkeeping as necessary to determine compliance with the applicable documents incorporated by reference and the regulations under this part.

In response to comments, MMS changed this section to require the CVA or project engineer to verify that proper procedures were followed during the operations addressed in the section. This change no longer requires the CVA or project engineer to witness all of the activities, but rather to verify that proper procedures were used.

Reserved Section (§ 285.711)

Section 285.711 is reserved.

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

This section details when the CVA or project engineer must submit reports to MMS and the lessee or grantee, including interim reports, as requested by the MMS. For each report, the CVA or project engineer must submit one electronic copy and one paper copy to MMS. In each report, the CVA or project engineer must:

- Give details of how, by whom, and when the CVA or project engineer activities were conducted;
- Describe the CVA's or project engineer's activities during the verification process;
- Summarize the CVA's or project engineer's findings; and
- Provide any additional comments that the CVA or project engineer deems necessary.

We made minor revisions to this section to include the applicable project engineer functions.

What must I do after the CVA or project engineer confirms compliance with the Fabrication and Installation Report on my commercial lease? (§ 285.713)

After receiving confirmation of compliance with the Fabrication and Installation Report from the CVA or project engineer, the lessee or grantee must notify MMS within 10 business days after commencing commercial operations.

We made minor edits to this section to include the applicable project engineer functions.

What records relating to SAPs, COPs, and GAPs must I keep? (§ 285.714)

This section provides requirements for records that the lessee must maintain for the duration of the project, until MMS releases the required financial assurance. The lessee or grantee must compile, retain, and make these records available to MMS representatives. These records include:

- The as-built drawings;
- The design assumptions and analyses;
- A summary of the fabrication and installation examination records;
- The inspection results; and
- Records of repairs not covered in the inspection report.

The lessee or grantee must record and retain the original material test results of all primary structural materials during all stages of construction. The lessee or grantee must provide MMS with the location of these records in the certification statement.

We did not make any changes to this section.

Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs and GAPs

Overview

This subpart describes requirements to prevent or minimize the likelihood of harm or damage to the marine and coastal environments and to promote safe operations, including their physical, atmospheric, and biological components. The MMS intends to use adaptive management practices to help ensure that renewable energy activities are conducted safely. Such a system relies on demonstrating and validating actual operating performance. The MMS then will require adjustments to

mitigation and monitoring activities on a case-by-case basis based on operating experiences. You must certify compliance with certain terms and conditions that the MMS will specify and incorporate into the SAP, COP, or GAP.

We retitled this subpart to reflect FERC's role in regulating hydrokinetic activity. Since FERC will regulate construction and operations activity on hydrokinetic commercial leases, this subpart applies only to the renewable energy activities that will be regulated by MMS under approved SAPs, COPs, and GAPs.

Air Quality

The air quality requirements were moved to subpart F.

Safety Management System

The safety management system would include, as applicable:

- Remote monitoring, control, and shutdown capabilities;
- Emergency response procedures;
- Fire suppression equipment;
- Testing procedures; and
- Training.

These safety management provisions also cover maintenance and equipment shutdowns, including reporting and notification requirements, as well as requirements relating to both MMS and operator self inspections. The safety management system would be required to be submitted as part of the COP.

Maintenance and Shutdowns

This section describes when operators are required to notify MMS of shutdowns. Notification is required when safety equipment is taken out of service for more than 12 hours. If safety equipment is removed from service for more than 60 days, the operator must submit a written notice to MMS. The operator must also notify MMS when the equipment is returned to service.

Equipment Failure and Adverse Environmental Affects

These provisions address equipment failure and adverse effects of environmental or other conditions. Operators are required to notify MMS and repair any equipment failure, including pipelines and cables, as soon as practicable. The MMS may require an analysis to determine the cause of the failure. The final rule has been revised to clarify what repairs must be reported to MMS. The rule also states that MMS may require a lessee to revise its COP depending on the magnitude of the damages to facilities. If environmental or other conditions adversely affect a cable, pipeline, or facility, the operator must submit a corrective action plan to MMS; take the actions described in the plan; and submit a report to MMS of the actions taken.

Inspections

The MMS will conduct periodic scheduled and unscheduled inspections of OCS renewable energy facilities. The purpose of an MMS inspection is to ensure that an operator is conducting operations in accordance with all laws, regulations, and MMS-approved plans and to verify that proper safety equipment is correctly installed and working properly.

Operators are required to develop a self-inspection program for all facilities that covers all structures including all parts above and below the waterline. Each operator must inspect for corrosion and other factors affecting the structural integrity of the facility. Operators also must submit annually a summary of inspections, including how they conducted the inspections; what equipment was used; what repairs were made, if any; and the structural condition.

With regard to hydrokinetic activity regulated under FERC license, MMS will retain a role in inspections under the MOU adopted by FERC and MMS. We may inspect to ensure compliance with any provision of a lease, easement, or right-of-way we issue. The MMS will coordinate such inspections with FERC.

Facility Assessments

This subpart also contains the requirements for facility assessments, incorporating sections 17.2.1 through 17.2.5 of the American Petroleum Institute Recommended Practice 2A–WSD (API RP 2A–WSD), as they relate to initiating facility assessments. This proposed provision would also require mitigation if a facility did not pass the assessment process described in API RP 2A–WSD. We selected the API RP 2A–WSD because there is a lack of standards for offshore renewable energy facilities, and this standard has proven to be an effective assessment tool for other OCS structures in U.S. waters. This relates to the structure only and does not include production or transmission equipment.

Incident Reporting

This final rule will require that operators report immediately to the Director certain significant incidents associated with activities regulated under this part. An initial report must be followed within 15 days by a written report. Significant incidents that require immediate notification are identified, and include any incidents resulting in fire, explosions, or that involve a fatality. In addition, MMS requires submission of a written incident report within 15 days following certain types of incidents, including those involving injuries that result in the injured not being able to resume all duties the following day.

Section-by-Section Discussion for Subpart H

How must I conduct my activities to comply with safety and environmental requirements? (§ 285.800)

This section states the performance requirements for using trained personnel and technologies, precautions, and techniques to prevent or minimize the likelihood of harm or damage to human life and the environment. In addition, you must certify compliance with those terms and conditions identified in your approved SAP, COP, or GAP.

We did not make any changes to this section.

How must I conduct my approved activities to protect marine mammals, threatened and endangered species, and designated critical habitat? (§ 285.801)

This section describes the actions you must take if there is reason to believe that protected species or designated critical habitat may be affected by your operations. If there is reason to believe that a threatened or endangered species may be present or designated critical habitat may be affected while you conduct your MMS-approved activities, you must notify MMS, and we will consult with appropriate agencies and, after consultation, shall identify whether, and under what conditions, you may proceed. If there is reason to believe that marine mammals or threatened or endangered species may be incidentally taken as a result of your MMS-approved activities, you must agree to secure an authorization from NOAA or the FWS for incidental taking, including taking by harassment, which may result from your actions. This section also includes provisions related to mitigating and monitoring measures you may be required to take.

We deleted the references to the SAP, COP, and GAP to clarify that this section applies to conducting activities under an approved plan and not to the information requirements for those plans.

How must I protect archaeological resources? (§ 285.802)

This section was removed from the final rule. The details about how a lessee or grant holder should protect

archaeological resources will be included in a guidance document that MMS will develop after the rule is final.

What must I do if I discover a potential archaeological resource while conducting my approved activities? (§ 285.802)

This section describes the procedures that must be followed if a potential archaeological resource is discovered while conducting any activity related to a project. It also includes additional requirements MMS may impose after such a discovery, such as conducting additional archaeological investigations. If a potential archaeological resource is discovered, you must immediately halt all seafloor disturbing activities within the area of the discovery; notify the Director of the discovery within 72 hours; and keep the location of the discovery confidential and not take any action that may adversely affect the archaeological resource until MMS has made an evaluation and tells you how to proceed.

The MMS may require additional investigations to determine if the resource is eligible for listing in the National Register of Historic Places under 36 CFR 60.4. This will be required if either the site has been impacted by your project activities or if impacts to the site or to the area of potential effect cannot be avoided. If these investigations indicate that the resource is potentially eligible to be listed in the National Register of Historic Places, MMS will tell you how to protect the resource or how to mitigate adverse effects to the site. Under section 110(g) of the National Historic Preservation Act, MMS may charge reasonable costs for carrying out preservation responsibilities under the OCS Lands Act.

The MMS changed the title from, ''What must I do if I discover a potential archaeological resource?'' to ''What must I do if I discover a potential archaeological resource while conducting my approved activities?'' to clarify that this section addresses activities under approved plans, not information requirements for the SAP, COP, or GAP.

How must I conduct my approved activities to protect essential fish habitats identified and described under the Magnuson-Stevens Fishery Conservation and Management Act? (§ 285.803)

This section addresses the actions that MMS and you must take if, during the conduct of approved activities, MMS finds an EFH or habitat areas of particular concern that may be adversely affected by your approved activities. The MMS will consult with NMFS, and the lessee or grant holder will be required to adopt mitigation measures designed to avoid or minimize the adverse effects. The MMS may require additional surveys to define boundaries and avoidance distances. If MMS requires additional surveys, we will specify the requirements at that time.

The MMS renamed this section from, ''How must I protect essential fish habitats identified and described under MSA?'' to ''How must I conduct my approved activities to protect essential fish habitats identified and described under the Magnuson-Stevens Fishery Conservation and Management Act?'' to clarify that this section addresses activities under approved plans, not information requirements for the SAP, COP, or GAP.

Reserved Sections (§ 285.804 Through § 285.806)

Sections 285.804 through 285.806 are reserved.

Air Quality

What requirements must I meet regarding air quality? (§ 285.807)

This section was moved to subpart F, § 285.659, and renamed to ''What requirements must I include in my SAP, COP, or GAP regarding air quality?'' to reflect that this section addresses information that must be included in a SAP, COP, or GAP.

Reserved Sections (§ 285.808 Through § 285.809)

Sections 285.808 through 285.809 are reserved.

Safety Management Systems

What must I include in my Safety Management System? (§ 285.810)

You must submit a Safety Management System with the SAP, COP, or GAP. The Safety Management System must describe the following for all aspects of the project:

- How you will ensure the safety of personnel;
- Remote monitoring, control, and shutdown capabilities;
- Emergency response procedures;
- Fire suppression equipment, if needed;
- How and when you will test your Safety Management System; and
- How you will demonstrate that personnel are properly trained.

This section also requires that you demonstrate compliance, identify any impacts and any mitigation measures that are not effective, and make recommendations for new mitigation measures.

We did not make any changes to this section.

When must I follow my Safety Management System? (§ 285.811)

This is a new section added to clarify when a lessee or grantee must implement their Safety Management System.

Reserved Section (§ 285.812)

Section 285.812 is reserved.

Maintenance and Shutdowns

When do I have to report removing equipment from service? (§ 285.813)

This section requires you to notify MMS when equipment necessary for implementing an approved plan is taken out of service for more than 12 hours. It also requires that MMS be notified after the repairs are complete.

We revised this section, based on comments that stated that the section was unclear as to the requirement for reporting when safety equipment is removed from service. We clarified that the lessee/operator must report the removal of any equipment that is necessary for implementing the approved plan.

Reserved Section (§ 285.814)

Section 285.814 is reserved.

Equipment Failure and Adverse Environmental Affects

What must I do if I have facility damage or an equipment failure? (§ 285.815)

This section requires that all facility damage or equipment failures be repaired as soon as possible, and that MMS be notified of the repairs as soon as practicable. Based on comments, we revised this section to clarify what equipment and facility repairs must be reported to MMS. We did this by requiring repair notifications if you are required to report facility damage or failure under § 285.381. This section also requires that you submit a report describing the repairs to MMS, and states that MMS may require an analysis of the failure necessitating the repairs. This section also states that MMS may require you to submit a revised COP depending on the extent of the damage to facilities or other failure.

What must I do if environmental or other conditions adversely affect a cable, pipeline, or facility? (§ 285.816)

If environmental or other conditions adversely affect a cable, pipeline, or facility, this section requires you to submit a plan of corrective action to

MMS. In addition, the lessee or grantee must take the remedial action described in the plan, and submit a report of the remedial action taken.

We did not make any changes to this section.

Reserved Sections (§§ 285.817 Through 285.819)

Sections 285.817 through 285.819 are reserved.

Inspections and Assessments

Will MMS conduct inspections? (§ 285.820)

The MMS conducts inspections of OCS facilities and any vessels engaged in activities authorized under this part to verify that the applicant is operating in accordance with the OCS Lands Act, the regulations, lease stipulations, conditions of the grant, approved plans, and other applicable laws and regulations, and to determine whether the proper safety equipment is installed and operating properly.

We did not make any changes to this section.

Will MMS conduct scheduled and unscheduled inspections? (§ 285.821)

The MMS will conduct both scheduled and unscheduled inspections of your facilities.

We did not make any changes to this section.

What must I do when MMS conducts an inspection? (§ 285.822)

These regulations require you to make the area of the lease or grant; all facilities on the lease or grant; and records of design, construction, operation, maintenance, repairs, or investigations available to MMS for inspection. You must retain all records as required, and certain records must be retained until MMS releases your financial assurance.

We did not make any changes to this section.

Will MMS reimburse me for my expenses related to inspections? (§ 285.823)

Upon request, MMS will reimburse your reasonable expenses for the expenses related to food, quarters, and transportation provided for MMS representatives while they inspect the project facilities.

We did not make any changes to this section.

How must I conduct self inspections? (§ 285.824)

This section requires the lessee or grantee to develop an annual self inspection plan describing both above-water and below-water structural inspections and describing how corrosion protection will be monitored. It also requires that you submit an annual report that summarizes the results of the inspections.

We did not make any changes to this section.

When must I assess my facilities? (§ 285.825)

This section requires the lessee or grantee to use the assessment requirements of American Petroleum Institute Recommended Practice for Planning, Designing, and Constructing Fixed Offshore Platforms—Working Stress Design (API RP 2A–WSD) to conduct assessments of structures, when needed, based on the platform assessment initiators in API RP 2A–WSD. The lessee or grantee must initiate mitigation actions for structures that do not pass the assessment process of API RP 2A–WSD and perform other assessments as required by MMS.

We did not make any changes to this section.

Reserved Sections (§§ 285.826 Through 285.829)

Sections 285.826 through 285.829 are reserved.

Incident Reporting and Investigation

What are my incident reporting requirements? (§ 285.830)

This section requires that all incidents listed in § 285.831 that occur on the area covered by a lease or grant and that are related to operations conducted under your lease or grant be reported to MMS. We did not make any changes to this section.

What incidents must I report, and when must I report them? (§ 285.831)

This section requires that all fatalities, incidents requiring evacuation of a person(s) from a facility, fires, explosions, incidents, and collisions resulting in property damage greater than $25,000, incidents resulting in structural damage, crane incidents, and incidents that damage or disable safety systems be reported to MMS immediately with written follow up within 15 days. It also requires that any injuries that result in the injured not being able to resume all duties the following day and incidents that require personnel to muster for evacuation be reported in writing within 15 days.

We did not make any changes to this section.

How do I report incidents requiring immediate notification? (§ 285.832)

This section describes what you must do for incidents that require immediate notification. You must notify the Director orally immediately after aiding the injured and stabilizing the situation. This section also describes the information required in the notification.

We did not make any changes to this section.

What are the reporting requirements for incidents requiring written notification? (§ 285.833)

This section describes the specific information regarding incidents that must be reported in writing to the MMS. It allows you to submit a form prepared for another agency to fulfill the requirement as long as it contains all the information required by MMS. The MMS may subsequently require additional information about an incident on a case-by-case basis.

We did not make any changes to this section.

Subpart I—Decommissioning

Overview

This subpart describes requirements for decommissioning OCS renewable energy facilities and associated structures including the submission of advance plans, applications, and notices to the MMS. Co-lessees and co-grant holders are all jointly and severally responsible for meeting decommissioning obligations on their respective leases or grants. All facilities, including pipelines, cables, and other structures and obstructions, must be removed when they are no longer used for operations but no later than 2 years after the termination of the lease, ROW grant, or RUE grant.

The MMS made conforming changes to the 30 CFR, part 250, subpart Q regulations regarding decommissioning requirements as they apply to oil and gas facilities that could be left in place for alternate use. We removed the phrase ''or other use'' from § 250.1730 because the EPAct amended the OCS Lands Act (43 U.S.C. 1337(p)(1)(D)) to give DOI authority to allow the use of OCS oil and gas platforms for other authorized marine-related purposes. For uses that MMS authorizes, the structure would no longer need to meet the requirements of § 250.1730(a).

Section-by-Section Discussion for Subpart I

Decommissioning Obligations and Requirements

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

Co-lessees and co-grant holders are jointly and severally responsible for the decommissioning responsibilities for facilities on a lease or grant, including all obstructions.

We did not make any changes to this section.

When do I accrue decommissioning obligations? (§ 285.9010)

Decommissioning obligations accrue when the lessee or grant holder installs; constructs; or acquires a facility, cable, or pipeline; or creates an obstruction.

We did not make any changes to this section.

What are the general requirements for decommissioning for facilities authorized under my SAP, COP, or GAP? (§ 285.902)

This section provides a general overview of the decommissioning process:

- After your lease terminates, the lessee or grant holder has 2 years to decommission and clear the seafloor of all obstructions created by activities on the lease or grant.
- Before decommissioning, the lessee or grant holder must submit a decommissioning application. This can be submitted at any time, but no later than 2 years before any intended decommissioning operation.
- Once MMS approves the decommissioning application, a decommissioning notice is required before beginning any decommissioning activity. The decommissioning notice is required to keep MMS informed of decommissioning activities.
- If an archaeological resource is discovered while decommissioning, activities around the resource must stop, and the lessee or grantee must inform MMS.
- Biologically sensitive features and items of archaeological interest must be avoided and protected during decommissioning and site clearance activities.
- If biologically sensitive features or items of archaeological interest are found, MMS will direct the lessee or grantee on what action to take.
- The MMS added a provision to document early efforts made by the applicant to coordinate with affected State, local, and tribal governments. This was added to remind project operators of the importance of coordinating early with affected entities.

Lessees decommissioning FERC-licensed facilities are not required to comply with this section.

Based on comments received, we changed the time to complete decommissioning on a lease or grant from 1 year after termination to 2 years after termination.

What are the requirements for decommissioning FERC-licensed hydrokinetic facilities? (§ 285.903)

This is a new section addressing the decommissioning requirements for FERC-licensed hydrokinetic facilities on the OCS. FERC license holders must comply with the conditions of their MMS-issued lease, including decommissioning requirements.

If you fail to comply with the requirements, then MMS may call for the forfeiture of your bond or other financial assurance and take enforcement action under § 285.400 of this part. Further, you remain liable for removal or disposal costs and responsible for accidents or damages that might result from such failure.

Can I request a departure from the decommissioning requirements? (§ 285.904)

Based on comments, we added a new section to clarify that a lessee or grant holder may request a departure from the decommissioning requirements under § 285.103. The MMS will consider the impacts of leaving the facilities, projects, cables, pipelines, and other obstructions in place versus the impacts of removal when determining whether to approve the departure. This also applies to circumstances when a limited lease holder installs a met tower or other equipment, then the lessee acquires a commercial lease that encompasses the limited lease area.

Decommissioning Applications

When must I submit my decommissioning application? (§ 285.905)

While the conceptual decommissioning plans will be included in the SAP, COP, or GAP, in many cases the project will not be decommissioned until many years after approval of the plan; therefore, a decommissioning application is required. A decommissioning application may be submitted at any time, but no later than 2 years before any intended decommissioning operation. However, if a lease or grant is cancelled, relinquished, or otherwise terminated, the application must be submitted within 90 days.

We did not make any changes to this section.

What must my decommissioning application include? (§ 285.906)

The application will include such items as: An identification and description of the facilities to be removed; a proposed decommissioning schedule; a description of the removal methods; description of site clearance activities; plans for transporting and disposing of the removed facilities; a description of those resources, conditions, and activities that could be affected by or could affect the proposed decommissioning activities; results of any recent biological surveys conducted in the vicinity of the structure and recent observations of turtles or marine mammals at the structure site; mitigation measures to protect archaeological and sensitive biological features during removal activities; and a statement on whether or not divers will be used to survey the area after removal to determine any effects on marine life.

The MMS revised this section to require that the decommissioning application include a description of measures to prevent unauthorized discharge of pollutants including marine trash and debris into the offshore waters.

How will MMS process my decommissioning application? (§ 285.907)

The MMS will review the proposed decommissioning and site clearance activities to ensure compliance with all applicable laws, regulations, and other requirements. The MMS will compare the decommissioning application with the decommissioning general concept in the approved SAP, COP, or GAP to determine what technical and environmental reviews are needed. The operator may be required to revise the approved SAP, COP, or GAP, if MMS determines the proposed decommissioning activities would result in a significant change in the SAP, COP, or GAP; or requires any additional permits; or proposes activities not previously identified and evaluated in the SAP, COP, or GAP. The MMS may begin the appropriate NEPA and other regulatory reviews as required.

After completing the technical and environmental reviews, MMS may approve, approve with conditions, or disapprove the decommissioning application. If MMS disapproves decommissioning application, the operator must resubmit the application to address the concerns identified by MMS.

We did not make any changes to this section.

What must I include in my decommissioning notice? (§ 285.908)

This section describes what needs to be included in the decommissioning notice. A decommissioning notice is separate from the decommissioning application and can only be submitted after MMS approves the decommissioning application. The decommissioning notice is submitted at least 60 days before you plan to begin decommissioning activities. The decommissioning notice includes any changes from your decommissioning application and your decommissioning schedule. The MMS will evaluate your decommissioning notice and may require additional changes to your decommissioning application before you can begin decommissioning activities.

We did not make any changes to this section.

Facility Removal

When may MMS authorize facilities to remain in place following termination of a lease or grant? (§ 285.909)

In the decommissioning application, the operator may request that certain facilities authorized in the lease or grant remain in place for other activities authorized in this part, elsewhere in this subchapter, or by other applicable Federal laws. The MMS will approve such requests on a case-by-case basis considering potential impacts to the marine environment; competing uses of the OCS; impacts on marine safety and national defense; maintenance of adequate financial assurance; and other factors determined by the Director.

If MMS authorizes facilities to remain in place, the former lessee or grantee under this part remains jointly and severally liable for decommissioning the facility unless satisfactory evidence is provided to MMS showing that another party has assumed that responsibility and has secured adequate financial assurances. In the decommissioning application, the operator may request that certain facilities authorized in the lease or grant be converted to an artificial reef or otherwise toppled in place.

We did not make any changes to this section.

What must I do when I remove my facility? (§ 285.910)

All facilities must be removed to a depth of 15 feet below the mudline, and you must verify to MMS that you have cleared the site within 60 days after you remove a facility.

We did not make any changes to this section.

Reserved Section (§ 285.911)

Section 285.911 is reserved.

Decommissioning Report

After I remove a facility, cable, or pipeline, what information must I submit? (§ 285.912)

Within 30 days after removing a facility, the operator must submit a written report to MMS summarizing removal operations. The report must include a summary of the removal activities including the date it was completed; a description of any mitigation measures you took; and, if explosives were used, a statement signed by an authorized representative that certifies that the types and amount of explosives used in removing the facility were consistent with those in the approved decommissioning application.

We did not make any changes to this section.

Compliance With an Approved Decommission Application

What happens if I fail to comply with my approved decommissioning application? (§ 285.913)

If the lessee, grantee, or operator fails to comply with the approved decommissioning plan or application, MMS may call for the forfeiture of your bond or other financial guarantee, and the lessees or grantee remain liable for removal or disposal costs and responsible for accidents or damages that might result from such failure.

We did not make any changes to this section.

Subpart J—Rights-of-Use and Easement for Energy and Marine-Related Activities Using Existing OCS Facilities

Overview

This subpart establishes general requirements for how MMS will consider proposals for activities that involve the alternate use of existing OCS facilities. This subpart also includes general provisions that explain how MMS will approve and regulate such alternate use activities on the OCS. We will authorize such activities through the issuance of an Alternate Use Right-of-Use and Easement (Alternate Use RUE).

This subpart explains how applicants request an Alternate Use RUE, how MMS will decide whether to issue Alternate Use RUEs, and how Alternate Use RUEs will be competitively issued (if MMS determines that competitive interest exists). Once an Alternate Use RUE is issued by MMS, this subpart provides details on the term of such authorizations; required payments to MMS; necessary financial assurance; as well as other administrative issues such as assignment, suspension, and termination of Alternate Use RUEs.

This subpart also includes provisions regarding decommissioning of approved alternate use facilities. In addition to the provisions in this subpart J, MMS has associated revisions to MMS's existing oil and gas decommissioning regulations found in 30 CFR part 250, subpart Q, that clarify and expand on an oil and gas platform owner's obligations for decommissioning, and when such decommissioning obligations may be suspended for approved alternate uses.

The statutory authority for this subpart is paragraph 8(p)(1)(D) of the OCS Lands Act (43 U.S.C. 1337(p)(1)(D)). Under this authority, as delegated by the Secretary, the MMS may approve activities that use, for energy or other marine-related purposes, facilities that are currently or were previously used for other activities authorized under the OCS Lands Act.

We received numerous comments on the proposed rule pertaining to the use of OCS facilities for aquaculture purposes. We wish to clarify that this rule does not authorize aquaculture operations. A different agency would be responsible for permitting and managing actual aquaculture activity under any RUE that is granted. In the event that legislation is enacted that regulates OCS aquaculture, we will reassess this issue and ensure coordination will be accomplished with all relevant agencies.

Section-by-Section Discussion for Subpart J

Regulated Activities

What activities does this subpart regulate? (§ 285.1000)

This provision describes the scope of activities regulated by this subpart. The authority for Alternate Use Rights-of-Use and Easements (Alternate Use RUEs) was established in paragraph 8(p)(1)(D) of the OCS Lands Act (43 U.S.C. 1337(p)(1)(D)). Under this authority, as delegated by the Secretary, the MMS may approve activities that use, for energy or other marine-related purposes, facilities that are currently or were previously used for other activities authorized under the OCS Lands Act. However, the MMS may not approve alternate use activities under subsection 8(p)(1)(D) of the OCS Lands Act if those activities are authorized by another statutory authority, including: The OCS Lands Act, the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*), the Ocean

Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 *et seq.*), or other applicable law.

To illustrate the types of activities that will be subject to this subpart, examples such as the following are useful. In the first example, an individual seeks to use an existing oil and gas platform in the Gulf of Mexico as an offshore emergency rescue training facility. Utilizing an existing OCS facility for such activities is not currently authorized by any other statutory authority. Therefore, MMS may authorize the use of an existing facility for such emergency rescue training activities using an Alternate Use RUE. In another example, an individual seeks to convert an existing oil and gas platform in the Gulf of Mexico to a deepwater port. Activities associated with the construction and operation of a deepwater port on the OCS are authorized under the Deepwater Port Act of 1974, as amended, and regulated jointly by the U.S. Coast Guard and U.S. Maritime Administration. Since such deepwater port activities are authorized by the Deepwater Port Act, the activities do not require an Alternate Use RUE under this subpart. While the MMS may not issue an Alternate Use RUE for deepwater port activities (or other activities that are authorized by other Federal law) that would use an existing OCS structure, MMS approvals may be required under either part 250 or part 282 of this subchapter for activities that could impact existing MMS-approved operations on an existing facility, as well as for deferring decommissioning requirements upon the termination of an OCS lease.

Use of the term ''existing facility'' or ''existing platform'' in this subpart is not intended to limit such facilities to those that are currently in place as of the time of publication of this rule. Any facility that, at the time of an alternate use proposal, is situated on the OCS and has been authorized by MMS under the OCS Lands Act is potentially eligible for consideration under this subpart. Therefore, such ''existing facilities'' may include oil and gas facilities, facilities constructed in association with sand, gravel, sulfur or any other mineral resource development approved under the OCS Lands Act, as well as renewable energy facilities pursuant to this part.

As stated in § 285.1000(c), MMS has the discretion to authorize alternate use activities on existing OCS structures that are currently in active operation, or limit alternate use activities to existing OCS structures that are no longer in operation and would otherwise be subject to removal. The MMS will consider these issues on a case-by-case basis taking into account the unique operating considerations for each proposed alternate use activity as well as the associated operations on the existing OCS platform. As explained previously, MMS does not intend to implement an aquaculture program under subpart J.

We did not make any changes to this section.

Reserved Sections (§§ 285.1001 Through 285.1003)

Sections 285.1001 through 285.1003 are reserved.

Requesting an Alternate Use RUE

What must I do before I request an Alternate Use RUE? (§ 285.1004)

Before submitting a request to the MMS for issuance of an Alternate Use RUE, the applicant must contact the owner of the existing OCS facility as well as the current lessee of the area in which the facility is located and reach preliminary agreement regarding the alternate use of the structure. Since the platform or other facility is the private property of the owner, MMS could not issue an Alternate Use RUE unless the alternate use was tentatively agreed to by the owner of the facility. If the alternate use applicant is also the lessee and owner of the existing OCS facility, a preliminary agreement regarding alternate use is not needed.

This provision does not require the owner of the facility and lessee of the area in which the facility is located to give a final, unconditional approval for the proposed alternate use. This initial agreement among the parties need only state that the owner and lessee are aware of the proposed alternate use activity, and have no immediate objections to such activities. This preliminary agreement does not need to be in any specific prescribed form.

We did not make any changes to this section.

How do I request an Alternate Use RUE? (§ 285.1005)

The MMS will consider requests for an Alternate Use RUE on a case-by-case basis, provided such requests comply with the requirements of this provision. An applicant's request for an Alternate Use RUE must include a summary of the proposed activities that would involve use of the existing OCS facility; a statement affirming that the proposed activities are not otherwise authorized by other MMS regulations or any other Federal law; and satisfactory evidence that the applicant qualifies to hold a lease, ROW, or RUE on the OCS. When summarizing the proposed activities under an Alternate Use RUE, the applicant must include all of the information identified in § 285.1005(a). Any request to MMS for an Alternate Use RUE must also include the signatures of the alternate use applicant, the owner of the existing OCS facility, and the lessee of the area in which the existing facility is located.

If an existing OCS facility proposed for an Alternate Use RUE is in operation on an active OCS lease, the alternate use applicant as well as the lessee or owner of the structure must consider what approvals and plan modifications may be required under part 250 or part 282 of this subchapter with respect to impacts on operations regulated by those parts.

We did not make any changes to this section.

How will MMS decide whether to issue an Alternate Use RUE? (§ 285.1006)

The MMS will consider requests for an Alternate Use RUE on a case-by-case basis. The MMS will evaluate all proposals to ensure that the proposed activities that would involve the use of existing OCS facilities can be conducted in a manner that is safe and protects the marine, coastal, and human environment; does not inhibit or otherwise restrain orderly development of OCS mineral and energy resources; and avoids serious harm or damage to, or waste of, any natural resources or property. Regardless of whether the existing OCS facility is currently in use or no longer in use and subject to removal, the MMS has the discretion whether or not to approve and issue an Alternate Use RUE. Since Alternate Use RUEs will require the MMS to regulate the development, operation, and eventual decommissioning of such alternate use projects, the MMS may determine that it has insufficient resources or subject matter expertise to properly regulate such projects. However, the MMS may partner with other Federal agencies with relevant expertise to ensure proper regulation of certain types of alternate use activities.

We did not make any changes to this section.

What process will MMS use for competitively offering an Alternate Use RUE? (§ 285.1007)

Paragraph 8(p)(3) of the OCS Lands Act requires that Alternate Use RUEs be issued on a competitive basis unless the Secretary determines, after public notice of the proposed Alternate Use RUE, that there is no competitive interest.

Before initiating the competitive process, the MMS will first determine whether an applicant's proposal contains the information necessary to be deemed acceptable, as set forth in § 285.1005. The MMS will then determine whether the proposed activity that would involve the use of an existing OCS facility is one that is (1) subject to MMS authority under paragraph 8(p)(1)(D) of the OCS Lands Act, and (2) the type of activity that the MMS has the necessary expertise and resources to regulate effectively. If the answer is yes to both (1) and (2), the MMS will issue a public notice in the **Federal Register** to determine if there is competitive interest in using the facility for other alternate use activities. The MMS will specify a time period (e.g., 30 days) from the date of issuance of the public notice for those who are interested in the use of that facility to respond to MMS indicating that interest. Indications of competitive interest are not required to provide all the information required in § 285.1005. If there is no expression of competitive interest within the timeframe expressed in the public notice, the MMS will presume that there is no competitive interest and will commence review of the applicant's proposal for an Alternate Use RUE.

If there are indications of competitive interest received by the MMS within the timeframe in the public notice, the MMS will proceed with a competitive offering. The MMS will request that each competing applicant submit a description of the types of activities proposed for the existing facility, as well as satisfactory evidence that the competing applicant qualifies to hold a lease, ROW, or RUE on the OCS. The MMS may impose a time period to submit the requested information, but one that would allow sufficient time for competing applicants to prepare the necessary information requested. The MMS may subsequently request additional information to adequately evaluate competing proposals. At this stage, competing applicants are not required to seek or obtain the consent of the lessee or owner of the existing OCS facility.

The MMS will evaluate the competing proposals to determine whether the proposed activities appear to be compatible with existing operations at the facility and are activities that it has the expertise and resources available to regulate effectively. If more than one proposal initially appears feasible, the MMS may commence an environmental review under NEPA, where each of the proposals is analyzed. Based on its NEPA analysis, the MMS may select one or more of the alternative proposals as potentially acceptable.

Once the MMS has chosen one or more acceptable proposals for activities involving the alternate use of an existing OCS facility, it will notify the competing applicants and submit each acceptable proposal to the lessee and owner of the existing OCS facility. The lessee and owner of the existing OCS facility may accept any one of the proposals deemed acceptable by the MMS. If the lessee and owner of the facility agree to accept one of the proposals through a written acknowledgement submitted to MMS, the MMS will complete efforts to issue an Alternate Use RUE. If the lessee and owner of the facility are unwilling to accept any of the proposals deemed acceptable by the MMS, the MMS will not issue an Alternate Use RUE.

Activities under subpart J will include full analysis as required by NEPA and other applicable laws. Compliance with the CZMA will follow 15 CFR part 930, subpart C, for competitive RUE offerings and 15 CFR part 930, subpart D, for noncompetitive RUE offerings.

We did not make any changes to this section.

Reserved Sections (§§ 285.1008 Through 285.1009)

Sections 285.1008 through 285.1009 are reserved.

Alternate Use RUE Administration

How long may I conduct activities under an Alternate Use RUE? (§ 285.1010)

This provision explains that MMS will determine the duration of Alternate Use RUEs on a case-by-case basis considering pertinent factors including the size, scale, and type of the proposed alternate use activities. Considering the scope of potential alternate use activities that could reasonably occur on the OCS, MMS does not believe that it is appropriate to set a specific term in the regulations for Alternate Use RUEs.

This provision also provides that MMS will consider requests for renewal of an Alternate Use RUE on a case-by-case basis, at MMS's discretion.

We did not make any changes to this section.

What payments are required for an Alternate Use RUE? (§ 285.1011)

This provision provides that MMS will determine rentals or other charges on a case-by-case basis, and such rentals or other charges will be set forth in the Alternate Use RUE. The MMS will charge rentals or other charges for Alternate Use RUEs to ensure a fair return to the United States, as required by subsection 8(p)(2) of the OCS Lands Act (43 U.S.C. 1337(p)(2)). There are many different potential alternate uses of the OCS that could be authorized (e.g., training, research, education, and recreation), and each of these potential uses could have different effects in terms of the exclusion of other valuable uses of the OCS area. Certain alternate use activities could require that a significant portion of an OCS area be excluded from other potentially valuable uses. The MMS will consider such exclusivity requirements for a potential alternate use activity in determining a fair return to the United States. The MMS will calculate the rentals or other charges for Alternate Use RUEs taking into account the areal extent of the alternate use activity, the MMS resources needed for regulating such activities, and the exclusion in that area of competing uses.

We did not make any changes to this section.

What financial assurance is required for an Alternate Use RUE? (§ 285.1012)

This provision makes clear that MMS will require that holders of Alternate Use RUEs provide financial assurance in an amount sufficient to cover all obligations under the Alternate Use RUE, including decommissioning obligations. Holders of Alternate Use RUEs will be required to retain such financial assurance until MMS determines that all obligations have been fulfilled to MMS satisfaction. The provision also provides that MMS may increase or decrease required financial assurance amounts, as appropriate, provided that financial assurance will always be required in an amount necessary to satisfy all obligations under the authorizing instrument.

The MMS has not defined in the regulations what specific forms of financial assurance will be deemed acceptable. The MMS will consider all forms of financial assurance that are deemed acceptable by MMS under its other regulatory programs, and will consider other proposals for financial assurance on a case-by-case basis.

Unlike the provisions for renewable energy under this part, and what is established for oil and gas leasing under part 256, MMS has determined that the regulations for alternate use activities should not set specific minimum levels for financial assurance. Considering the range of potential activities that could be approved for an Alternate Use RUE, MMS has determined that it is more appropriate to set required financial assurance levels on a case-by-case basis.

We did not make any changes to this section.

Is an Alternate Use RUE assignable? (§ 285.1013)

This provision provides that Alternate Use RUEs may be assigned to eligible assignees. This provision sets forth the requirements that must be satisfied for MMS to approve an assignment request. At this time, it is not clear to what extent Alternate Use RUEs will be requested and approved by MMS. Therefore, we are not creating a standard MMS form for assignments at this time.

In §§ 285.1013(d) and (e), we describe to what extent assignors and assignees are responsible for obligations associated with an Alternate Use RUEs arising both before and after MMS approval of an assignment. This provision is intended to be consistent with other MMS regulatory precedent (*See* 30 CFR 256.62(d) and (e)).

We did not make any changes to this section.

When will MMS suspend an Alternate Use RUE? (§ 285.1014)

This section explains that MMS may suspend activities authorized under an Alternate Use RUE and describes when such a suspension may be ordered. It is important to note that MMS may suspend activities authorized under an Alternate Use RUE even if there has been no finding of fault by the grantee. The holder of an Alternate Use RUE may be in full compliance with the terms and conditions of the grant, but other circumstances outside the control of the grantee may require MMS to suspend activities in order to comply with judicial decrees, for reasons of national security or defense, to avoid unsafe activities or interference with lessee's operation, and to protect against potential environmental damage. For this reason, any such suspension will extend the term of the Alternate Use RUE for the period of the suspension.

We did not make any changes to this section.

How do I relinquish an Alternate Use RUE? (§ 285.1015)

This provision explains that the holder of an Alternate Use RUE may relinquish its grant at any time provided it complies with the requirements of this section. The MMS will officially approve any relinquishment after it has determined that the requestor has complied with all necessary requirements, including the payment of any outstanding rentals (or other payments) and fines. The relinquishment will take effect on the date that MMS officially approves the request.

We did not make any changes to this section.

When will an Alternate Use RUE be cancelled? (§ 285.1016)

This provision explains under what circumstances MMS may cancel an Alternate Use RUE. The provisions of this section are similar to the cancellation provisions under subpart D of this part, but include an additional provision for cancellation when continued activity under an Alternate Use RUE is determined to be adversely impacting ongoing lease activities on the existing OCS facility (e.g., an associated oil and gas production platform on which alternate use activities have been authorized).

Commenters to the proposed rule expressed concern that this provision did not provide for notice and opportunity to be heard prior to cancellation of an Alternate Use RUE. The MMS agrees with these comments and added a provision to the rule concerning notice and an opportunity to be heard.

Reserved Section (§ 285.1017)

Section 285.1017 is reserved.

Decommissioning an Alternate Use RUE

Who is responsible for decommissioning an OCS facility subject to an Alternate Use RUE? (§ 285.1018)

This provision explains that the holder of an Alternate Use RUE will be responsible for removing all structures and completing all other decommissioning activities associated with an approved alternate use activity. The Alternate Use RUE will set forth specific requirements for decommissioning, as determined by the MMS based on the approved alternate use activity.

As set forth in the conforming amendments to part 250, subpart Q, included in this final rule, approval of an Alternate Use RUE will not relieve the original lessee (e.g., the original oil and gas lessee) from its accrued decommissioning obligations. If the MMS approves an Alternate Use RUE with respect to an existing facility located on a lease that has terminated, or a lease that subsequently terminates following approval of an Alternate Use RUE, the MMS will defer commencement of decommissioning activities related to that facility for the duration of the Alternate Use RUE. Such deferral will be limited, however, to the facility that is associated with the alternate use activities, and the lessee will be required to complete all other decommissioning activities associated with the lease. Unless the lessee and owner of the existing facility are also the holder of the Alternate Use RUE, the lessee and owner of the existing facility are not responsible for decommissioning requirements associated with an Alternate Use RUE. Similarly, the holder of an Alternate Use RUE is not responsible for decommissioning requirements with respect to the existing facility. To avoid confusion or potential subsequent dispute between the parties, MMS anticipates setting forth in the Alternate Use RUE grant the specific decommissioning obligations pertaining to the alternate use activities.

We did not make any changes to this section.

What are the decommissioning requirements for an Alternate Use RUE? (§ 285.1019)

This provision explains that decommissioning requirements for Alternate Use RUEs will be established on a case-by-case basis after considering the specific alternate use proposal. These specific decommissioning requirements will be set forth in detail in the grant authorizing instrument. This provision also explains that all decommissioning activities will be required to be completed within 1 year of termination of the Alternate Use RUE.

We did not make any changes to this section.

Comments on the Proposed Rule and MMS Responses

We reviewed all the comments on the preamble and proposed rule. We categorized and summarized similar comments and then responded to those comments by subpart subject matter. We organized the comments and our responses in a table for each subpart as follows.

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GENERAL COMMENTS	
Comment	**Response**
Consultation and Coordination	
Clarify roles and responsibilities for Federal agencies, States, lessees, local governments, existing users, and other stakeholders. Clarify the process by which MMS will coordinate with State, tribal, and local governments in adapting permits and conditions and adjusting mitigation and monitoring requirements.	We will work with all appropriate parties to determine the appropriate process. The regulations do not need to clarify the roles and responsibilities of other parties. Nor do the regulations need to clarify the process that MMS will use to coordinate with all parties.
There appears to be a degree of inconsistency in the rule with respect to mandatory versus discretionary consultation and coordination with State and local government. The MMS should ensure that there is certainty throughout the rule regarding the need for mandatory coordination and consultation by the MMS with the affected State and local governments.	We do not see any inconsistency in the rule. The regulations clearly require MMS to ensure that activities are carried out in a manner that provides for public notice and provide for consultation with States and local governments.
Expand the language regarding coordination. The rule currently limits coordination and consultation with State and local entities to one representative from the Governor's office and one executive representative from local government. Although this may seem advantageous to expediting decision-making, it can create suspicion and distrust in the parties that are not at the table.	The rule does not limit coordination and consultation to just one representative from the Governor's office and one executive from local government. Task forces, formed with the Governor of a State or an executive from a local government, is just one way MMS will coordinate with affected States and local communities. MMS is not limited to just that option.
Work closely with, and enter into Memoranda of Understanding (MOUs) with States, local officials, tribes, resource agencies and Federal agencies, including Federal Energy Regulatory Commission (FERC), to pre-qualify sites for bidding, coordinate permitting, eliminate duplicative processes, and ensure accountability by all public officials throughout the leasing process. Consultation should occur before a site is identified in a request for a commercial lease or a request for interest in a site.	The rule provides for early and continuous consultation, and MMS plans to work under the rule with States, local officials, tribes, resource agencies and Federal agencies, and enter into MOUs, as appropriate. The MMS and FERC finalized an MOU in April 2009, clarifying jurisdictional understandings regarding renewable energy projects on the OCS to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects.
Establish standing regional task forces specifically in the rule.	We have not adopted this recommendation. The MMS may create regional task forces under the provisions of the rule. We believe it would be premature and inefficient to establish specific standing regional task forces by rule at this time.
It is unclear in the rule to what degree the MMS will consult on State ocean and coastal planning processes for State waters when considering the siting and scale of OCS leases that require a transmission line through State waters.	The rule provides the necessary framework for timely and efficient consultation with States on transmission lines in subpart F.
Develop a Joint Planning Agreement, per Figure 1 of the Draft EA, and encourage MMS to follow through with this effort to help ensure that all concerns are taken into account and to streamline the regulatory process.	The rule allows the use of a Joint Planning Agreement or other arrangements to support consultation as appropriate.
Address coordination on a regional basis, to	We plan to make sound decisions to balance

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enable States to avoid duplication of effort, efficiently manage their common resources, and effectively engage with MMS.	ocean uses appropriately. We will consult and coordinate extensively with relevant organizations at the national, regional, state, and local levels to receive input relating to the siting of renewable energy projects and the development of program priorities.
Consider impacts on existing stakeholders as part of any project and work to minimize these impacts.	Section 285.102(a)(10) requires MMS to ensure that authorized renewable energy and alternate use activities consider other uses of the sea or seabed.
Consult with States and local governments before finalizing the rule so that States' needs are reflected in the final rule and the regulatory framework is clear to all parties.	We have considered State and local government comments in adopting the final rule, and we will continue to consult with all interested and affected parties in its implementation.
The MMS should develop language requiring coordination between developers and stakeholders. This should be a precursor to development of a SAP.	The rule encourages developers to coordinate with stakeholders before a lease or grant is issued, in subparts B and F and in the preamble, and appropriate consultation and coordination are required of lessees and grantees.
Other than commenting in response to Federal Register notices, what will be the opportunities for public comment on a lease, subsequent plans, and related environmental documents?	In addition to commenting in response to Federal Register Notices, the public may participate in relevant NEPA hearings and actions, may be included in task forces or similar consultations, and may offer comments and recommendations at any time on any aspect of the alternative energy program and activities.
Will a non-applicant stakeholder be permitted to seek administrative appeal under 30 CFR, part 290, or judicial review, of the final decision?	Per 43 CFR 4.410, to appeal a decision, the person or party must have taken action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal.
Incorporate input from existing users and consider consistency with CZMA and State coastal zone plans before initiating any leasing process.	The rule provides for appropriate CZMA consultations throughout the lease and grant processes in subparts B, C, and F.
Use interagency working groups prior to and during the NEPA consultation process and CZMA Federal consistency process.	This approach is possible under the rule.
Include review by the agencies implementing each State's CZM Program.	The rule provides for CZMA consultations with affected States. It will be the responsibility of those States to provide for review by their appropriate agencies.
Work with the National Oceanic and Atmospheric Administration's (NOAA's) Office of Ocean and Coastal Resource Management to provide guidance, possibly through a series of regional workshops, that will addresses specific questions regarding CZMA consistency review as applied to activities under this new program.	This approach is possible under the rule. We intend to work with NOAA and each State's CZM agency to ensure these issues are addressed, and we may hold workshops as recommended.
The joint task force mechanism structure and procedure should be more fully developed and be required as early in the leasing process as possible. The MMS should be clearer regarding	We will provide details about task forces in the implementation guidance that we intend to issue after the rule is approved.

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who should be on these task forces, how interested parties and stakeholders may access the task forces, the objective of the task forces, and the notice procedure for public comment/participation. The MMS should also describe their specific role, purposes, powers, etc. and to whom and how they are to report.	
Require that developers be involved in providing information to these task forces and engaged in the process to some degree, yet not permitted to impede, overwhelm, or control the mechanism or process. The Settlement Process of the Reedsport, Oregon Wave Energy project provides one good model for how this may be structured. The MMS must recognize and respect the needs and concerns of existing users and a broad range of stakeholders, including conservationists and local communities, especially those outside the conventional energy development/OCS interests.	We will work with all taskforce participants to ensure that appropriate information is provided to the task force.
The proposed rule should create a mechanism to compensate States for adverse impacts to coastal resources or uses. This compensation should be separate from general revenue sharing and authorized for use specifically for mitigating adverse coastal impacts through mitigation, conservation and reclamation, and planning assistance. Any "mitigation" revenue should be distributed to affected States on a basis proportionate to the impacts and not according to the usual '27% revenue sharing' basis.	The Energy Policy Act of 2005 (EPAct) does not require or authorize MMS to provide or require developers to provide compensation for mitigating adverse impacts to the States or local areas.
Wind farm constructors and operators should be required to report any cable breaks on submerged facilities and their causes. The MMS should use this data to monitor developments on the OCS and to develop regulatory processes for assuring that buried cables remain buried during their useful life. Cables, though, should be removed at the time of decommissioning, unless it is clearly demonstrated that they will remain buried after decommissioning.	§ 285.813 requires the reporting of any cable breaks. We plan to monitor lease, right-of-way (ROW), and right-of-use and easement (RUE) activities and adapt requirements accordingly. Decommissioning of cables will be reviewed and authorized, on a case-by-case basis, in accordance with subpart I.
Will MMS favor or prioritize competing alternative energy uses (such as wave vs. wind)?	Although we have no plans to establish such priorities at this time, we may do so in implementing the rule.
Will MMS give priority in offshore development to local governments (city and county) or communities over private development?	The rule does not provide for such priority.
Initiate comprehensive planning for the ocean ecosystem to ensure an appropriate balance between emerging industrial uses and conservation.	We plan to make sound decisions to balance ocean uses appropriately and will consult with NOAA and other relevant Federal agencies to ensure consistency and integration in the large context of spatial planning for ocean uses and ecosystem protection. In addition, we will consult

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	and coordinate extensively with relevant organizations at the national, regional, state, and local levels to receive input relating to the siting of renewable energy projects and the development of program priorities.
In cases where multiple offshore power generation plants need access to shore or connection to the power grid in the same geographic area, who has authority to decide how competing needs or claims will be resolved?	Ultimately, the MMS will be the authority on competition on the OCS. However, as provided in the rule and preamble, we intend to consult and coordinate closely with all interested and affected parties in making such decisions.
How will NOAA and MMS (or any other relevant agency with interest or potential jurisdiction such as the FERC resolve competing license applications for the same physical area when one request is being made under MMS authority and the other request is being made under NOAA authority? There needs to be a process created for competing claims that are administered by separate government authority, and clear procedures and processes established for resolving potential jurisdictional overlaps of authority between MMS and NOAA (as well as any other relevant agencies).	The MMS and FERC finalized an MOU in April 2009, clarifying jurisdictional understandings regarding renewable energy projects on the OCS to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects. The MMS can develop MOUs with appropriate agencies as needed.
Clarify how subsea cabling from an OCS project will be managed as it crosses into State waters. It is unclear whether the cable triggers a separate licensing or certification process outside of the MMS leasing process.	Information concerning subsea cables, including routing through State waters, will be included in the various plans. Review and approval of the routing through State waters is covered by the regulations. The regulations also require operators to obtain appropriate State and local approvals for State water and onshore activities.
Ensure a timely, cost-effective permitting process. To facilitate a transparent and smooth permitting process for prospective wind developers, it will be useful for MMS to specify timelines in the final rule as a guide for different entities to conduct a responsive and timely review. The timelines need to be practical for wind developers to be able to pursue opportunities and for regulators to efficiently and effectively oversee the permitting process.	The rule provides a framework that identifies processes and information requirements for issuing leases and reviewing and approving plans. Anticipated deadlines for MMS's completion of its responsibilities will be determined once MMS gains an enhanced understanding of the likely timeframe for processing renewable energy leases. We plan to provide target deadlines for MMS decisions and actions in the implementation guidance that we intend to issue after the rule is approved.
Will the MMS establish and maintain a docket on each application for lease, RUE, or ROW for a hydrokinetic facility? Will the docket contain all documents in the proceeding? Will the docket be available for public review? If so, will the docket be available online?	The MMS will publish a notice of a requested lease, ROW, or RUE grant in the Federal Register. Information on proposed projects will be posted on the MMS.gov Web site, as appropriate.
Employ adaptive management to ensure that new information is applied to assess needs for modification, mitigation, and/or removal.	The rule includes adaptive management protocols, notably in subparts B, F, and H.
The MMS' rule does not account for the adverse impacts on renewables developers, such as	The rule provides opportunities for MMS to exercise flexibility in managing projects proposed

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potentially duplicative regulation between MMS and FERC, excessive costs and the bonus bid based competitive system. Nor does the rule provide a process for waiver of the regulations as they apply to small developers of new technologies. The MMS must promulgate a separate penalty and enforcement system for small companies to comply with the Small Business Regulatory Enforcement Fairness Act (SBREFA).	by small businesses. These options include waivers for operating fees and rentals and the ability to request departures. However, many of the requirements cannot be modified because of the potential impacts on safety and the environment. The MMS can not waive compliance with other Federal laws (NEPA, CZMA, National Historic Preservation Act etc). The SBREFA does not give MMS the authority to reduce or waive civil penalties for small business. The MMS and FERC finalized an MOU in April 2009, clarifying jurisdictional understandings regarding renewable energy projects on the OCS to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects.
Recommend that MMS use consistent terminology to describe the objective of having lessees and grantees avoid and/or minimize adverse effects to natural resources in coastal and marine environments. Under § 285.800 (a)(2), the regulatory text calls for lessees and grantees to use techniques "to minimize the likelihood of harm or damage to human life, the marine environments,..." At §285.105(a), lessees and grantees are directed to "minimize adverse effects to the coastal and marine environments..." At §§ 285.606 (a) and 285.621(d), a lessee is directed to demonstrate that activities under a SOP and a COP, respectively, will "not cause undue harm or damage to natural resources..." For both the regulated community and agency staff, the changing language seems to indicate different levels of protection, although this is not MMS's intent.	Agree. We revised these sections to use consistent terminology; all sections were changed to, "will not cause undue harm or damage to natural resources..."

SUBPART A—GENERAL PROVISIONS	
Comment	**Response**
Subpart A lacks guidance on several important "regulatory-approach" issues. Subpart A should be expanded to include the following: (1) general regulatory policies that MMS will employ, (2) express commitments to adaptive management, (3) a public interest review standard (i.e., standard similar to that employed by the ACOE under section 10 of the Rivers and Harbors Act, pursuant to ACOE regulatory policies in 33 CFR part 320) for reaching decisions on leasing authorizations, and (4) a process for addressing other State, Federal, and local government requirements.	We did not adopt this recommendation. We believe the rule adequately conveys policies and processes for regulating renewable energy activity on the OCS.
Revise § 285.101 to articulate the purpose of the	We did not adopt this recommendation. We believe

SUBPART A—GENERAL PROVISIONS	
Comment	**Response**
rule. It should include language pertaining to the generally-held view that power generated using the current mix of technologies can yield significant environmental benefits. The MMS should insert the following as 101(d): Promote timely development of commercially viable alternative energy projects on the OCS.	this section adequately states the purpose of the rule which reflects the purpose of EPAct. The EPAct did not include among its purposes that suggested by the commenter. While the benefits of MMS issuing leases and grants for renewable energy activities will include positive environmental impacts, that is not for purpose of the EPAct nor the OCS Lands Act, which it amended.
The MMS should recognize the need to include Indian tribes in the processes for this rule. Add Indian tribes to various parts of this section.	We have accepted this recommendation and provide for coordination and consultation with affected Indian tribes in § 285.102(e) and in other appropriate sections.
The proposed rule provides that MMS may waive requirements under its rules governing operations when needed to "facilitate the proper development of a lease or grant . . . ." Although we recognize practical considerations on which this provision may rest, we suggest MMS clarify in its rule that such waivers would not be solely sufficient as to something otherwise required under a State enforceable policy applicable pursuant to the CZMA's consistency provision.	We believe the requirements in § 285.103(b)(2) provide sufficient guidance to ensure that the use of a departure would not allow a lessee or grantee to bypass or sidetrack a State enforceable policy or requirement of any Federal law.
Section 285.103(b)(4) requires that "any departure approved under this section and its rationale must...[b]e documented in writing." It is unclear what this requirement means. If it means that MMS must approve the departure in writing and provide a written justification for the departure, then this provision should clearly state that requirement. Alternatively, if MMS' intent is only that the departure must be submitted by the applicant with a written justification, then the regulations should likewise make that clear.	Section 285.103 allows MMS to prescribe or approve a departure. The section is clear that MMS will not prescribe or approve a departure unless it meets the criteria for a departure and the supporting rationale is documented in writing by the lessee or grantee.
§ 285.105: The rule should also require project developers to coordinate and consult with stakeholders in adjoining States early in the planning and development of their proposed projects. This requirement should be included under subpart A § 285.105.	We have not adopted this recommendation. We cannot mandate potential project developers to coordinate and consult before they acquire a lease or grant, because no law gives us this authority. However, we do encourage such early coordination and consultation efforts and require them to be documented in submitted plans (subpart F).
§ 285.106: Revise § 285.106(b) to eliminate subsection (b)(4), which appears to be subsumed within subsection (b)(2) and to serve only as a source of potential confusion.	We have adopted this recommendation.
§ 285.106: Strengthen the requirements for leaseholders to prevent speculative and nuisance interference with the leasing process.	We have adopted this recommendation. We have added a requirement to §§ 285.106 and 107 that lessees and grantees demonstrate the technical and financial capabilities and intention to construct, operate, maintain, and terminate/decommission projects.
§ 285.106: The rules should restrict foreign ownership of leases.	The requirements for lease and grant holders, found in § 285.106, provide these restrictions consistent with other DOI leasing programs.

SUBPART A—GENERAL PROVISIONS	
Comment	**Response**
§ 285.106: As written, it is not clear whether private universities and research institutions are eligible. These institutions may be interested in using OCS facilities for aquaculture and other types of research.	A private university or research institution would be an association of citizens, nationals, resident aliens, or corporations and would be eligible to hold a lease or a grant under § 285.106(a)(4). We did not make any changes to the regulatory text.
The rules should include an MMS process for addressing insolvent or bankrupt projects. Simply reporting financial failure is insufficient.	The financial assurance provisions in the rule will ensure compliance with all obligations under the leases or grants.
To protect public assets from irresponsible financial management, prior to issuing final permits for any and all projects that show unsound economics and the potential for failure, MMS must require a "performance bond" that is separate from a decommission.	We have not adopted this recommendation. The rule provides for financial assurance based on estimates of decommissioning costs and other financial commitments. Requiring an additional bond based on project economics is not necessary, because project economics are encompassed in such costs and commitments.
Clarify if merges, name changes, or changes of business form must be filed as assignments. The MMS has this provision to address these types of changes to a business; there is no need to request an assignment under §§ 285.408 through 285.411.	We have adopted this recommendation and changed § 285.408 to clarify that these cases are addressed in § 285.109.
Citations regarding cost recovery are incorrect and should be revised.	We have adopted this recommendation and changed the citations in both §§ 285.111 and 285.118 to 43 CFR part 4, since there are multiple sections that apply to appeals.
Expand the definition of "Natural Resources" to include natural lightscapes and soundscapes.	We have not adopted this recommendation. The definition of "Natural Resources" in § 285.112 is broad enough to include these resource values.
§ 285.112: The "alternative use" definition in § 285.112 is vague, overly broad, and does not provide sufficient information about the types of activities that would be considered as an "alternative use" of these facilities. The MMS needs to identify those activities that would be included or excluded as "alternative uses."	We have not adopted this recommendation. We do not wish to limit the possible uses that we could consider under these regulations by specifying alternate uses at this time.
§ 285.112: The "alternative use" definition in § 285.112 is unclear and confusing and contains "use" within the definition. This is circular and does not define what a "use"' consists of. You must define when a "use" exists, i.e., when is something occupied or otherwise not available for others to occupy.	We have not adopted this recommendation. We believe it is possible for an existing OCS facility to accommodate multiple alternate uses (e.g., an ocean research program could share the facility with a SCUBA diving business).
§ 285.112: The rule fails to include the definition of "adaptive management" in § 285.112, an important approach that should be defined and meaningfully applied in the proposed rule. Define "adaptive management" as "seeking continuous refinements in and improvements to the project's environmental management systems to respond to new information resulting from changed or unforeseen circumstances, new scientific and technical information, and new or updated	We have not adopted this recommendation. We include adaptive management protocols in the rule that are consistent with the recommended definition but do not believe there is a need to include a definition of the term. Whether or not the term is specifically defined will not affect implementation of the protocols.

SUBPART A—GENERAL PROVISIONS	
Comment	**Response**
modeling."	
§ 285.112: The "commercial activities" definition in § 285.112 is unclear and confusing. It excludes all commercial activities that are not associated with electricity or energy production. This is problematic for two reasons: (1) There are other "commercial activities" (e.g., hotels, restaurants) that may take place which do not include the generation of electricity or energy. How are these other commercial activities defined? (2) There may be some noncommercial generators of electricity and energy, such as Public Utility Districts.	We have revised this definition to apply only to renewable energy leases and grants and not to alternate uses (e.g., hotels, restaurants). Public utilities would be captured under this definition and the definition of "commercial operations" because they would conduct activities to generate power for public use.
§ 285.112: The definitions in § 285.112 relating to leases, ROWs, and RUEs are unclear and confusing. They are circular and do not define anything other than the title of the authorization document. The definitions should make clear the substantive legal differences between each form of authorization.	We have not adopted this recommendation. There are no substantive legal differences among the types of instruments offered in the rule. The difference is in the purpose of the instrument.
§ 285.112: Definition of Lease: The definition of "lease" in § 285.112 should make it clear that a lease conveys a property right to the lessee. Therefore, the definition should be amended to state that a lease "means the right to use a designated portion of the OCS...."	We have changed the definition of lease to substitute "agreement" for "authorization" and to refer to the right to use the OCS in the lease agreement.
§ 285.112: Definition of Lessee and Operator: The language defining a lessee in § 285.112 as "all persons authorized...to conduct activities authorized in this part" is so broad that it would make a contractor, operator or even a CVA, a lessee, The "depending on context" language does not give enough guidance to make this definition helpful. Similarly, the definition of "operator" is too broad to be helpful. It should provide greater clarification as to the distinction between "operator" and "lessee." The definition of "lessee" under the OCS oil and gas regulations, § 250.105, is a better model for these regulations.	The definition of lessee was revised to read, "means the holder of a lease, an MMS-approved assignee and, when describing the conduct required of parties engaged in activities on the lease, also refers to the operator and all persons authorized by the holder of the lease or operator to conduct activities on the lease." The term operator means "the individual, corporation, or association having control or management of activities on the lease or grant under this part." The operator may be a lessee, grant holder, or a contractor designated by the lessee of holder of a grant under this part.
§ 285.112: The term "relevant federal agencies" should be defined as those that have statutory responsibilities over resources and values that could be affected by decisions made in implementing the regulations.	We have not adopted this recommendation. We believe that the term "relevant federal agencies" as used in EPAct is unambiguous and needs no definition in the rule.
§ 285.112: A definition for "undue harm" should be added. The regulations refer to "undue harm" in many sections that call for the mitigation of impacts. It is often used in conjunction with requiring operators to mitigate damage to resources. The reader is left wondering if "undue harm" is meant to mean something other than mitigating damage.	We have not adopted this recommendation. We do not believe a definition of this term is needed in the rule. Analogous DOI regulations do not include a definition of this term.

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§ 285.112: Clearly explain the terms "use" and "user." For instance, fisheries should be included in subpart A, § 285.1 02 (7) as "other authorized users of the OCS." Under § 285.102 (9), "reasonable uses" should also be clearly defined. In many instances, both commercial and recreational fishing are considered reasonable uses.	We have not adopted this recommendation. We do not believe definitions of these terms are needed in the rule. Analogous DOI regulations do not include definitions of these terms.
§ 285.112: Include natural lightscapes and acoustic studies as examples of baseline collection studies.	We have not adopted this recommendation. The examples provided in the rule and preamble are not intended to be all inclusive. They are merely examples and do not preclude lightscape and acoustic studies.
§ 285.113: Keep confidential all proprietary information associated with any resource assessment/technology testing activities including, but not limited to, all raw data, analyses, and computational models.	We have revised § 285.113 and other relevant sections to state clearly how we will protect proprietary information.
§ 285.113: Make data more available for evaluation by States and other stakeholders.	The types of data to be made available to States and other stakeholders under the rule will be guided by the requirements of the FOIA. Section 285.113 states how and when data will be made available. The EPAct does not authorize protections of data beyond what is provided in FOIA. Entering into relevant agreements with States is possible under the rule. Specific procedures for handling data will be developed and included in the implementation guidance that we intend to issue after the rule is approved.
§ 285.113: The protections outlined in proposed § 285.113 are insufficient to shield highly sensitive commercial data such as business and trade secrets. Any data that MMS obtains under § 285 will be subject to release under the FOIA, notwithstanding the objections of the party that provided the information, if a court determines that the data does not fall within one of the exemptions to disclosure under that Act (e.g., 30 CFR part 252.6).	The EPAct does not authorize protections to data beyond what is provided in FOIA.
§ 285.113: All data regarding environmental and socioeconomic effects of proposed projects should be made available to the general public. All data, including the applicant's financial information and proprietary information (i.e., intellectual property), should be disclosed to the applicable State governments, so that the State(s) may conduct thorough and accurate analyses. The MMS should consider entering into agreements with the relevant State(s) to ensure the information will be kept confidential by State agency employees and will not be disseminated outside the various State agencies or further than necessary within the State agencies.	Availability of data will be handled in accordance with § 285.113. Specific procedures for handling data will be developed and included in the implementation guidance that we intend to issue after the rule is approved. Under § 285.113(b), MMS will not release any data or information that is exempt from disclosure under FOIA, unless the submitter agrees to the disclosure, except to the extent required by law. This includes data and information that is released to any State. We will pursue agreements with States on this issue, as appropriate.

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The MMS should require wind speed data submitted by an applicant to be verified by an independent third party. The data should be for at least three (3) years of observation.	The rule would allow such an approach. We will determine the amount and type of resource data to require to support our decision-making on a case by case basis in lease and plan processes.
The MMS should not compel those responding to request for information to submit the required information by a specific date.	We have not adopted this recommendation. We believe that due dates for responding to such requests are necessary for efficient and responsible program analysis.
§ 285.116: Section 285.116 states that MMS may request information at any time, and lessees and other parties are required to respond in a timely manner, or they will be subject to enforcement. A reasonableness standard should be applied to this broad grant of power to ensure that applicants and other stakeholders are not required to "timely" meet unreasonable deadlines.	We have removed the following sentence from § 285.116: "You must respond to such a request in a timely manner, as established in the request." As a matter of policy, we will be reasonable in both our information requests and any enforcement actions.
Requesting information from lessees and other parties - MMS can only require the lessee to meet timeframes, not anyone else.	We have revised § 285.116 to clarify that parties other than lessees, applicants, operators, or holders of ROW grants, RUE grants, or Alternate Use RUE grants are not required to meet timeframes for information requests from the Director.
We recommend that the following sentence in § 285.116 be modified, as follows: "Such requests for information could relate to the identification of environmental, technical, regulatory or economic matters that promote or detract from continued development of alternative energy technologies on the OCS."	We have adopted this recommendation and added "regulatory."

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Clarify which areas are subject to leasing under the current program. Do the water depths from the Final Programmatic EIS apply? The final Programmatic EIS for the Alternative Energy Program examined areas with water depths of 100 meters or less for wind and wave technologies and areas with water depths of 500 meters or less for current technologies. Will these criteria be the basis for determining the initial areas subject to leasing for alternative energy projects by MMS's program unless a supplemental programmatic EIS is conducted?	The water depths were included in the Programmatic EIS as reference points for NEPA review of likely scenarios, and actual leasing under the rule will not be limited by them. Various activities involving different technologies and water depths will be considered under the rule and subsequently undergo appropriate individual NEPA analysis.
Add details on the proposed lease area assessment process.	Further details on the lease area assessment process have been added to the discussion of both the leasing process and NEPA review process in the preamble to the final rule. Also, MMS will issue implementation guidance with further explanation after the rule is approved.
Change provisions allowing industry to identify areas available for leasing – Establish a 3-year planning cycle during which limited strategic	Such an approach is possible under the rule.

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areas are selected where commercial leases for alternative energy projects would be offered. Each 3-year cycle would be initiated with the identification of areas to be offered by MMS, followed by competitive leasing and environmental analysis of the site-specific projects offered, and the cycle would end with the issuance of leases. For alternative energy development projects, only areas identified by MMS as having adequate energy resources, appropriate water depth, proximity to a load center, and minimal environmental impact would be offered. The specific localities would be determined in coordination with the affected States and would be subject to adequate interest by industry. Each area identified would be evaluated through the NEPA process, and specific locations within the area could be identified as unacceptable for development.	
Add language that makes it clear that areas on the OCS may be offered for lease once a determination is made that development in such areas will be in accordance with the various responsibilities of MMS, as set forth at § 285.102, which include protection of the environment, and state that if conflicts arise with the stated criteria that cannot be resolved with respect to a given tract, that area will not be offered for lease.	We have not adopted this recommendation. Section 285.102 clearly states that MMS must ensure that all activities—which would include leasing—are carried out in a manner that provides for the responsibilities listed.
We support the exclusion of the sites listed in this section from those areas to be made available for leasing, including units of the National Park System, National Wildlife Refuge System, National Marine Sanctuary System or any National Monument. Other designated resource areas of interest to coastal States include National Estuarine Research Reserves, units of the National Estuary Program, and identified EFH. Alternative energy research and development should not necessarily be included in or excluded from these areas, rather such activities must be fully consistent with the respective program regulations.	The rule provides for coordination and consultation with Federal agencies, through which consistency with respective program regulations will be assured.
Concerning coordination on various biological components of the proposed rule, such as surveys and migratory bird consultation, the proposed rule does not discuss or reference MMS's responsibilities regarding the Migratory Bird Treaty Act.	The final rule addresses the protection of migratory birds in several major ways. As described in the preamble, all NEPA reviews must examine biological resources including marine birds. In the rule, NEPA reviews occur at the lease issuance stage, as well as, site assessment, construction and operations, and decommissioning stages. In addition, the rule requires that biological surveys, which include descriptions of the presence of sea birds, be submitted with the SAP, COP, GAP and

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	decommissioning application Further, we are working with FWS on an MOU to implement E.O. 13186, "Responsibilities of Federal Agencies to Protect Migratory Birds" (January 10, 2001).
The proposed rule does not mention the Fish and Wildlife Coordination Act (FWCA) which applies to water resource development projects. Although a 1982 Solicitor's Opinion states that the FWCA does not apply to mineral development or oil and gas projects on the OCS, the Service believes the proposed alternative energy development program in the OCS, which is the subject of MMS rule, would be the type of project to which the FWCA would apply.	We have reviewed the 1982 Solicitor-Opinion, "the Fish and Wildlife Coordination Act Does not Apply to OCS Leases and Permits Issued by the Secretary," and have concluded that it is also applicable to leases and grants issued for renewable energy and alternate use activities.
Select lease sale areas to minimize effects on existing uses - do so by requiring coordination between the applicant, State and local governments, and other stakeholders early in the site selection process.	We plan to make sound decisions to balance ocean uses appropriately. We will consult and coordinate extensively with relevant organizations at the national, regional, state, and local levels to receive input relating to the siting of renewable energy projects and the development of program priorities.
§ 285.222: Proposed § 285.222(a) should be revised to set a 30-day deadline for acceptance or rejection of the high bid. In addition, if MMS declines to revise proposed § 285.107 to establish meaningful bidder competence requirements, proposed § 285.222(b) should be changed to provide for review of high bidders' qualifications to make productive use of alternative energy leases before the lease is awarded in place of conducting a bid adequacy review. American Wind Energy Association believes that this provision (MMS reserving the authority to nullify an auction because the competitively determined value of a lease falls short of a minimum value that MMS has placed on it) is misguided.	We have not adopted this recommendation. We believe that the proposed 90-day deadline is more practical, recognizing that bid review may be accomplished in less time. We have revised bidder qualifications in § 285.107. We have decided to establish a bidder competence requirement, but that in itself is not considered sufficient to protect the public interest. To ensure receipt of a fair return, MMS intends to rely primarily on area-specific minimum bid levels and auction designs that encourage competitive bids. Where competition clearly prevails, MMS expects to make high bid acceptance and rejection decisions within 30 days following the sale, absent the presence of unusual bidding patterns. The 90-day post-sale evaluation period is generally intended to apply in those unusual cases where bid adequacy procedures must be used.
The MMS should delete the regulatory reference to minimum bids and provide additional guidance as to the bid evaluation criteria it might announce and apply.	We have not adopted this recommendation. We believe setting a minimum bid is necessary to inform auction participants of the smallest bid amount that could be accepted in a sealed bid auction, or to set the level for opening bids in an ascending bid auction. Further, minimum bids can serve as a deterrent to strategic or speculative bidding. Bid evaluation procedures will be announced in the Proposed Sale Notice.
§ 285.223: Proposed § 285.223 should be revised to eliminate references to (i) selection by lots to break ties; and (ii) MMS reviews of "bid adequacy." A selection system that incorporates some element of merit, such as the credit-worthiness of the company or individual, is	We have revised § 285.223 to provide for breaking ties by further bidding rather than by lot. Also, we have revised the qualification requirements in § 285.107, as recommended by commenters.

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preferred to selection by lot. In addition, if MMS declines to revise proposed § 285.107 to establish meaningful bidder competence requirements, proposed § 285.222(b) should be changed to provide for review of high bidders' qualifications to make productive use of alternative energy leases before the lease is awarded.	
The MMS's competitive bidding methodology is at odds with FERC's first-through-the-door approach for sites that straddle the 3-mile jurisdiction boundary.	The MMS and FERC finalized an MOU in April 2009, clarifying jurisdictional understandings regarding renewable energy projects on the OCS to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects.
Allowing bidders to define a set of tracts on which they wish to submit a package bid should increase interest in a sale because it will help ensure that bidders acquire the tract most suitable for their particular project.	The rule allows this approach.
Package bidding protocols and rules would dramatically increase the complexity of the alternative energy leasing process. The MMS should evaluate the costs and benefits of package bidding, and consider the results of the first rounds of leasing in the continuing evaluation. Those first rounds of leasing, however, should be conducted in a more conventional format, based on MMS's informed judgments concerning the appropriate size of leases offered to all bidders.	While we will be able to proceed with package bidding under the rule, it is likely that a more conventional approach will be used early on, and MMS will consider these early leasing results in considering different approaches in the future.
Bidders should have flexibility to designate a package of tracts but should not be burdened with intertract competition. MMS should not be attempting to inflate or manufacture artificial interest where none exists with intertract bidding, but should conclude that no competition exists and proceed to issue a noncompetitive lease for that tract.	The MMS may choose to employ intertract competition to assess bid adequacy in cases where there are multiple tracts of interest but few bidders per lease, and when bids submitted for a tract are otherwise not a good indicator of true market competition. The sealed bid auction format is administratively compatible with the application of a ranking and filtering procedure to identify the set of highest bids per tract before MMS decides which of those tracts to lease, and reduces reliance on a calculated reservation price. The object of intertract competition would be to provide signals through the bids, which serve to assist MMS in leasing areas with the most valuable sources of energy to the bidders that value those areas most highly.
For intertract competition, MMS would need to assume the role of electrical supply planner The complexity of an intertract bidding system would add significantly to the time and expense required to execute leases, and the system would complicate MMS competitive interest determinations.	A broader sale that utilizes intertract competition could be held for many reasons. Overall, the competitive lease process leading to a lease sale on the OCS could take more than a year to complete. In all likelihood, the information submitted in response to the initial request or after the call for nominations could only give a partial indication of the extent to

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	which entities hold an interest in leasing an area. The cost to MMS and potential lessees of complying with NEPA requirements before a sale is held may be lower if multiple tracts are analyzed. The MMS could offer tracts for lease that comprise an area that exceeds nominations, and use intertract competition as a fair-market evaluation technique to determine how many tracts receiving bids can be leased. A programmatic goal could aim to increase the total number of tracts under lease in the sale area, to maintain the number of tracts leased at a constant level, or to allow the number of tracts under lease to decline, given the level of bidder interest. We do not believe MMS would need to assume the role of electrical supply planner. However, it is possible that MMS will be put in a position to design lease sales that are responsive to electrical supply circumstances and needs identified by stakeholders including, State and local governments, utilities, and others.
Allow applicants to bundle together several tracts which have the best potential for commercial development - applicants have been actively investigating available and developing technology and the existing environmental data for various sites, and are in the best position to determine whether one, two, or more tracts are necessary to support commercial development.	The rule allows this approach.
Sealed bids are the best method - Most bidding activities will be time bound due to a response to a utility RFP. This window will last from 60 - 90 days. If control of the site is not able to be established prior to the submittal of the bid, then the bid will most likely not be evaluated further. Developing a site at an approximate cost of $6,500,000 per site in the hope that the Integrated Resource Plan or RFP may occur within 5 years requires the project developer to assume significant financial risk. A single round of bidding is a more equitable process than ascending bidding and is the simplest, most straight forward method.	We recognize that under certain conditions, a sealed bid auction can yield better results than an ascending bid auction. Such an auction would help ensure that MMS receives a fair return for leases awarded while prompting a minimal number of tract specific assessments to calculate reservation prices. We will review information received in response to a Request for Interest and a Call for Information and Nominations before announcing a sale design and auction format in a proposed notice of sale.
Adopt a multiple-factor bidding process for leases that fully account for environmental and economic externalities, environmental best practices, technological superiority, past experience, future plans, stakeholder engagement and consultation, and the efficiency of the proposed project.	We have adopted this recommendation and revised § 285.220 and other relevant sections to provide for such a process.
Section 388 of EPAct requires that MMS receive a "fair return" for any lease, easement, or ROW. Until commercial production of wind energy on the OCS is demonstrated through	The MMS has chosen to retain the flexibility to implement bid adequacy procedures, when needed to ensure the public receives a fair return for renewable energy lease rights conveyed. The agency believes

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implementation of multiple projects, a "fair return" to the United States should be a minimal standard. It certainly should not be used as a basis to reject a good faith bid for a lease received through a public and competitive process in the early years of the Alternative Energy Alternate Uses (AEAU) regulatory program. The MMS should adopt a policy wherein the agency will negotiate with applicants to ensure that areas of interest get developed, even if bids fall below an artificial price signal which may not reflect actual market value. The Government should not need to be compensated for such a lease, as it is not foregoing anything that would require a "return." The base rental rate and operating fees will cover costs to MMS of operating and overseeing the program and will deter insincere applicants not acting in good faith.	that a combination of bonus, rent, and operating fee payments should be balanced in a way that encourages successful development. The MMS will establish categorical lease terms, when reasonable, to simplify leasing by avoiding the complex analysis that would be required to negotiate lease terms for each proposal on the OCS. The MMS has added a multiple-factor auction format to the processes it may utilize to award leases competitively (§§ 285.221 and 285.222). The agency does not anticipate that the format would have wide application, but expects that the public will benefit in cases where the process makes it possible for the Government to obtain commitments from industry to do innovative research and technology development to test and demonstrate a new project concept.
§ 285.214: Proposed § 285.214 should be revised to clarify that MMS may, over time, issue multiple Calls for Information and Nominations covering any particular region of the OCS.	We have not accepted this recommendation, because we believe it should be understood that multiple Calls may be issued for the same area over time. We have added additional explanation in the preamble.
We suggest one of the sections of subpart B should apply to the matter of ownership of a commercial lease. Given the investment of government time and effort to evaluate a project, a commercial lease should not be transferrable or saleable to another party.	We do not see a need to prohibit assignment of OCS renewable energy leases, and we believe that subpart D and related provisions appropriately provide for transfers that will maintain diligence requirements promoting development of OCS renewable energy resources.
Develop a mechanism to provide compensation to mitigate adverse impacts to coastal resources or uses.	We have not adopted this recommendation. The EPAct does not require or authorize a mechanism to provide compensation to mitigate adverse impacts to coastal resources or uses.
Competition for alternative energy leases will be limited. An ascending bid process would be preferable, and sealed bidding should not be used.	We have not adopted this recommendation. The rule provides for both sealed and ascending bidding auction formats. The MMS will consider issues such as these in selecting auction formats under the rule on a case-by-case basis.
§ 285.200: Section 285.200(b) states that a lease confers on the lessee the right "to one or more project easements without further competition...." It also provides that lessees must apply for project easements as part of the COP or GAP. The regulations should also make clear that the lessee may later amend the COP or GAP and request modified or additional easements if necessary, without being subjected to further competition.	We have not adopted this recommendation. We believe that the regulations clearly provide for amending (revising) plans and that project easements could be covered in such amendments. Additional explanation on this topic has been added to the preamble.
The MMS should seek to avoid all unnecessary delays in the leasing process and should require a competitive leasing process only in situations where more than one applicant has shown	As explained in the preamble, we do not believe that competition should be limited only to situations in which overlapping interest is indicated. We have maintained the discussion of six approaches to

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serious interest in the same area and where the proposed lease areas overlap. If there is an initial indication of an overlap among areas of interest for development, the applicants should be given an opportunity to consult and reach agreement on amendments to the proposed areas such that there is no overlap. The MMS offered six options on the process for deciding conflicts when two proposed projects overlap. A seventh option was proposed. The MMS should consult with the applicants for Projects A and B to give each applicant the opportunity to amend its application to avoid the overlap. Only if the applicants are unable to agree should MMS consider one of the other alternatives. Of the options MMS proposed for consideration, only Option 2--competitive bidding only for the overlapping areas and noncompetitive lease issuance for the nonoverlapping areas--should be used.	partial overlap as options for proceeding under the rule. We have not adopted the additional approach recommended due to concerns about adverse effects on competition. Also, we have adopted additional qualification requirements in § 285.107.
§ 285.231: In § 285 .231 (b), MMS must issue a public notice of the noncompetitive lease request. Inordinate delay is a great concern. This is an example of a section where MMS should prescribe a time deadline to issue the public notice, not to exceed 20 days. This section also should provide a more detailed explanation of what constitutes a "public notice" if MMS intends it to constitute something less than publication in the Federal Register. The same comment applies to § 285.307(a) (RUEs and ROWs).	We have not accepted this recommendation to place a deadline in the rule. However, we will include a target deadline for this and other MMS actions in implementation guidance we intend to issue after the rule is approved. Also, we believe that public notice means a notice published in the Federal Register (as we have done in implementing the MMS interim policy on limited leasing).
§ 285.231: Under § 285.231 (d), if MMS makes a determination of no competitive interest, it will publish a notice of determination in the Federal Register. The MMS again should establish a date, not to exceed 30 days from the closing date of the request for competitive interest, to make such determination.	We have not accepted this recommendation to place a deadline in the rule. However, we will include a target deadline for this and other MMS actions in implementation guidance we intend to issue after the rule is approved.
Allow lease applicants to designate proprietary data and information as confidential business information (CBI), and such information should not be made publicly available unless an interested party can establish why the information is not proprietary or its designation as CBI is otherwise inappropriate.	We have revised § 285.113 and other sections of the rule in subparts B, F, and G, as well as relevant parts of the preamble, to clarify that certain information will be withheld from public disclosure as CBI under FOIA exemption 4.
Either reduce the amount of detailed information required (Call for Nominations) or guarantee proprietary treatment for the submitted information.	We have added a statement that certain information cited in § 285.213(d) will be withheld from public disclosure under FOIA exemption 4.
Send any notices to a "contact list" which would include the e-mail addresses or physical	We have not adopted this recommendation in the text of the rule. We do not believe it would be

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addresses of any parties that commented on the lease form or this rule. It is easy to miss "Calls" and "Requests for Information" in the Federal Register.	appropriate to include the specifics of a "contact list" in the regulatory text. However, such contact lists may be used by MMS in implementing the rule, and we will take measures to communicate promptly and efficiently regarding notices.
Apply federal consistency and early coordination standards/rules to access easements needed for the power transmission cable.	Project easements will be subject to CZMA consistency requirements and applicable coordination provisions in the rule.
Adopt the use of a settlement agreement type process, like that used by FERC, to ensure an opportunity for early stakeholder involvement and compatibility with the Territorial Sea Plan (TSP) and other regulatory programs.	We have not adopted this recommendation. We do believe that a settlement agreement process could inhibit the flexibility (e.g., adaptive management) that will be necessary in the OCS AEAU Program.
Enter into formal, well-defined relationships with as many of the regulatory bodies as feasible - e.g., FERC and each costal State's agencies that would be involved in the development of offshore energy projects.	We believe the rule provides for establishing well-defined relationships necessary for coordination and consultation in authorizing OCS renewable energy projects. The MMS and FERC finalized an MOU in April 2009, clarifying jurisdictional understandings regarding renewable energy projects on the OCS to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects.
Include a requirement under subpart B to coordinate and collaborate with Federal, State, and local agencies in developing options for environmental analysis and leasing under § 285.211(b).	We have not adopted this recommendation. We believe that § 285.211 and other provisions adequately call for consultation in developing leasing options and conducting NEPA and other environmental analyses.
Note the consultation requirement for Assateague Island National Seashore in the final rulemaking as a condition of any future actions associated with alternative energy development and production and alternate uses of facilities on the OCS in proximity to and with potential to affect this park - consultation is a requirement of the park's enabling statute, located at 16 U.S.C. 59f-11(b).	We note this requirement and will ensure that it is implemented in any relevant actions taken under the rule. Such requirements will apply absent specific mention in the rule, so revisions to include such requirements are unnecessary.
Develop joint procedures through MOUs between the National Park Service (NPS) and MMS that address coordination and collaboration among Federal agencies at the Washington and regional level.	The rule provides for appropriate consultation, and MMS plans to work with interested and affected parties and enter into MOUs as appropriate. We may pursue appropriate MOUs with the NPS in implementing the rule.
While MMS states that it will consult with "relevant federal agencies" (§ 285.203), it is not clear that this includes the Department of the Defense (DOD) or pertains only to those agencies with jurisdiction under the environmental laws. For § 285.203, recommend adding "including the Department of Defense" after "relevant Federal agencies." Alternatively, MMS could state in the preamble to the final rule that DOD is one of the relevant federal agencies with whom it will coordinate and consult before issuing a lease.	We have not adopted this recommendation in the rule text because it should be understood that DOD is a relevant Federal agency. We have specified DOD as a relevant agency in the preamble.

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Work with DOE, NOAA, FWS, and FERC to identify the best placement of alternative energy pilot sites.	This will be possible under the rule.
The MMS should clearly delineate Federal agency roles for review of lease requests and environmental impact review for offshore wind farms.	We have not adopted this recommendation in the text of the rule. We will attempt to outline agency roles in the implementation guidance we intend to issue after approval of the rule. The rule provides for appropriate consultation, and MMS plans to work with interested and affected parties and enter into MOUs as appropriate.
Send the notice of proposed sales to the affected Fishery Management Council as established under the Magnuson-Stevens Act.	We have not adopted this recommendation in the text of the rule. Such a notification protocol may be established in implementing the rule and documented in the implementation guidance we intend to issue after approval of the rule. The rule provides for appropriate consultation, and MMS plans to work with interested and affected parties as appropriate.
Regarding lease forms, MMS should specify the affected parties and lay out the mechanism to ensure consultation. Interested Federal and State agencies, as well as the alternative energy business community and general public, should be allowed to comment on draft wording.	The lease form is not included in the rule. We intend to develop a model lease form through a public process that will invite all interested and affected parties for input. Subsequently, consultation on specific leases will be conducted through the relevant means and processes outlined in the rule.
Advise lessees and grantees to engage affected agencies early in the process, to help eliminate errors in the location and boundaries of park units and other areas. Several park units have boundaries that extend significantly offshore, like Assateague Island National Seashore in Maryland and Virginia, and Olympic National Park in Washington, which extends 25 to 40 miles from the shoreline.	The rule includes several provisions encouraging early consultation with affected agencies, notably in subparts B and F.
The rule should contain sample or template documents to guide consultation requirements. For a commercial lease, one option is to create an agreement (similar to a settlement agreement used in a FERC license application) that is incorporated into the sale notice and is expanded upon in the site assessment phase.	We have not adopted this recommendation in the text of the rule. As stated elsewhere, we do not wish to adopt a settlement agreement process, and we believe there are ample provisions in the rule that encourage early consultation. Also, we will expand on the rule provisions in the implementation guidance we intend to issue after the rule is approved.
Employ a regional/State stakeholder process when conducting analysis, in cooperation with affected States and Federal agencies, on factors useful to determining future leasing zones	Such an approach would be possible under the rule. While it is not necessary for MMS to outline such a process or commit to it in the regulatory text, we fully intend to coordinate and consult extensively with stakeholders.
Other State entities (e.g., the Department of Natural Resources) not part of the State Governor's Office(s) should be included in each project "task force," (not all relevant State agencies are cabinet agencies), as should tribal governments.	We have not adopted this recommendation in the text of the rule. Interested and affected State agencies designated by the Governor may be included in a task force, and tribes also may be included. The composition of relevant task forces will be discussed in more detail in the implementation guidance we intend to issue after the

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	rule is approved.
Working with each affected State to develop an MOU regarding timing and content of Federal Consistency review and the ability for MMS to develop such Memoranda should be codified in the proposed regulations.	Such an approach would be possible under the rule. The rule provides for appropriate consultation, and MMS plans to work with interested and affected parties and enter into MOUs as appropriate.
§ 285.230: (1) Add the following sentence to the end of subsection (e) of proposed rule 285.230: "If the governing body of an affected local government has enacted an ordinance establishing a formal consultation process for selecting areas for the siting of alternative energy facilities in the OCS under this part, you must certify that that you have used, or attempted in good faith, to use that process to identify appropriate parts of the OCS for your proposed alternative energy project." (2) Add a new paragraph (5) to proposed rule 285.211(b) to read as follows: "(5) If the governing body of an affected local government has enacted an ordinance establishing a formal consultation process for selecting areas for the siting of alternative energy facilities in the OCS under this part, before MMS initiates a competitive lease process for part of the OCS involving that affected local government, MMS will first attempt to use that process to identify appropriate parts of the OCS."	We have not adopted these recommendations. While we strongly believe that local consultation requirements and processes should be considered, they do not have primacy in the authorization of renewable energy activities on the OCS. We intend that MMS and project proponents will coordinate and consult with local interests as necessary, but we will not mandate local requirements in the rule.
The rule should expressly provide the State a separate opportunity to comment on the terms of any proposed lease.	The rule provides States the opportunity to comment on the terms of proposed leases (§§ 285.211 and 216).
If the right to a project easement includes the right to pass through State waters, then there needs to be some kind of explicit acknowledgment of the need for consultation with the affected State(s).	Subpart F of the rule includes provisions for consulting with affected States on project easements, which are elements of plans (COP and GAP) that will undergo State review and be subject to CZMA consistency requirements.
The rule should clearly state that MMS will consult with affected parties, including State and local governments, to determine mitigation requirements.	The rule provides for such consultation in § 285.211, and the preamble discussion of that section states explicitly that we will consult with State and local officials on mitigating stipulations and conditions.
Add affected Indian tribes—"For leases issued under this part, by either the competitive or noncompetitive process, MMS will coordinate and consult with relevant Federal agencies, with affected Indian tribes, with the Governor of any affected State, and the executive-of any affected local government, as directed by subsections 8(p)(4) and (7) of the OCS Lands Act and by other relevant Federal statutory requirements (e.g. Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA)). Affected Indian tribes	We have added "affected Indian tribes" in § 285.203, and added a definition of such tribes in subpart A. We have not added a citation of the MMPA, because we wish to list a number of examples of relevant laws rather than an exhaustive list. The fact that a particular law or requirement does not appear on the list does not affect its potential applicability.

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are those Indian tribes with treaty or other reserved rights that may be impacted by a lease issued under this part."	
In the case of Connecticut, utilize the online Federal Consistency Worksheet to comply with State coastal management programs.	Such an approach would be possible under the rule.
Work with coastal States to simply and clarify framework for processing CZMA reviews and to incorporate CZMA compliance standards into lease terms. The competitive lease process may require up to three different CZMA determinations under various subparts of the CZMA.	The rule provides for appropriate consultation, and MMS plans to work with interested and affected parties as appropriate. We intend to work with the States as suggested.
Add new § 285.2xx: What steps will MMS employ to ensure coordinated and effective application of the CZMA process?	We have not adopted this recommendation per se. However, we have added new language to this effect in subparts B, C, and F, have expanded relevant preamble discussion, and will provide more details in the implementation guidance we intend to issue after approval of the rule.
While there may be opportunities to streamline project review, it remains important that CZM Programs are able to review the project at each stage: lease sale, SAP, and the subsequent COP - the project size, design and subsequent coastal effects could be markedly different between the lease and COP stage.	The rule provides for project review in stages under CZMA, at § 285.612 for the SAP, § 285.627(b) for the COP, and § 285.647 for the GAP.
Include review by the agencies implementing each State's CZM Program. Additionally, the CZMA should be added in both sections as one of the applicable Federal acts.	The rule provides for State CZMA review, and we expect such review will be conducted by appropriate State implementing agencies. We do not believe it is necessary to cite all individual applicable Federal laws.
The rule should include a completed matrix for easy reference by CZM Programs and applicants to avoid confusion and to increase predictability; timelines for each type of review may also prove to be helpful.	We have not adopted this recommendation per se. However, we have added new language to this effect in subpart F, have expanded relevant preamble discussion, and will provide more details in the implementation guidance we intend to issue after approval of the rule.
It is unclear if the certification is required to include an evaluation of consistency with a State's federally approved CZM Program or is meant to address only consistency with energy plans. This language is used in several sections of the proposed regulations and should be clarified in all sections where it is used.	With respect to the commenter's concern that we have used certain language (certification) in several sections and that it should be clarified, we have deleted § 285.212(e) entirely and have changed "certification" to "a statement" in § 285.230(e). Absence of "certification" should clarify that we are not referring to actions under the CZMA.
Allow 30/60 calendar days to review terms and conditions and execute a lease - 10 business days may be insufficient if the developer companies haven't seen the leases prior to receipt, (the requirements in § 285.224(a) would also have to be met in this same timeframe.)	We have not adopted this recommendation. We believe 10 days is reasonable for executing the lease, paying the remainder of the bonus, and providing financial assurance. Companies will be aware of lease terms and conditions well in advance of lease issuance (in sale notices for competitive offerings and in lease negotiations with MMS for noncompetitive offerings).
The 10-day business deadline for successful	We have not adopted this recommendation. As

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bidders to submit 80 percent of its winning cash bonus plus 6 months rental and the cost of initial financial assurance measures is unreasonably short.	stated previously, we believe the 10-day timeframe is reasonable. We have increased the timeframe for paying the first 6 months' rent to 45 days in order to give lessees the opportunity to relinquish unwanted acreage (see preamble pertaining to subpart B).
It is unclear how the process described by MMS will permit developers to respond in a timely manner to RFPs issued by utilities or other buyers. Developers will be hard pressed to respond to the bid requirements and also procure the necessary control of the site to ensure that their bid demonstrates "control of the site."	The rule provides the means for developers to obtain control of the site. It will be up to the RFP offerors and the developers to work out the most efficient procedures to meet their individual needs as efficiently as possible. If MMS can help in such efforts with coordination and consultation mechanisms, we will seek to issue clarifications in the implementation guidance we intend to issue after the rule is approved.
Sixty days for submittal of a SAP too short - Because MMS will seek comment and competing offers for all requests for noncompetitive leases, an applicant has no certainty of receiving the lease that they requested and, thus, should not be obligated to submit an SAP in such a short time after the lease issuance.	We believe that an entity submitting an unsolicited request for a lease should have a very good idea of its intentions for that lease at the time it submits its request and should not need more than 60 days to submit a SAP. However, it should be noted that under revised § 285.103, a departure from this deadline requirement may be approved on a case-by-case basis.
Define the statutory phrase a "competitive basis lease" to "include leases with any bidder selected as part of a request for proposals issued by a State, a State agency with jurisdiction over utilities or electricity rates, a subdivision of a State, or a regulated utility" OR provide that there would be a strong presumption that "no competitive interest" exists in those situations where a bidder has been selected as part of an RFP issued by a State, a State agency with jurisdiction over utilities or electricity rates, a subdivision of a State, or a regulated utility.	We have not adopted either of these recommendations. After this rule is approved, all proponents of renewable energy projects on the OCS must acquire lease rights in accordance with the rule. As stated elsewhere, we intend to coordinate and consult as necessary to assure efficient sequencing of actions by relevant entities under the rule.
Consider strategies, in addition to diligence requirements, to ensure that individual developers could not tie up large areas of the OCS, prohibiting other development interests and other uses.	We believe the rule's diligence measures and new qualification requirements in § 285.107 are adequate for this purpose.
Monitor developments under the lease to ensure that lessees are actively working to develop sites - require ongoing financial investment such as meeting specified work commitments or payment of 'delay rental' in lieu of work commitment; if they are not actively working to develop sites, MMS must exercise its powers to rescind leases and restart the bid process	The rule provides for such monitoring and action by MMS to assure diligence. Relevant provisions are included in subparts B, D, and F.
§ 285.221: The MMS should revise proposed § 285.221(a) to conclude with the statement that "In deciding among these auction formats and specifying auction details in the Proposed Sale Notice and Final Sale Notice, we will guard against auction procedures that invite sham and	We have not adopted this recommendation in the text of the rule but have added discussion along these lines in the preamble.

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speculative bidding by placing undue weight on contingent promises of future payment."	
Address the ROW easements early (at the lease sale or SAP stage), rather than later as part of the COP or GAP. Doing so may avoid potential conflicts with other users and provide greater certainty and lower cost to project developers.	We have not adopted this recommendation in the text of the rule. While we agree that it would be desirable to address the project easement as early in the process as possible, we believe that in most cases it will not be possible to review and approve locations and activities until the COP stage. However, it would be possible under the rule for developers to pursue earlier review and approval, (e.g., by submitting project easement information in a combined SAP/COP). We have revised the discussion in the preamble to address this issue.
The rule should clarify how appropriate corridors will be established and who will determine the need for multiple corridors. In addition, if a portion of an applicant's proposed transmission corridor easement crosses an area proposed for lease by another company, how will use of the area be resolved?	We have not adopted this recommendation in the text of the rule. Transmission corridors will be considered case-by-case in the review and approval of project easements and transmission ROWs, and this may include the consideration of multiple corridors, if needed. Overlapping project easements and ROWs may be accommodated under the rule. We have revised the discussion in the preamble to explain these issues.
How will MMS handle project easements that may need to run through the territory of another lessee?	Overlapping leases, project easements, and ROWs may be accommodated under the rule. We have revised the discussion in the preamble to explain how.
Project easements should be evaluated in the same manner as project areas, and MMS should ensure that a fair return for this right is granted.	This recommendation has not been adopted. We believe that it would not be practical to evaluate the actual acreage of a project easement that, in most cases, will not be known at the time of lease issuance. Therefore, under the rule MMS would approve the project easement subsequent to lease issuance and charge a rental to receive fair return. This is similar to the authorization of pipelines on the OCS, which does not entail charging more than rent to achieve fair return.
The OCS alternative energy rule should require an Economic Viability Plan (EVP), and the lease rights must be subject to an acceptable EVP demonstrating that the project is economically viable.	We have not adopted this recommendation. We believe it is beyond the purview of MMS to attempt to conclusively determine the economic viability of a project. Under the rule we will assume (and it is reasonable to do so) that a developer who goes to the expense of acquiring a lease and posting securities to ensure site integrity through subsequent phases of development is doing so in pursuit of a profitable venture.
If MMS adopts its existing "interim lease," or a similar "interim RUE limited lease," concept into the AEAU regulations, the agency could reduce the time for placing a met tower for a commercial lease by 18 months or more, thereby dramatically shortening the development timeline.	We have not accepted this recommendation in the text of the rule. We explain in the preamble how developers could pursue a limited lease in concert with a commercial lease to expedite authorization of necessary data collection activities (e.g., installation of a meteorological tower).

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§ 285.231: In § 285.231(a), MMS states that it will not consider unsolicited requests for a lease "in an area of the OCS" scheduled for a competitive lease sale, However, MMS does not explain how large an "area" may be. If the area that MMS is contemplating is large, this provision would discourage opportunities for noncompetitive lease development.	We do not intend to discourage noncompetitive lease development with this provision but wish to make clear that those areas in which there is demonstrated competitive interest will not be available for noncompetitive lease issuance. However, since an area proposed for a competitive lease sale could vary in size significantly, we do not think it would be reasonable or desirable to provide a size limit in the rule. We have added discussion of this issue in the preamble to clarify our intentions.
§ 285.231: As stated in § 285.231(b), MMS must issue a public notice of the noncompetitive lease request. In light of possible delays, MMS should prescribe a time deadline for issuing such notices and related findings. This same comment applies to § 285.307(a) for RUEs and ROWs.	We have not adopted this recommendation. We do not wish to establish firm deadlines for these actions at this time. As we gain experience in implementing the program, we may consider such deadlines at a later date.
If a developer files an unsolicited request for a limited lease, and then finds that MMS will offer the area competitively, the developer nominating the lease should be allowed to withdraw its interest and receive a refund of their acquisition fee. Little is to be gained from such a developer being forced to under-bid just to get his funds returned.	We have not accepted this recommendation. The MMS will incur expenses related to processing an unsolicited request for a lease. In cases where an area would be offered competitively, MMS believes retention of the acquisition fee is appropriate where the entity that originally requested the lease does not bid. In the worst case, fee retention allows the Government to lower its costs in the event a sale is cancelled due to a lack of participation. Further, we believe an acquisition fee is appropriate to begin the noncompetitive process and have set the fee at a level intended to discourage speculation but not inhibit interest. Applicants who are not willing to compete should not be allowed to start a process and then withdraw without forfeiting the fee.
The MMS could have unconstrained discretion to decide whether particular tracts should be leased on a noncompetitive basis. It is recommended that MMS change the regulation so that the agency would limit its authority to reject a request for noncompetitive leasing to cases where the acreage would be offered in a lease sale or when the acreage is not suitable for reasons that would be equally applicable to leasing on a competitive basis.	We have not adopted this recommendation. The EPAct requires that renewable energy leases be issued competitively unless the Secretary determines that there is no competitive interest. Also, we note that the authority to issue leases is discretionary.
Given the investment of Government time and effort to evaluate a project, a commercial lease should not be transferrable or saleable to another party. If the lessee desires not to build and operate the project, the lessee should return the lease to MMS.	We have not adopted this recommendation. Subpart D authorizes assignments and relinquishments. It would not be in the public interest to establish a policy that could inhibit business transactions between qualified entities.
The MMS should immediately propose a lease form for public review and comment so that, as soon as possible after the AEAU regulations become final, MMS will be ready to proceed with lease issuance.	We will develop a lease form in a timely manner that will not result in any delays in issuing leases.

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Some technology does not lend itself well to the proposed 3 nm x 3 nm standard "squares" proposed in the regulations - A marine renewable project might cross a portion of two or more contiguous OCS blocks (this same issue would also apply to the noncompetitive lease process). The lease size would be specific to a proposed lease activity - MMS should recognize that environmental concerns may vary with lease size and should be addressed accordingly.	As explained in the preamble to the proposed rule, lease size will be determined on a case-by-case basis to ensure it is appropriate for the anticipated activity, and leases may be smaller than 3 nm x 3 nm or larger. Environmental concerns and their relationship to lease size may be appropriately addressed under the rule and NEPA.
§ 285.206: Replace § 285.206(b) with: The lease size will correspond to MMS's determination of the minimum area that will allow the lessee sufficient space to develop the project and manage activities in a manner that is consistent with the provisions of this part. The minimum area will include, where appropriate, space needed for adjustment to the locations of proposed structures based on detailed site characterization work and sufficient space between project areas.	We have not adopted this recommendation. We believe the suggested wording is not necessary, because the existing wording in the section of the rule cited by the commenter provides for the lease size to correspond to MMS's determination and to accommodate adjusting location of structures.
Clarify the lease size in the final rule, assuring a lessee sufficient setback from adjoining tracts to ensure unimpeded access to wind resources, notwithstanding subsequent development.	We have not adopted this recommendation in the text of the rule. We have added explanation in the preamble to clarify that providing for a size appropriate to accommodate anticipated activities may include any necessary setbacks.
§ 285.235: The proposed rules state that a commercial lease may have additional time added to the operations term, not to exceed the length of the original lease term. Section 285.235(a)(5). The MMS should clarify whether the referenced original term is the operations term of 25-years or the full lease term of 30-years (25-year operations term + 5-year site assessment term). Also, see comments regarding lease renewals in § 285.425.	We believe that §§ 285.235(a)(3) and 285.425 clearly refer to the operations term and not to the site assessment term. We have added clarifying explanation in the preamble.
§ 285.235: The 25-year operations term should commence after the submission of the final, CVA-certified Fabrication and Installation Report required by proposed § 285.708(a)(5). Under the lease term heading, an additional provision should be added to part (4) of the table in § 285.235(a), to state that: The operations term begins on the date when the CVA submits a certified final Fabrication and Installation Report as required by § 285.708(a)(5).	We have not adopted this recommendation. We believe it is better to start the operations term with approval of the COP than on the date when the CVA submits a certified final Fabrication and Installation Report for administrative purposes. We have retained the start of the operations term at the time of COP approval, but as recommended by other comments, have revised the date on which the operating fee commences to be the date on which commercial generation of electricity begins.
Among the lease sale terms and conditions, include the following: (1) A term that puts potential bidders on notice that a lease can be terminated in the event that vital information has been overlooked or misapplied, and (2) A term that identifies the components of a liquidated damage award in order to truncate protracted	We have not adopted these recommendations. We believe that termination on the basis of overlooked or misapplied information is covered under § 285.437(b) of the proposed rule. We also believe the cancellation and compensation provisions are adequate, as they are analogous to similar provisions under other DOI programs that do not include the

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litigation and unrealistic expectation on the part of potential lessees in the event a lease must be canceled for public purpose reasons, like environmental protection.	terms recommended by the commenter.
A 25-year term may be too short to attract cost-effective financing, but may be long enough if the rule allows for open-ended lease terms and automatic renewals. The term could use a minimum of 40 years as the commercial operating period. However, stakeholders have indicated that open-ended lease terms may not be appropriate given the uncertainty of environmental effects. The MMS should consider adopting a process, such as an adaptive management committee, for open-ended leases or automatic renewals that would adequately protect the environmental resources during the relicensing process.	We have not increased the operations term or provided for an open-ended term. As explained in the preamble of the proposed rule, an operations term longer than 25 years could be established for a particular lease under the rule. Further, the preamble explained that we believe that open-ended leases could perpetuate inefficient or obsolete operations.
Acknowledge that other foreseeable lease terms will include conditions related to environmental protection, including, as needed, mitigation for any unavoidable impacts (e.g., compensatory funding to the State for impacts to fisheries or to birds and other wildlife that use both State and Federal waters for foraging, breeding, and migration.)	We have not adopted this recommendation. While the proposed rule provides for mitigation, the EPAct does not require or authorize a mechanism to provide compensation to mitigate adverse impacts to coastal resources or uses.
The proposed process appears to lengthen the term of existing oil/gas leases, rather than substitute a new and current lease agreement for a new use of existing facilities. If so, the process should be changed to require either a new lease or a revised lease, with current terms and stipulations that do not put the U.S. Government in jeopardy of a breach of contract if and when it complies with current laws and regulations.	As provided in subpart J and explained in the preamble to the proposed rule, alternate use is authorized by a right-of-use and easement and does not lengthen the term of existing oil and gas leases.
Consider a more practical approach that avoids premature presumption of project approval before the project has undergone adequate environmental review.	We have not adopted this recommendation. We do not believe that the proposed approach to leasing and development results in premature presumption of project approval. All projects under the rule will be subject to appropriately phased review and decision-making, including NEPA analyses.
Model the competitive processes for limited leases after the Federal Power Act's preliminary permits as described in sections 4(f) and 5 (16 U.S.C. 797 and 798).	We have not adopted this recommendation. We believe that the requirements of EPAct, primarily the competition and the revenue sharing requirements, preclude such an approach.
Allow limited lease holders to sell power to the grid to generate revenue for a project.	We have revised the definition of limited lease to provide for limited lease holders to sell power. Under the revised definition, a limited lessee may be authorized to sell a limited amount of power as specified in the lease. We also state in § 285.505 that we will not charge any operating fee on the sale of power from a limited lease (limited lessees will pay only rent). We also revised the definitions for

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	commercial lease and commercial operations to clarify the distinctions between limited leases and commercial leases. These changes are intended to provide a way for limited lessees to recover some of their expenses by being allowed to sell a small amount of power over a relatively short term (less than 5 years) while testing technology.
Treat commercial leases and limited leases equally or give a preference to limited leases.	We have not adopted this recommendation. The EPAct clearly favors production of renewable energy, which under our proposed approach requires a commercial lease.
§ 285.235: Revise § 285.202 to add the following provision regarding rights associated with limited lease: (a) A limited lease provides the lease holder with an exclusive right to apply for a commercial lease for a project within the area of the limited lease during the term of the limited lease. The limited lease will set forth the conditions under which this preference will be maintained. The interest retained by the limited lease holder will constitute only an interest to preclude other limited lease or commercial lease applications for the area covered by the limited lease during the 5-year period of the limited lease. If a holder of a limited lease submits a request for a commercial lease and a SAP prior to the expiration of the limited lease for development in the area of the limited lease, the commercial lease application will be reviewed through a noncompetitive award process.	We have not adopted this recommendation. As explained in the preamble, we do not support providing a commercial option or preference with a limited lease as recommended, because such rights are available and should be secured with commercial leases. Limited leases are designed to provide limited rights for a short term. However, in response to comments, we discuss in the preamble a possible scenario for issuing a limited lease with a commercial lease preference under certain circumstances.
Clarify that the scope of the environmental analysis required by the NEPA for a limited lease will reflect the limited nature and duration of the authorized activities and will be largely based on existing, available data.	We have adopted this recommendation by providing a more detailed discussion of NEPA procedures in the preamble. Also, such procedures will be outlined in the implementation guidance we intend to issue after the rule is approved.
Grant an RUE for meteorological towers instead of limited leases.	We have not adopted this recommendation because we wish to limit the granting of RUEs to the purposes outlined in the proposed rule. We believe expanding the scope of RUEs at this point in the rulemaking could be confusing, and we think that consideration of simultaneous application for limited and commercial leases, as also recommended by this commenter, would be a preferable approach to timely authorizing meteorological towers.
The MMS also could modify the rules to allow an applicant to apply for a limited lease (§ 285.236) for a met tower at the same time that it applies for a commercial lease.	We have not adopted this recommendation in the text of the rule. We believe that the rule would allow simultaneous limited and commercial lease issuance to facilitate installation of meteorological towers or other data collection devices. We discuss this approach in the preamble and will include such procedures in the implementation guidance we intend to issue after the rule is approved.

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§ 285.211(b)(2) should read "We will evaluate the potential effect of leasing on the human and marine environments, and develop measures to mitigate adverse impacts, including lease stipulations."	We have adopted this recommendation and revised § 285.211(b)(2) to say ". . . human, marine, and coastal. . . ."
The rule needs further clarification as to what the process would be for a lessee that obtains a lease allowing a single use to expand its activities within the lease area to multiple uses.	We have not adopted this recommendation in the text of the rule. We believe the preamble to the proposed rule clearly explained that expanding a single purpose lease to cover other activities would entail issuance of new lease(s) authorizing those activities. We have expanded the discussion of this approach in the preamble to this rule.
Take the necessary steps to ensure that both offshore and onshore activities associated with leases on the OCS do not adversely impact units of the NPS and the special status areas of Assateague Island National Seashore in Maryland and Virginia, Olympic National Park in Washington, and Padre Island National Seashore in Texas.	The rule provides the framework for taking such steps in subparts B and F under the leasing and plan approval processes. We do not believe that it is necessary or desirable to include such specific provisions in the text of the rule, and that it would be more appropriate to outline such steps in relevant MOUs or by other means to be developed in implementing the rule.
Exclude sites (units of the NPS, etc.) - Alternative energy research and development should not necessarily be included in or excluded from these areas, rather such activities must be fully consistent with the respective program regulations.	Section 388 of the EPAct expressly prohibits MMS from offering leases or grants within the boundaries of any unit of the NPS, National Wildlife Refuge System, or National Marine Sanctuary System, or any National Monument.
Designate exclusion zones adjacent to national parks to protect viewsheds zones. (To illustrate the resources and values contained in coastal units of the NPS, the commenter included a summary for two units, Assateague Island National Seashore and Padre Island National Seashore in Texas. The companion map for Assateague underscores the importance of designating exclusion zones adjacent to the park to protect viewsheds.)	We have not adopted this recommendation. We believe that it would be premature to adopt such exclusion zones without knowing the types of renewable energy technologies and structures that might be proposed for use in those areas. Viewshed issues may be considered on a case-by-case project-specific basis under the rule in order to protect scenic values associated with units of the NPS, and we intend to coordinate and consult with stakeholders on such issues in implementing the final rule.
Conduct a project-specific Supplemental EIS after the lease term ends to ensure that newer information regarding impact and advanced technologies with potentially fewer environmental externalities be analyzed and then taken into account in changing the renewed lease or reopen the bid so that others have the chance to apply.	We have clearly stated our intent to comply fully with NEPA and its analytic requirements. Therefore, we will conduct supplemental environmental analysis for authorizing a renewal if it is warranted.
§ 285.231: Revise § 285.231(a): "The MMS will consider unsolicited requests for a lease on a case-by-case basis, <u>but will not process</u> 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." and § 285.231(e): "If we approve or approve with conditions your SAP or GAP, we <u>will offer you</u>	We have not adopted these recommendations. We wish to retain the discretion not to consider unsolicited requests in areas proposed for competitive leasing and to issue or not issue a lease.

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a noncompetitive lease unless we conclude that the requested area is not suitable for leasing for reasons that would be equally applicable to leasing on a competitive basis."	
Start the operating fee when actual revenues are obtained from the sale of electric power.	We have adopted this recommendation and revised subpart E (§ 285.503) to require payment of the operating fee to commence with the commercial generation of electricity.
Utilize an electronic system for the notification of lease availability and information requests similar to the FedBizOps Web site in addition to the Federal Register.	Use of such notification systems will be possible under the rule.
Give consideration to technology-specific calls for interest and bidding processes.	This rule allows this approach.
If awardees choose not to progress towards construction, then it would be appropriate to introduce a requirement for findings for noncommercial site appraisal to be made available publicly.	The rule's diligence requirements provide for forfeiture of leases that do not progress toward construction and production. Section 285.113 of the rule provides that all information from terminated leases and grants will be made available to the public.
Any areas that meet the definition of a Marine Protected Area contained in E.O. 13158 should be excluded (65 FR 34909 Conservative Law Foundation: "Defending the Law of the Land" - 5- (May 26, 2000)("any area of the marine environment that has been reserved by Federal, State, territorial, tribal or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein").	The rule provides for compliance with applicable Federal requirements including E.O. 13158.
The MMS should seek to work with the relevant Federal and State agencies to facilitate, to the extent practicable, "one-stop shopping" for permit reviews. The BLM has had great success in streamlining permit approvals for Federal oil and gas leases in the pilot project offices established under section 365 of EPAct. The MMS should consider a similar approach for AEAU permit reviews and approvals.	We support such an approach, and the rule would allow it. Detailed procedures will be provided in the implementation guidance that we intend to issue after the rule is approved.
Temporarily delay the commercial lease acquisition process for areas adjacent to Oregon's territorial sea and consider only issuing the short-term limited lease (5-year) for site assessment and technology testing purposed - Oregon is currently in the initial stages of reviewing its TSP, with the intention of amending it specifically for designating areas deemed appropriate for wave energy facility development, and have not yet amended the TSP to designate those special use areas.	The rule will allow such an approach. We believe that the rule's coordination and consultation provisions will allow stakeholders to consider such issues and make appropriate determinations and decisions.
Reserve the rights to easements to authorized lessees without further competition.	We have not adopted this recommendation, because EPAct mandates competition for all leases, easements, and ROWs unless we determine that

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	there is no competitive interest.
If subsection (3) of this section is intended to include certification of coastal consistency, it should be so stated.	All actions under the rule that require CZMA consistency are identified in subpart F. Also, we have added detailed discussion of the CZMA requirements to the preamble.
Unless intended by list item (a), information should include identification of any known unique site characteristics, specifically environmental or other resource information, that would impose potential constraints or require mitigation.	Such information would be covered under § 285.211(a). Also, such information would be considered under the requirements of NEPA.
Gather regional information regarding overall suitability factors (such as existing ocean uses and sensitive resources) prior to issuing commercial leases.	The rule allows this approach, and we intend to coordinate and consult with stakeholders in this manner. Also, such information would be considered under the requirements of NEPA.
Establish a rule and schedule that help facilitate and expedite the infrastructure development process for a broad range of offshore wind development interests, and avoid prohibitive operating fees that could deter many companies from moving forward with offshore wind farms.	We believe the rule provides a suitable process for authorizing wind development that strikes an appropriate balance for assuring a fair return to the Federal Government through operating fees while assuring that such fees are not prohibitive.
Create a prescribed leasing plan for each region of the OCS - otherwise, the proposed site-specific cumulative analyses will be conducted in a vacuum, with no material information on how much of the surrounding region may potentially be developed in the future.	The rule allows the creation of such regional plans. While this might be a viable approach, we believe that proper cumulative analyses can be conducted in the absence of such plans.
Describe areas available for leasing with the latitude and longitude coordinates, water depth, bathymetry conditions, ecological conditions, and distance from shore.	The rule provides for describing lease areas by leasing maps and official protraction diagrams. Ancillary descriptive data such as those recommended may also be used under the rule. Such information would be considered under the requirements of NEPA.
Include the following in the information provided to identify interest in general areas of the OCS: the type of energy device to be installed, a general description of the necessary infrastructure, the basic facility components, a description of device performance in similar areas or conditions, device test data, a general project schedule, anticipated power production figures, and likely power purchasers.	We have not adopted this recommendation in the text of the rule. We believe the information suggested is captured under §§ 285.213 and 285.230. We have expanded the discussion in the preamble to discuss this information, and it also will be included in the implementation guidance that we intend to issue after the rule is approved.
Expand the lease types to provide for and require more phased development.	We have not adopted this recommendation. We believe that the rule provides the necessary flexibility to allow phased development. We do not believe that phased development should be mandated by the rule.
The leasing process does not allow adequate time for preparation and review of environmental documentation requirements and State and Federal consistency determinations.	We believe the leasing process in the rule provides ample time for preparation and review of NEPA and CZMA documentation.
The proposed process is insufficient for obtaining public input on unsolicited	We have adopted this recommendation and added public review provisions to § 285.231.

SUBPART B—ISSUANCE OF OCS RENEWABLE ENERGY LEASES	
Comment	**Response**
applications. The rule needs to clearly specify how- both procedurally and temporally- public input will be obtained and considered.	
The MMS should increase the time available for reviewing and commenting on proposed developments at all stages of development.	We believe the timeframes in the rule are adequate.
The final rule should require the MMS to hold public hearings so that the process of leasing is made as transparent as possible and the public is given ample opportunity to voice concerns and opinions.	We have not adopted this recommendation. Public hearings will be possible under the rule when warranted and appropriate. We do not believe it is necessary for the rule to require hearings for all proposed leasing actions, and believe that such a requirement would be overly burdensome.
New approaches to competitive leasing are also needed to avoid unnecessary costs to newly developing energy entrepreneurs that are backed by investors and may not be in the same position as oil corporations to shell out bonus payments, large or small, prior to knowledge that the project passes environmental review.	The EPAct mandates for competition and receipt of fair return prohibit us from eliminating auctions and waiving all fees. However, we have revised the rule in § 285.220 and other relevant sections to provide for multiple-factor bidding processes, which we believe is responsive to concerns about the expense of securing rights for renewable energy development on the OCS. This approach could be attractive to lower capitalized developers that seek leasing opportunities on the OCS.
The preamble discussion for § 285.200(c) states that MMS may waive the rental fees for acreage when the lease is developed in phases. This section should clarify that MMS will waive the rental in such cases. Alternatively, MMS should explain the standards it will consider in deciding whether to grant a waiver of rentals.	Section 285.510 gives the Director the discretion to reduce or waive the rental or operating fee if the information provided by a lessee in its application sufficiently demonstrates that the project would be uneconomic otherwise or that a reduction or waiver is necessary to encourage additional activities. The Director may require additional information, such as the efficacy of operations, the value of maintaining operations, and findings that there are no other operators that could take over operations and run them effectively. More specific criteria for any waiver would inadvertently, but almost certainly, interfere with the desirable efforts to nurture an industry where there is a lack of historical operational information. The MMS may subsequently standardize this process, much like it does for oil and natural gas projects, following implementation and experience with this new program.
§ 285.212: Change the first sentence of proposed § 285.212 to read: "Potential lessees who respond to a Request for Information or a Call are encouraged to provide the information identified in paragraphs (a) through (g) of this section." This would avoid (1) ambiguity as to whether responses to requests and calls are mandatory and (2) overly burdensome information demands.	We have not adopted this recommendation. The rule does not attempt to make responses mandatory. However, a respondent must furnish the information listed in § 285.213 to receive our consideration. We have added some discussion on this point in the preamble and will address it in the implementation guidance that we intend to issue after the rule is approved.
§ 285.238: Apply a cross-reference to the criteria that govern the issuance of leases at § 285.102 to the leasing of the OCS for DOE	We have revised § 285.238 to include more details on proceeding under that section. § 285.204 applies to all leasing activities, including those under

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managed alternative energy projects. The only criteria that § 285.238 (c) notes as germane for issuing a lease is whether there is a lack of competitive interest in the area. This section should make clear that the lands off limits to leasing under § 285.204 also applies to the location of DOE managed alternative energy projects.	§ 285.238.
§ 285.238: Make it clear that the Director will make areas available to coastal States to conduct research activities and without the requirement or expectation that States must seek DOE approval or coordination. Rules should provide a mechanism for cooperation with coastal States that may wish to work with MMS and DOE to establish such a testing area in State waters. (A joint Federal-State test facility, sited on adjoining State submerged lands and OCS areas, for example, has potential to provide a broader and more diverse area for research and testing as well as a host of related benefits).	We have expanded the scope of § 285.238 to include States.
The rule does not detail the process or terms under which it would work with the DOE to establish one or more DOE-managed alternative energy research and testing areas on the OCS. Rules should make it plain that environmental and natural resources standards would not be unduly compromised to accommodate the DOE.	We have revised § 285.238 to include more details on proceeding with research activities on leases issued to Federal agencies or States.
Although it is questionable whether MMS has authority under Section 388 of EPAct for such a delegation to DOE, the commenter does not oppose this proposal provided: (1) MMS publishes notice of any such intention in the Federal Register with a request for commercial interest in the area; and (2) MMS only designates such areas where there is no expression of commercial interest in development.	The rule provides for this approach and requires the recommended actions.
Engage in a limited scope of marine spatial planning to identify "high impact" and "low impact" OCS development areas, and incorporate this into the agency's bidding process.	Such an approach would be possible under the rule and we would consider such an approach if recommended by stakeholders through coordination and consultation processes in implementing the final rule.
Use an ecosystem-based spatial planning approach in selecting appropriate areas for leasing and granting RUEs, ROWs and Alternate Use RUEs.	Such an approach would be possible under the rule and would be considered in coordinating and consulting with stakeholders.
§ 285.201: Revise § 285.201 to read "...we will issue leases noncompetitively as provided under § 285.231(d) through (f)." The current language references provisions that describe the entire proposed procedure for securing a lease through an unsolicited request.	We have not adopted this recommendation. We believe it is preferable to cite all of § 285.231 because we think the entire procedure is relevant and provides necessary context for the provisions cited by the commenter.

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Comment	**Response**
§ 285.201: Replace the term "appropriate" with "relevant" under subsection (b) of this section, where it states that MMS will coordinate with "appropriate Federal agencies" to identify areas for environmental analysis.	We have not accepted this recommendation. We believe that the term appropriate is interchangeable with the term relevant that is used in EPAct.
The timeline for the project site selection through the lease sale process is aggressive and offers minimal opportunity for the State and other stakeholders to respond. It is unclear what happens during the area identification process or how long that period may extend prior to the Proposed Sale Notice. This is a critical period where potential user-conflict issues may be avoided or resolved, and it occurs simultaneously with MMS performing the NEPA and CZMA review which have their own separate timelines.	We have expanded discussions of the procedures and timelines for the leasing process and associated NEPA and CZMA review processes in subparts B, C, and F. More explanation will be provided in the implementation guidance that we intend to issue after the rule is approved.
Allow for/require the creation of transmission corridors that would allow multiple projects to use the same easements or ROW/RUE grants, thereby minimizing environmental impacts.	Such an approach would be possible under the rule. We do not believe such corridors should be required by rule at this time. We will be open to considering them as we implement the final rule.
Provide flexibility in choosing easements and right-of-way routes for transmission lines and cabling associated with the lease activity.	We believe the rule provides the necessary flexibility to accommodate route adjustments.
The proposed types of leases do not adequately address the need for the wave energy industry to advance in stages. The costs of applying for and acquiring a commercial lease-especially if issued competitively- are prohibitive to small developers in this sector. Eliminating or waiving financial criteria, such as the proposed bidding and auction processes, would allow wave energy developers to grow their financial abilities as the industry establishes itself.	The EPAct mandates for competition and receipt of fair return prohibit us from eliminating auctions and waiving all fees. However, there is flexibility in the rule to allow some less financially burdensome approaches to leasing for ocean wave and current energy projects, and we intend to work with stakeholders to that end. Also, adoption of a multiple-factor process in §§ 285.220 and 285.221 is responsive to this comment.

SUBPART C—RIGHTS-OF-WAY GRANTS AND RIGHTS-OF-USE AND EASEMENT GRANTS FOR RENEWABLE ENERGY ACTIVITIES	
Comment	**Response**
Please clarify that MMS may not issue ROWs, RUEs, or easements within units of the NPS. Lessees, grantees, etc., should be required to evaluate the potential impacts that their facilities could have on units of the NPS and on special status areas over which the NPS has some programmatic responsibilities, and should be required to implement measures to avoid or mitigate such impacts.	We have not adopted this recommendation. The language of EPAct expressly excludes from consideration of any area on the OCS within the exterior boundaries of any unit of the NPS. This is also noted in the preamble to subpart C. The MMS is obligated to comply with Federal laws that require an evaluation of such potential impacts, such as the NEPA.
Modify subparts B and C to include review by the agencies implementing each State's CZM Program. The CZMA should be added in both subparts as one of the applicable Federal acts.	The rule provides for State CZMA review, and we expect such review will be conducted by appropriate State implementing agencies. We do not believe it is necessary to cite all individually applicable Federal laws.
The provision for project easements and	Such an approach would be allowable under the rule.

SUBPART C—RIGHTS-OF-WAY GRANTS AND RIGHTS-OF-USE AND EASEMENT GRANTS FOR RENEWABLE ENERGY ACTIVITIES	
Comment	**Response**
ROW/RUE grants should take into account minimizing the footprint of cables, pipelines, and other structures. The rules should allow for or require the creation of transmission corridors that would allow multiple projects to use the same easements or grants.	We agree that combining transmission projects, where feasible, is desirable, and we wish to preserve the flexibility to consider transmission planning and approval on a case-by-case basis.
We recommend that MMS take a more proactive role by providing for the establishment of standing committees to address any unidentified or incidental issues that arise.	We have not adopted this recommendation. We believe that establishing standard committees in the rule would be premature and inefficient. The recommended committees would be possible under the rule and MMS will consider such means to resolve issues in implementing the rule.
Please clarify whether an ROW grant would include a corridor extending through State waters for the purpose of transmitting energy produced at an OCS facility. We potentially would have the same concerns about the siting of structures subject to ROW and RUE grants within designated resource areas as with regard to leased facilities.	An ROW grant would not include a corridor extending through State waters. Such an area would fall under the applicable State's jurisdiction.
Please clarify why ROW and RUE grants issued competitively would be considered direct Federal actions, while those issued noncompetitively would be considered Federal licenses or permits.	This distinction is drawn to comply with the requirements of the CZMA.
Federal consistency and early coordination provisions are also applicable to access and/or ROW easements needed for power transmission cables. Cables that transit the States territorial sea are regulated by the State's enforceable policies.	The rule provides for early coordination and Federal consistency.
The rule should address the overlapping permitting and licensing responsibilities of MMS and FERC, and offer a procedure for coordinating the MMS and FERC processes.	The MMS and FERC finalized an MOU in April 2009, clarifying jurisdictional understandings regarding renewable energy projects on the OCS to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects.
The ROW and RUE grants have virtually unlimited project life spans with poorly defined environmental controls.	The rule outlines measures to ensure that ROW/RUE grants are not misused. Examples include: the ability of MMS to include strict requirements in the grant document, civil penalties provisions to ensure that applicants are complying with the terms of the ROW and RUE grants and the GAPs, and MMS's authority to terminate a ROW or RUE grant if the associated activities are not properly maintained. Also, the requirements of NEPA apply to the issuance, management, and termination and decommissioning of the grants.
Please clarify whether a facility partially used by an Alternative Energy Project (AEP) and partially by a nonAEP would be regulated under this subpart and, if so, how. Because facilities,	The MMS will authorize Renewable Energy (REn) ROWs for transmission of renewable energy from sources other than oil and gas and will not issue REn ROWs in support of transmitting energy from oil or

SUBPART C—RIGHTS-OF-WAY GRANTS AND RIGHTS-OF-USE AND EASEMENT GRANTS FOR RENEWABLE ENERGY ACTIVITIES	
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particularly transmission cables, can be used by AEPs as well as nonAEPs, it will be important to know whether the Rule applies only to facilities exclusively used by AEPs.	gas sources. The MMS will consider, on a case-by-case basis, REn ROWs supporting a "source mix," provided that renewable energy generated from sources other than oil or gas is primarily what is being transmitted.
If facilities under this subpart can jointly be used by AEPs and nonAEPs, then payments should be adjusted to reflect the percentage used by an AEP.	The owner of the ROW will be held responsible for all payments.
The MMS should establish criteria for evaluating ROW and RUE grant requests that do not have a competitive interest.	We have not adopted this recommendation. At this time, the MMS has no basis for establishing such criteria. The MMS will look to the information that has been submitted by the applicant at the time that no competitive interest is determined.
This subpart should specify timelines for issuing public notice, evaluating comments from notice, or determining level of competitive interest.	We have not adopted this recommendation. As discussed in the preamble, MMS considers it very unlikely that there will be much, if any, ROW/RUE grant competition. Thus, MMS has determined that specifying timelines in § 285.307 is unnecessary and perhaps premature.
The terms and conditions of the grant are considered nonnegotiable. This has the potential of rendering projects not financeable. Some flexibility should be built in concerning the grant terms and conditions to ensure they are financeable.	This issue is addressed in § 285.306. If MMS determines that there is no competitive interest in an ROW or RUE grant, we will consult with the applicant to establish terms and conditions for the grant. The applicant can raise any concerns about the ability to finance the project during the consultation process.
This subpart should set up a timeline for issuing a noncompetitive ROW or RUE grant.	We have not adopted this recommendation. Given the uncertainties that may arise during the ROW/RUE grant issuance process, MMS has decided against setting up specific timing requirements.
It is unclear whether competitive interest includes only interest in an ROW or RUE grant or whether it also includes interest in the same area for a potential lease. The regulations should clearly explain what determines competitive interest in these cases.	We have not adopted this recommendation. We believe the rule provides clearly for considering multiple competing uses and projects in subparts B and C. We will address the competitive relationship between leases and grants in more detail in the implementation guidance that we intend to issue after the rule is approved.
This subpart should require applicants to demonstrate that they are technically and financially qualified to undertake the activities of this subpart.	Under the rule, MMS may require the submission of information regarding an applicant's technical and financial capabilities early in the process to ensure that only qualified applicants may undertake the activities of this subpart.

SUBPART D—LEASE AND GRANT ADMINISTRATION	
Comment	**Response**
§ 285.405: The MMS should utilize a different approach for approving a change in operators. Operators should be permitted to provide MMS with 30 days advanced notice of a change in operators. If MMS doesn't object to the change	We have not adopted this recommendation. We prefer to actively review and approve operators. We believe this is a better approach to keeping track of leases and activities that would avoid any omissions or oversights that could occur under the presumptive

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of operators, the change will become effective. The MMS has proposed this approach in other sections of the regulations.	approach recommended by the commenter.
§ 285.436: The MMS's ability to contract a lease area will serious jeopardize developer's ability to secure project financing, as no serious investor will tolerate a contingent property interest as the basis for an electric power project. The MMS should give consideration before implementing its powers since some developers may seek to engage in phased lease development.	The provisions governing contraction give the lessee the opportunity to make its case against contraction and the right to appeal an MMS contraction decision. The rule provides flexibility and recognizes that phased development may be pursued.
§ 285.408: The proposed provisions for lease assignment should be sufficient. The only possible issue with this provision is whether or not this will be an avenue for speculators to acquire large areas of the OCS and then assign it for a profit.	We believe that the extensive diligence and financial assurance provisions in the rule will prevent improper speculative lease acquisitions and assignments.
§ 285.425: Clearer guidelines need to be established for the renewal of a lease, particularly if there is potential for reuse of the site with similar equipment and minor changes to the mooring and cabling. This will reduce project financing and lower the development risk to all stakeholders, including utility ratepayers. The MMS should specify in proposed § 285.427 the principal factors the agency will consider to set the renewal term for an OCS lease or grant. It should also consider granting a renewal term that exceeds the original term if warranted by particular circumstances. Criteria that should be applied to evaluate a request for renewal of an existing OCS lease or grant include the following: (1) design life of existing technology; (2) availability and feasibility of new technology; (3) environmental and safety record of the lessee; (4) operational and financial compliance record of the lessee; and (5) competitive interest and fair return considerations. These criteria should be used to evaluate a lease or grant renewal request. Further, MMS should consider, where applicable, the relative significance in terms of generation capacity and reliability of the OCS electric power generation facility within the regional transmission system that receives the electric power output from the facility.	We have adopted the recommendation to grant longer renewal terms and have revised § 285.427 to provide for commercial lease renewals of 25 years or longer if negotiated by applicable parties. We have added detailed criteria for lease renewal at § 285.429. We also have added discussion of these issues to the preamble and will address them in the implementation guidance that we intend to issue after the rule is approved. We believe the rule provides necessary discretion and flexibility to allow longer or shorter terms, as appropriate, on a case-by-case basis.
§ 285.425: The MMS should not unnecessarily limit renewed lease terms. The MMS should allow for longer subsequent leases to take into account such circumstances.	We have adopted the recommendation to grant longer renewal terms and have revised § 285.427 to provide for commercial lease renewals of 25 years or longer if negotiated by applicable parties. We have added detailed criteria for lease renewal at

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	§ 285.429. We also have added discussion of these issues to the preamble and will address them in the implementation guidance that we intend to issue after the rule is approved. We believe the rule provides necessary discretion and flexibility to allow longer or shorter terms, as appropriate, on a case-by-case basis.
§ 285.425 As an alternative to open-ended lease terms, a lease or grant should be for an initial term that is subject to automatic renewal for one or more consecutive terms provided that the lease holder continues to satisfy certain conditions, such as the lease holder continuing to have a good operating record and providing any required financial assurance.	We have not adopted this recommendation. As explained in the preamble to the proposed rule, we believe that open-ended leases and automatic renewals would perpetuate inefficient or obsolete operations.
§ 285.425: Lease renewal should not be automatic, nor have an open-ended term, but should be available in shorter terms. Evaluation of the site and project(s) should occur to ensure the project is still within the scope of the original lease.	We do not agree that leases should be renewed in shorter terms. We believe that the plans and agreements for production of power (e.g., power purchase agreements) should govern the length of renewal. We agree that site and project evaluation should be conducted when reviewing renewal requests, and such evaluation is possible under the rule.
§ 285.415: Requests for lease or grant suspensions should be granted only for good cause, particularly if the request is due to the failure to meet timelines for the submission of a SAP, GAP, or COP.	We agree and have designed the suspension provisions accordingly in §§ 285.415 through 285.421.
§ 285.437: Under subsection (c), MMS should add provisions that inform lessees of the nature of the compensation the Federal Government will owe them in the event a lease is terminated. This information will inform potential lessees that compensation will be limited. Too often lessees seek inflated awards when the Federal Government needs to cancel leases for a variety of legitimate reasons, including the protection of natural resources.	We have not adopted this recommendation. We believe flexibility is needed to consider cancellations and negotiate compensation on a case-by-case basis.
The rule should allow States or other Federal agencies to appeal to MMS for termination of a lease. The rule proposes several good criteria that may cause a termination, such as serious harm or damage to "environment, life or property" or failure to comply with terms and conditions of lease. However, these conditions can affect resources that the State and other Federal agencies manage.	The rule does not prevent affected States, relevant Federal agencies, or other interested or affected parties to recommend termination of a lease. Although there is no expressed provision or process addressing this issue in the rule the parties would be able to make such recommendations, and MMS would be able to consider those recommendations in light of the cancellation provisions in § 285.437. We have added discussion of this issue to the preamble, and it will be addressed in the implementation guidance that we plan to issue after approval of the rule.
The rule needs clarification added regarding specific deadlines by which specific action should be undertaken; clear termination of	We have added deadlines in the rule where we believe they are appropriate. We believe the termination and suspension provisions in the rule are

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authorized rights when a party does not perform; and narrow authority to MMS to suspend commitments and extend termination.	appropriate. We will provide further explanation of these provisions in the implementation guidance that we intend to issue after the rule is approved.
The MMS proposed rules may not provide sufficient guarantees to developers that would allow them to obtain financing. Specifically, there is concern that the MMS could suspend or revoke a firm's development rights through events and circumstances that are out of the developer's control – particularly in regards to complying with environmental regulations. In order to encourage the development of large-scale offshore projects, the MMS should consider provisions modeled after current State Public Utility Commission issuance of Certificate of Public Convenience and Necessity.	We believe that the rule's suspension provisions are necessary and will not prevent obtainment of financing. These provisions are analogous to those that have been implemented under other DOI programs and have not proved to be an obstacle to financing. As lessor, MMS must have such provisions to protect the resources and environmental values of the OCS.
§ 285.408: Clarification is needed in the rule on whether a marine renewables company that merges or is acquired by a larger company must assign or transfer leases to the new corporate entity.	We have adopted this recommendation and added a new subsection (e) to § 285.408 to clarify.
The MMS should enter into tailored negotiations with each applicant to ensure the lease instrument effectuates the business purposes of the applicant. The MMS suggests it will solicit comments from the States and public about the content of proposed leases and will publish lease terms prior to the time of signature. The MMS should be flexible in its approach and must be willing to negotiate suitable lease terms which meet the objectives of the lessor and the lessee.	Such an approach is possible under the rule. We intend to be flexible in establishing lease terms.
§ 285.400: The MMS is urged to act flexibly in requiring corrective action of developers and in imposing penalties or cessation orders.	The rule provides us necessary flexibility in this regard.
§ 285.400: The proposed noncompliance actions are well-founded and should be effective in ensuring proper execution of lease and grant terms. However, the proposed actions could be too stringent for this emerging industry, as it will encounter "growing pains" as it matures.	We do not believe that the rule's measures for dealing with noncompliance are overly stringent, and we believe they provide necessary flexibility for regulating emerging industries.
Subpart D needs further clarification with regard to MMS mechanisms for enforcement. The threat of lease or grant cancellation seems to be the main enforcement mechanism for MMS. Subpart D, especially parts 2 and 3, could be interpreted so that grantees are almost never found to be in violation. For example, the regulations fail to define "serious harm or damage" or to provide examples as guidance. There is no definition of what an "acceptable" decrease in damage within a "reasonable" time might be. Finally, there is absolutely no guidance in how MMS should balance the	The rule's cancellation provisions are based on analogous provisions in the OCS oil and gas regulations. We believe they provide necessary discretion, and we do not favor adding the details and definitions cited in this comment. We will provide further explanation of these provisions in the implementation guidance that we intend to issue after the rule is approved.

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advantages of cancellation against the advantages of continuing the lease.	
The rule should clearly state that any mitigation in the form of financial compensation for impacts to affected uses or resources be treated as revenue eligible for sharing. Further, the additional "revenues" should be distributed to affected States on a basis proportionate to the impacts.	We have not adopted this recommendation. The EPAct does not require or authorize financial compensation for impacts to affected uses or resources, and we do not include such requirements in the rule.
To the extent feasible, a cessation order should require discontinuation of only those lease or grant activities that form the basis of the noncompliance addressed in the cessation order. MMS should revise § 285.402(a) to state that a cessation order should require discontinuation of only those activities that form the basis of the noncompliance addressed in the cessation order, unless the specific circumstances warrant cessation of all lease or grant activities.	We have not adopted this recommendation. We wish to maintain full discretion on the scope of activities to be ceased. In § 285.402(a), MMS will specify all activities that must cease, as well as all activities that may continue. We have revised the explanation in the preamble to clarify.
This section does not identify the process for terminating or lifting the order where the lessee, grantee, or operator timely satisfies of satisfies before the deadline all requirements of the order. The MMS should revise § 285.402(b) to either (1) specify the process for termination or lifting of a cessation order where the lessee, grantee or operator has satisfied all requirements of the order, or (2) state that a cessation order must include the requirements and process for terminating or lifting the order on or before the end of the period specified in the order.	We have adopted this recommendation and have revised § 285.401(b) to state that a cessation order will include the requirements and process for terminating the order.
The MMS should revise § 285.405(e) to specify the time period, following the occurrence of a change in the designated operator, within which written notice of the change must be provided to MMS, e.g., within 72 hours following the assumption by the new operator of its responsibilities under the lease or grant.	We have adopted this recommendation and have revised § 285.405(e) to provide 72 hours for receiving written notification of a change in designated operator.
§ 285.405: In order to avoid unnecessary delays in the review and approval of a new operator notice, MMS should identify in § 285.405 the information that the lease or grant holder must include in a written notice of change of a designated operator. Also, MMS should specify in § 285.405(e) a time period within which MMS must issue written notice of its approval or denial of the new operator designation, e.g., within 30 days after receipt of written notice of a new operator designation.	We have adopted the recommendation that MMS identify the information in a written notice of change of operator and have revised § 285.405(e) to specify that such notification be on a form approved by MMS. We have not adopted the recommendation to set a 30-day time limit for approval on MMS, because we generally do not intend to impose regulatory time requirements on ourselves.
§ 285.408: There should be a time period for action on an assignment application in order to avoid delays in processing and taking action on assignment applications and to minimize	We have not adopted this recommendation because we generally do not intend to impose regulatory time requirements on ourselves.

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commercial uncertainty where an assignment application is pending.	
§ 285.417: Section 285.417(b) should be revised to clarify that the site-specific study shall not automatically be required to comply with NEPA and/or the NHPA unless the proposed lifting of the suspension order independently warrants such an analysis. It is unclear whether MMS would require that this study follow NEPA guidelines for preparing an EA or EIS or, for studies related to sites, structures, or objects of historical or archaeological significance, the requirements under Section 106 of the NHPA. It could be interpreted to require automatic preparation of a NEPA or NHPA analysis to support the lifting of a suspension order regardless of whether such an analysis otherwise is warranted by the proposed action. In addition, the process for MMS review of the study is not clear, i.e. whether a draft study would be subject to public notice and comment requirements or whether MMS would issue the final study together with its decision to lift, modify, or sustain the suspension order. In addition, the final rule should specify the process for review of a site-specific study.	We have not adopted these recommendations. We believe there is nothing in § 285.417 that could be interpreted to require automatic preparation of NEPA or NHPA analysis in site-specific studies relating to suspensions. Also, we do not wish to specify processes for these studies in the regulatory text and prefer to maintain Government discretion, especially at the outset of a new program on the OCS. We have added discussion of this issue in the preamble, and we will include more details in the implementation guidance that we intend to issue after the rule is approved.
The MMS should revise § 285.418 of the final rule to provide a time period within which MMS must issue a decision (either oral or written) on a suspension request.	We have not adopted this recommendation because we generally do not intend to impose regulatory time requirements on ourselves.
§ 285.420: Section 285.420(b) does not clarify the circumstances under which a suspension of the payment obligation may be warranted where MMS has approved a request for a suspension order submitted pursuant to § 285.416. The MMS should provide for an automatic waiver of the payment obligation where MMS has approved a suspension request submitted by a lease or grant holder. This approach would be consistent with the automatic waiver of the payment obligation provided under § 285.420(c) where MMS has issued a suspension request. Alternatively, MMS should clarify in § 285.420(b) the criteria it will consider in determining whether to waive the payment obligation for an approved lease or grant suspension under § 285.416.	We have not adopted this recommendation. Section 285.420 provides for a waiver of payments when suspensions are necessitated by events that generally are beyond the control of the lessee or grantee, and we do not wish to extend such waivers automatically to suspensions requested by the lessee or grantee. We wish to reserve maximum discretion to the Government for determining when continued payments should be required and do not favor adding criteria in the rule of the text. We have added discussion of this issue in the preamble, and we will address it in the implementation guidance that we intend to issue after the rule is approved.
§ 285.421: The MMS should revise § 285.421(b) of the proposed rule to allow for up to a 5-year suspension, where justified by the particular circumstances.	We have not adopted this recommendation. We wish to limit development delays as best we can and believe the 2-year period serves this purpose in a reasonable way.
The MMS should clarify that the intention of the lease holder to upgrade or replace wind turbine	This approach is possible under the rule. We have added discussion of this issue to the preamble, and

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equipment before the end of the lease term would not require the lease holder to file a new application for an OCS lease for the site. Given the likelihood of technological developments during the term of an OCS lease, there may be circumstances where a lease holder would seek to upgrade or replace the wind turbine structures (excluding the marine foundations) at an OCS wind turbine generation facility at or near the end of the original lease term, and continue to operate the OCS wind turbine generation facility under a renewal lease. Technological improvements in turbine design could make replacement advantageous, if lease renewal were available, as early as 15 years into the operating term. The original lease holder under such circumstances will be allowed to apply for a lease renewal under the lease or grant renewal provisions.	we will address it in the implementation guidance that we intend to issue after the rule is approved.
§ 285.426: The MMS should include in § 285.426 the time period within which the agency must take action on a renewal request, whether to grant, grant with conditions, or deny the request. The MMS also should clarify § 285.427(a) to state that the timely filing of a renewal request allows the lease or grant holder to continue activities under the original lease or grant terms until MMS takes action on the renewal request, regardless of whether the original lease or grant term has expired.	We have adopted the recommendation to state that timely filing entitles the lessee to continue activities for as long as the request is pending decision by MMS (§ 285.428(a)). We have not adopted the recommendation for a deadline for MMS action because we generally do not intend to impose regulatory time requirements on ourselves.
§ 285.428: The MMS should revise subsection (a) of § 285.428 to allow for circumstances where a lease or grant renewal request is pending before MMS as of the termination date for the original lease or grant.	We have adopted this recommendation and revised § 285.432(a) to provide for leases or grants to continue while renewal requests are pending decision by MMS.
There may be circumstances where the development and operation of a project does not require use of the entire lease or grant area issued to the holder. Where MMS proposes contraction of a lease or grant, it is provided that the lease or grant holder should have the opportunity to submit information to justify the need for the entire or some portion of the lease or grant area, in an effort to refute the proposed contraction. Nonetheless, the authority of MMS to seek contraction of a lease or grant area has significant potential consequences for the offshore wind power generation industry, and § 285.436 does not clarify the scope of the information that MMS will consider in making an initial decision to notify a lease or grant holder of a proposed lease or grant contraction. The MMS should specify in proposed § 285.436	We have not adopted this recommendation in the text of the rule. We believe it should be clear in the context of this section that MMS will initiate inquiries relating to contraction based on relevant information and situations (e.g., failure to develop a significant portion of a lease). Also, the rule provides the lessee or grantee ample opportunity to respond to such an inquiry and make its case against contraction, as well as the right to appeal contraction decisions. We have added discussion of this issue to the preamble and will address it in the implementation guidance that we intend to issue after the rule is approved.

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the information that MMS would be required to consider as part of such an area "review" before making a decision to notify a lease or grant holder of a proposed contraction, i.e. at a minimum, by taking into consideration all information submitted by the lease or grant holder in its application for an OCS lease or grant, as well as all other information and plans submitted by the holder following issuance of the lease or grant.	
§ 285.426: A 2-year notice for a commercial lease renewal is excessive, and a 1-year notice should be sufficient.	We believe that 2 years is a suitable timeframe for processing a renewal request, especially in light of associated NEPA and CZMA analyses that are likely to be required. No change to the final regulations has been made in response to this comment.
§ 285.437: In any situation where MMS has the right to terminate the lease (e.g., § 285.437), a lessee should have notice and an opportunity to cure the issue because of the substantial investment the lessee will be making in the project.	We believe the cancellation provisions give a lessee ample opportunity to remedy issues leading to cancellation. Section 285.437(a) provides for cancellation due to fraudulent or misrepresentative lease acquisition but includes opportunity for a hearing. Section 285.437(b) explains that for all other situations leading to cancellation, except national security or defense and premature termination of commercial operations, the lessee will have an opportunity for a hearing and for remedying the situation. We have not changed the final rule in response to this comment.
Is there clarification as to whether the current proposed rule envisions and allows the lessee to sublet a lease? If so, are there any additional rules for subleases, or are they governed by the exact same provisions as the original lease? Must the "sublet" be for the same type of activity as originally licensed--i.e., could a lessee with a license for a wind project sublet the leased area to an ocean thermal energy conversion (OTEC) or wave generation project?	Section 285.408 will allow the assignment of aliquot portion(s) of the lease and would govern all activities on all parts of the lease. The preamble to the rule explains in the discussion of § 285.202 that leases may be issued for single purposes (e.g., wind power generation) or multiple purposes (e.g., wind and wave power generation). Any aliquot portion of a lease that is assigned would carry the right(s) conveyed originally in the lease (i.e., either for a single purpose or multiple purposes, as stated in the lease instrument).
§ 285.400: The proposed noncompliance actions are well-founded and should be effective in ensuring proper execution of lease and grant terms. However, the proposed actions could be too stringent for this emerging industry, as it will encounter "growing pains" as it matures.	We believe the provisions governing noncompliance in §§ 285.400 through 285.402, along with minor modifications discussed previously, will be appropriate. We have not changed the final rule in response to this comment.
§ 285.408: The proposed provisions for lease assignment should work fine. The only possible issue is whether or not this will be an avenue for speculators to acquire large areas of the OCS and the assign it for a profit?	We believe the assignment provisions, along with the various diligence requirements, will discourage improper speculation.
§ 285.425: Lease renewal should not be automatic, nor have an open-ended term, but should be available for shorter terms.	We have adopted the recommendation to grant longer renewal terms and have revised § 285.427 to provide for commercial lease renewals of 25 years or longer if negotiated by applicable parties. We have

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	added detailed criteria for lease renewal at § 285.429. We also have added discussion of these issues to the preamble and will address them in the implementation guidance that we intend to issue after the rule is approved. We believe the rule provides necessary discretion and flexibility to allow longer or shorter terms, as appropriate, on a case-by-case basis.

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Economic viability assessments should be undertaken on all prospective projects, and those deemed uneconomic should not be approved for development.	We have not adopted this recommendation. The EPAct does not require MMS to conclusively determine the economic viability of a project.
§ 285.503: The greatest single obstacle to the financial and economic viability of alternative energy development on the OCS is the proposal for a commercial lease rental fee of $3/acre/year in § 285.503. In establishing rate levels, the California Public Utility Commission determines if a utility's investments are prudent. Under this regulatory structure (and different from an oil and gas exploration business), a utility in California does not enjoy the potential of achieving an unbridled return on its investment should a project turn out to be successful. A project with extremely high lease costs only serves to increase the cost of energy to a utility's customers and may prevent the project from being economically viable.	No changes to the final regulation have been made in response to this comment (see detailed explanation in the preamble at § 285.503). The MMS has determined that the $3/acre fee is a reasonable level for renewable energy development projects on the OCS. However, MMS can reduce or waive the rental fee, as provided in § 285.510.
§ 285.505: The annual operating fee formula in § 285.505 is acceptable. It is not clear, however, that MMS will apply it in such a way as to maximize the revenue for the US Treasury.	Section 388 of the EPAct (43 U.S.C. 1337(p)(2)) does not require MMS to maximize the revenue for the U.S. Treasury, perhaps in part because renewable energy generation provides positive externalities to the public beyond monetary value. No changes to the final regulation have been made in response to this comment.
§ 285.500 The MMS should bear in mind that renewable energy projects use public space, but do not use finite, depletable public energy stores like the oil and gas industry upon which MMS's fee proposal appears to be based. The MMS should revise its fee proposal in § 285.500 to be more reasonable, reflecting a rental concept rather than payment for extraction of resources, particularly since operating fees are inappropriate while marine renewables remain in their nascence and must reflect the realities of renewable energy project development.	The MMS understands that renewable energy projects do not use a depletable resource, but they do occupy public land to the exclusion of other potential uses. Therefore, MMS has adopted rental and operating fees that are much lower than those MMS charges the oil and natural gas industries for extraction on the OCS. In terms of the annual operating fee in § 285.506, the operating fee formula, which is based on the formula that BLM employs for onshore wind energy, is capacity based, and therefore, is primarily determined by a readily observed objective measure - the size of the project that a lessee develops using public land that falls within MMS's jurisdiction. No changes to the final regulation have been made in response to this

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§ 285.506: The approach in § 285.506 for calculating annual operating fees is unnecessarily complex. The proposed formula for calculating annual operating fees is based on such statistics as the average retail power price in the State where an offshore alternative energy project's transmission cable makes landfall, as well as a capacity factor that MMS will select based upon present and future domestic and foreign projects that operate in comparable conditions and on comparable scales.	The MMS believes that the annual operating fee formula in § 285.506 is a transparent and equitable approach using easily referenced components, such as the power price as reported by EIA. For a discussion of other approaches considered, see the explanation in the preamble at § 285.506 Additionally, while a fee based on net revenues promises some potential theoretical benefits, it introduces some practical problems along with added program costs associated with the need to estimate or audit cost streams. A gross revenue basis also removes much of the uncertainty associated with the potential for conflict over results of these measurement activities. No changes to the final regulation have been made in response to this comment.
§ 285.506: The MMS should reconsider basing their revenue calculations and operating fees in § 285.506 on the gross capital costs of the project developers. The MMS should calculate these figures on a net basis instead.	Calculation of revenues on a net basis, such as through financial statements, would increase the complexity of such a calculation as a number of additional components to a project's pro forma would need to be considered. While a net basis promises theoretical benefits, it introduces more significant practical problems such as the need to estimate or audit cost streams. A gross basis removes the uncertainty associated with the potential for conflict over results of these activities. No changes to the final regulation have been made in response to this comment.
§ 285.506: The operating fee in § 285.506 should commence when the project is actually operating or when actual revenues are obtained from the sale of electricity, as the operating fee would be burdensome during construction when there is no revenue stream and the cost of capital is high. The positive externalities associated with marine renewable projects, as well as the nascent nature of the industry, should also be considered. A more practical approach would be to impose operating fees after a project has been in commercial operations for at least 1 year.	We have amended § 285.505 to state that MMS will begin collecting operating fees on a commercial lease beginning at the time that the generating facility starts producing electricity commercially during the operations term. Alternative forms of due diligence, such as continuing to charge a rental during the construction phase and adopting a deadline for starting the operating fee, will balance the encouragement of development through a more reasonable fiscal approach while providing the safeguards against potentially manipulative lessee behavior.
§ 285.506: The fee on imputed revenues in § 285.506 should commence when actual revenues are obtained from the sale of electric power. Due to financial and operating constraints, a more practical approach would be to start imposing operating fees after the project has been in commercial operation for 1 year and some level of output from the facility has been subscribed. Until revenues are earned by commercial operation, the project will not have a revenue stream from which to pay the fee and will instead be forced to finance the operating	The MMS considered these recommendations and agrees with the commenter that operating fees should not be charged until after production. However, we do not believe we should wait until 1 year after production starts to charge an operating fee. We have amended the regulations at § 285.506 to charge the annual operating fee at the time the project begins generating electricity. Other forms of due diligence, such as continuing to charge a rental during the construction phase and adopting a deadline for starting the operating fee, will balance the encouragement of development through a more

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fee. The carrying costs of the project at the early stage, given the high cost of capital and the revenue stream uncertainty, will be significant and are a sufficient incentive to ensure the developer will pursue successful commercial operation in a timely and diligent manner. Also, given the benefits of marine renewable in terms of energy security, climate change, air quality and comparative wildlife impacts (as compared to conventional means of electricity generation), MMS should defer the collection of royalties until such time as the marine renewable energy facility is actually operating. Additionally, charging operating fees in the infancy of a newly constructed project puts an undue burden on developers at a time when capital costs are high and revenue is uncertain. The MMS should consider delaying the collection of operating fees until at least 1 year after completion of construction and initiation of operations.	reasonable fiscal approach while providing the safeguards against potentially manipulative behavior.
It should be noted that as currently proposed in § 285.506, the Government does not obtain any fair return from additional revenue streams such as the sale of renewable energy credits (RECs) or the sale of air emissions credits for cap and trade systems.	The wholesale power price, which is a component of the formula used in § 285.506, generally does reflect the cost of RECs and emission allowances on a system-wide basis. With the majority of regional energy markets deregulated, the wholesale power price in a given region represents, by and large, the marginal unit in the generation stack in terms of cost of generation. Therefore, revenue streams from the sale of RECs or the sale of air emissions credits for cap and trade systems will be indirectly accounted for in the annual operating fee, and so the Government will obtain a fair return. No changes to the final regulation have been made in response to this comment.
It should not be assumed that the State where a transmission cable makes landfall is the same State where the project's output is sold. Also, it is not unusual for power purchase agreements to be negotiated with two purchasers, which may be located in two different States, neither of which are necessarily the State where the cable makes landfall.	Given the transmission grid and congestion issues, it is likely that the project's output will ultimately serve the State where the transmission cable makes landfall as these load zones and the corresponding load requirements are in close proximity to the coasts. In the interest of avoiding excessive complexity, MMS has chosen a straightforward and transparent fee mechanism. It is unlikely that the electricity generated on the OCS would be used to serve load in States further away, given the current transmission grid and congestion issue as well as increases in transmission losses and wheeling charges the longer that electricity is transmitted. No changes to the final regulation have been made in response to this comment.
§ 285.506: The formula in § 285.506 for	The final rule was amended to use wholesale rates

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calculating the operating fee should be based on wholesale rates. Basing the operating fee on retail rates does not make much sense since the lessee will not be receiving the retail rate for the power it produces, and since retail rates will reflect only in small part of the cost of purchasing the offshore alternative energy output.	instead of retail rates. The MMS recognizes, however, that there are limitations in that wholesale rates are published on a regional (multi-state) basis as specified by the North American Reliability Council and are of an older vintage. The MMS will employ the wholesale rate initially as the basis for its valuation, but retains the authority to adjust that published value to better reflect variations by State within a region as well as market conditions of more recent vintage that may be better captured in the published retail power price, given the information provided by EIA. The MMS also retains the flexibility to use more timely or disaggregated wholesale price indices, where applicable, as appropriate information becomes available.
§ 285.506: The proposed definition of "P" in the imputed revenue formula in § 285.506 is inappropriate to measure the wholesale value of the power from an offshore project since it represents a retail end-user price that includes distribution and transmission charges. It also should be noted that EIA published Statewide average retail prices that includes averages for the residential, commercial, industrial, and transportation end use sectors. The use of actual project revenues is a far superior measure of revenues. However, if MMS wants to use imputed revenues, a more suitable (but imperfect) measure would be the average standard offer service or default service rate in $/MWh for electric power suppliers in the State that supplies wholesale power requirements (or if there are not, the average wholesale cost of power supplied to or by the utility in question). If an imputed revenues measure is used, lessees have the ability to reduce their payments if actual revenues are significantly lower than imputed revenues.	As previously stated, MMS has considered this recommendation and will make use of a readily available wholesale power price index, as opposed to the retail power price, as a more appropriate power price to use in the annual operating fee formula. The wholesale power price may be representative of a State or regional power price based on available public data and corresponding adjustments that MMS could make to account for local variations and market conditions, as discussed in section 285.506. Given that MMS adopts the use of wholesale power prices, the commenter's recommendation to use the standard offer service or default service rate, which are alternatives representing retail power prices, is no longer germane. The use of actual project revenues for computing the operating fee introduces costly accounting and audit obligations that are largely absent in the case of an imputed, market-based proxy for project revenues. Moreover, there is no compelling evidence that a simple market-authenticated measure of wholesale value cannot be employed in a generally equitable manner. Accordingly, MMS has not made any changes in the final regulation in response to this comment regarding the use of actual project revenues.
§ 285.506: The capacity factor in § 285.506 should be based on meteorological data at the existing site, not on MMS evaluation of "comparable" sites. Sites can differ tremendously based on location and, as long as site-specific data are available for a site, there seems to be no good reason why precise capacity factors should not be used. Furthermore, the capacity factor should be discounted by a percentage from the measured data to account for	The MMS can set the initial estimate of the capacity factor based on meteorological data at the existing site from information collected during the SAP term. To account for fluctuations, the rule allows for adjustment of the capacity factor after the first year of commercial operations and for every 5-year period thereafter, which will also allow for averaging of the capacity factor once an operational history of the project is established. No changes to the final regulation have been made in response to

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annual fluctuations.	this comment.
§ 285.506: The calculation and payment of an operating fee after 1 full year of commercial operation will avoid the need to establish hypothetical capacity factors, which are not directly related to a particular project's operations. Rather than impose an initial capacity factor which has a significant potential of being too high, MMS should base its operating fee on real data compiled during the first year of commercial operation. To this end, § 285.505 should be amended to state that the first payment will be based on the first full year of commercial operation.	The MMS believes that the estimate of the capacity factor to be used in the annual operating fee formula in § 285.506 is appropriate and reasonable because it is based on lessee provided data. The MMS recognizes that actual commercial operations may be different than estimates and therefore has provided that the capacity factor may be adjusted after the first year of commercial operations and for every 5-year period thereafter. No changes to the final regulation have been made in response to this comment.
§ 285.506: As the rule is currently written in § 285.506, MMS would have to wait by as much as 5 years to capture the monetary benefits of projects that are able to improve their operational capacity factor.	Current experience in renewable technologies points to underperformance issues as opposed to improvements in capacity factors. The 5-year period by which MMS would evaluate the capacity factor of a project also would allow for averaging of historic performance, which would account for higher or lower than normal operating years. The MMS believes the experimental character and social benefits of the new technology justify any risk in giving a renewable energy project certainty on its fiscal obligations for up to a 5-year period. No changes to the final regulation have been made in response to this comment.
§ 285.506: The rule should clarify in § 285.506 that the operating fee set during the term of a lease will not be adjusted unless it is based on a formula negotiated with the lessee and incorporated into the executed lease. Entities need to be able to model the costs of a long-term project. It is not realistic or fair to raise operating fees based on some post-hoc exercise of MMS's discretion. To avoid such financial uncertainty and the concomitant risk to project viability, MMS should disavow the potential approach suggested at 73 FR 39413, and should affirm that an operating fee can only be adjusted based on a formula mutually agreed upon by the parties and included within the lease.	The power price component of the operating fee will be adjusted on an annual basis using information from an independent outside source, EIA, to reflect prevailing market conditions. The possibility of adjustment within this impartial structure is essential to restore the intended financial shares in the event of unforeseen changes in the expected operating conditions. Such changes could work to the detriment of either party, so this flexibility protects both parties. Accordingly, there will be no unexpected changes in fiscal terms mandated by MMS that would contribute to destabilizing the underlying profitability of the venture. The other components of the annual operating fee formula cannot be changed, nor can other provisions such as rental fees, after issuance of the lease instrument. No changes to the final regulation have been made in response to this comment.
The MMS should consider "investing" in the short term growth cycle of the industry to reap benefits over the long term. Perhaps the first 200 MW installed nationally could be free from operating charges and benefit from reduced lease charges. Clearly this would have implications for any competitive bidding processes. In light of prevailing energy prices in the United States	Section 388 of the EPAct specifically charges MMS with ensuring a fair return for AE leases on the OCS, and this mandate does not allow MMS to permanently waive the annual operating fee for some group of projects. The rule does have provisions under § 285.510 for temporary reduction or waivers of the annual operating fee for no more than 6 years if the lessee demonstrates that the

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and the absence of production tax credits for wave energy output, it is unlikely that any bids would be made in any revenue-based competitive process in the short term in any case. In Europe, wave energy projects are only now starting to get off the ground, even with enablement mechanisms yielding kWh payments in the high 30-cents range. No such mechanisms exist in the United States, so it is difficult to see where such bid payments could originate. The MMS should waive fees for early stage developers of new renewable technologies that may be deployed for clean, renewable energy generation purposes on the OCS. Pre-commercial testing and device demonstration projects should be granted fee waivers for a short time period of 1-2 years.	project would be uneconomic, or if the reduction or waiver is needed to encourage additional activities. Also, MMS will consider waivers for fees associated with limited leases under § 285.103. With the ocean wave and current industry just starting on the OCS, it is likely that only a small number of companies will have the necessary resources and technological expertise to develop renewable energy ocean projects in the near term. In addition to the reduction and waiver provisions previously mentioned, the rule addresses this issue in subpart B, which provides applicants with a number of different options including competitive and noncompetitive lease offerings as well as commercial and limited leases. Further, the U.S. energy markets are much different from those in Europe, and enablement mechanism, such as feed-in tariffs that essentially provide a subsidy to developers of AE projects, do not fall within the scope of section 388 of the EPAct. No changes to the final regulation have been made in response to this comment.
It is not appropriate to model offshore renewable energy regulations directly after the oil and gas framework, nor would it be effective in supporting the growth of this critical emerging industry. Further, the financial requirements for offshore renewable energy projects need to reflect the actual economic conditions of the industry, not hypothetical models. The economic analysis models MMS used to establish financial criteria in § 285.506 of the proposed rule do not reflect the emerging nature of the wave energy industry. The proposed operating fee rate of 1-2 percent of the retail value of power is much too high for this nascent industry.	The rule's annual operating fee formula in § 285.506 is based on comparable systems onshore, such a those employed by BLM for renewable energy leases, and constitute much lower fiscal terms than that in the oil and gas industry. Consequently, an operating fee rate of 1-2 percent of the retail value of power should be a reasonable rate for this nascent industry. However, as provided for in § 285.506(c), MMS will specify operating fee parameters in the Final Sale Notice for commercial leases issued competitively and in the lease for those issued noncompetitively—thus taking into consideration the emerging nature of wave energy industry. Additionally, MMS maintains the flexibility to adjust the operating fee rate from the 2 percent on a lease-specific basis in addition to the provisions in the rule that allow for the reduction or waiver of the annual operating fee temporarily on a case-by-case basis. No changes to the final regulation have been made in response to this comment.
§§ 285.506 and 285.510: The MMS should create a predictable and fair fee process, and eliminate the waiver provision in § 285.510 for fees and revenues and the sliding operator fee scale in § 285.506. All projects should have the same standard of financial responsibility to the Federal Government and the State for the use of public trust land.	To facilitate the development of renewable energy projects on the OCS, MMS retains the flexibility to reduce or waive the rental and annual operating fee, at the discretion of the Director, if the lessee is able to demonstrate though an application that there is such a need despite its good faith efforts and through no fault of its own (§§ 285.103 and 285.510). No changes to the final regulation have been made in response to this comment.
The provision in section § 285.509 that permits	Comment noted. The MMS believes the provision

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MMS to reduce or waive the rental or operating fee when the Director determines that it is necessary to encourage continued or additional activities is a good provision and should remain unchanged in the final regulations.	for reduction and waivers of rental or operating fees is appropriate and will give the agency flexibility to encourage develop of offshore renewable energy projects, particularly as this industry is growing.
The MMS should add a new provision to section § 285.509 as follows: (f) MMS shall reduce or waive rental or operating fees in an appropriate amount: (1) if there is no federal production tax credit in place for the project, or (2) for projects that have the potential to significantly advance technology development or the infrastructure capability of alternative energy resources on the OCS in situations where the successful demonstration of the commercial viability of the particular activity or technology has not been adequately established.	Section 285.510 is clear with regard to the reasons whereby the Director may reduce or waive the rental or operating fee: (i) continued activities would be uneconomic without the requested reduction or waiver or (ii) a reduction or waiver is necessary to encourage additional activities. Both of the stated grounds for reduction in the comment fall within the existing provisions in § 285.510. No changes to the final regulation have been made in response to this comment.
§ 285.509: The section giving the Director the ability to waive all payments with no accountability or guidance at all should either be removed entirely or substantially expanded. Additional requirements should be added relating to the efficacy of operations, the value of maintaining operations, and findings that there are no other operators that could take over operations and run them effectively. In the event that the final rule retains significant operating fee charges based on imputed rather than actual revenues, proposed § 285.509 should be revised to include the following: "(c) No holder of a lease or grant will obtain full waivers of operating fees covering more than 6 years of the relevant operations term under subsection (a) of this section. (d) The MMS Director shall reduce the operating fee for a commercial lessee under this subpart if the lessee demonstrates that estimated revenues for its operations (that is, the product of the M, H, c and P factors defined in section 505(a) of this part) exceed actual revenues by 20 percent or more. A lessee that qualifies for relief under this section shall pay operating fees on revenues equal to 120 percent of actual revenues. (e) When requesting a reduction or waiver under subsection (d) of this section, you must submit an application to us that includes all of the following: (1) The number of the lease involved; (2) Name of each lessee of record; (3) Name of each operator; (4) Documentation of actual power sale revenues derived from operations under the lease; and (5) Any other information required by the Director."	Section 285.510 gives the Director the discretion to reduce or waive the rental or operating fee if the information provided by the lessee in its application sufficiently demonstrates that the project would be uneconomic otherwise or a reduction or waiver is necessary to encourage additional activities. Under the rule, the Director may require additional information, including those highlighted in the comments. However while we may standardize this process, much like we do for oil and natural gas projects, following implementation and experience with this new program, we have chosen not to include such criteria as regulatory requirements. No changes to the final regulation have been made in response to this comment.

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Discretionary authority to reduce or waive operating fees is helpful, particularly if it is exercised liberally "to encourage continued or additional activities." However, the reservation of such purely discretionary authority will not adequately address the serious threat that MMS's proposed operating fee formula poses to project finances. Prospective investors in offshore wind projects will not accept the possibility of partial discretionary administrative relief as an answer to the risks posed by operating fee liabilities that are both unbounded and decoupled from actual project revenues. The operating fee rate for competitive auctions in § 285.506 should be lowered to 1 percent, and MMS should assess these fees against actual rather than imputed power revenues. If MMS rejects both these recommendations, it should, at a minimum, provide assured, as opposed to discretionary relief, for lessees whose actual revenues are sharply lower than the revenues imputed to them under the operating fee regulations.	As discussed in the preamble to the rule regarding MMS's analysis of various payment scenarios in the fiscal cost-benefit analysis, the results indicate that payments, including those in the high case scenario, do not have a significant impact on the economic viability of potential renewable energy projects, particularly those that are truly feasible economically. Therefore, MMS does not adopt the commenters lower operating fee rate recommendation of 1 percent for the entire term of the lease. However, MMS does recognize that, in the near term, offshore AE projects may be considered marginally economic and has provided waivers in §§ 285.103 and 285.510, and can specify operating fee parameters (such as the operating rate) in the Final Sale Notice for commercial leases issued competitively and in the lease for those issued noncompetitively—thus taking into consideration sale- or project-specific economic considerations (§ 285.506(c)). Additionally, we have amended § 285.506 to state MMS will begin collecting operating fees on a commercial lease beginning at the time that the generating facility starts generating electricity for commercial distribution during the operations term.
§ 285.517: Balance bond amounts in § 285.517 appear to be prohibitive to would-be speculators but within the realms of affordability by serious project proponents - perhaps other, nonfinancial, stipulations could be introduced in lieu of capital.	The MMS does not take into consideration the motives of the operator when it sets bond amounts. The MMS will determine bond amounts using the criteria in § 285.516 of the rule. The amounts will be determined by lease or grant obligations, including estimated decommissioning costs. No changes to the final regulation have been made in response to this comment.
§ 285.526: The MMS needs to allow for a broader array of credit support and performance assurance beyond the costly options specified in the proposed rule. The proposed requirement to obtain financial assurance specified in § 285.526(a) will require applicants to incur significant and generally unnecessary costs, particularly companies which are able to provide financial assurances in other, far less expensive ways. It is wasteful to have a creditworthy company tie up financial resources for 30 years. Surety bonds and the alternate forms of financial assurance are expensive (usually around one percent of face value) and could significantly impact the commercial viability of a project.	The financial assurance requirements are necessary to protect the Government from losses in the event a lessee or grantee failed to perform its obligations. We have revised § 285.526 of the final rule to allow even more instruments to meet the financial assurance requirement that may be less expensive for operators than surety bonds. A lessee may consider negotiable government bonds or securities, investment-grade securities, and insurance. The final regulation also allows the demonstration of financial strength and reliability as well as the use a of a third-party guaranty to satisfy the bonding requirement.
§ 285.540: Revenue sharing under § 285.540 should accrue to the State where a project's power transmission cable makes landfall, regardless of the project's distance offshore. This is not the revenue sharing provision that is	The revenue sharing provision of section 388 of the EPAct specifically states that a project that is located wholly or partially within the area that is 3 nautical miles seaward of State submerged lands are qualified for State revenue sharing, and

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in section 388 of the EPAct, and it would require a new act of Congress to change this revenue sharing provision.	payments shall be distributed to States whose coastline falls within 15 miles of the geographic center of the project. However, the commenter notes that revenue sharing should not be limited to the 8(g) zone, but should apply to all energy production on the OCS. As the commenter notes, changes to the State revenue sharing provision would require a new act of Congress. No changes to the final regulation have been made in response to this comment.
§ 285.517: The MMS should clarify how the calculations conducted to determine amounts required for bonding under § 285.517 will consider costs associated with removal, cleanup, and mitigation of damages to adjacent areas.	In determining the amount required for bonding at § 285.516, MMS will consider projected amounts of rents and other payments due to the Government over the next 12 months; any past due rents or other payments; and the costs of lease abandonment and cleanup. No changes to the final regulation have been made in response to this comment.
Business certainly is key for investors. The rule needs an orderly, simple, and predictable bonding schedule where the level of Government fees is known in advance of the final permit. Further, the regulations should be crafted in a way that ensures the final bonding costs will remain within reason and are carefully reviewed to cover only the necessary costs.	The methods to ensure financial assurance have been expanded. The rule has been revised at § 285.516 and § 285.521 to allow a decommissioning bond that could be staged to ensure that the amount of financial assurance matches the expected decommissioning costs. The MMS will work to ensure that the financial assurance it requires will be only that which is necessary to cover lessee or grantee obligations.
The rule should make clear that no decommissioning coverage will be required until construction actually begins. As the operating term proceeds, the level and type of financial assurance that is required should be linked to actual default risks.	The rule (§ 285.516(a)(4)) has been revised to allow a separate decommissioning bond that could be staged to ensure that the amount of financial assurance matches the expected decommissioning costs. As the operating term proceeds, the level of financial assurance that is required will be reflected in the schedule for providing the appropriate level of financial assurance that must be approved by MMS.
The MMS should separate financial assurance for decommissioning costs from financial assurance for other regulatory obligations.	The financial assurance for decommissioning costs has been separated from other regulatory obligations (see §§ 285.516 and 285.521). Financial assurance for decommissioning may be staged over the life of the project on a schedule approved by MMS.

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Surety bonds can only provide protection for a 25-year operating term if they are consistently renewed. A lessee or operator that was unwilling or unable to renew a surety bond during the closing years of its operating term would leave MMS with no guaranteed funding for decommissioning costs.	The regulations adequately cover the situation where a lessee fails to comply with the conditions of the lease or grant (see Subpart D). The MMS will call for forfeiture of the bond or other form of financial assurance. The final regulations allow for staged amounts of financial assurance for decommissioning obligations. The MMS may periodically review § 285.517(c)(1) estimates of decommissioning obligations to ensure that those obligations are covered by the level of financial assurance. The regulations at § 285.517(c)(2) also allow the lessee to request a reduced level of financial assurance if a review shows the reduced level covers the estimated decommissioning obligation. We have revised the regulations at §§ 285.516 and 285.521 to clearly allow a separate bond to cover decommissioning costs. The financial assurance obligations of lessees will change over time, including the obligation after the lease term ends. The MMS will periodically review estimates of decommissioning obligations to ensure that those obligations are covered by the level of financial assurance. The rule has been revised § 285.526 to allow other forms of financial assurance. This should allow all lessees to obtain appropriate financial assurance for renewable energy projects.
Alternatives used elsewhere in the OCS program should be adopted for financial assurance in the final rule, including in the MMS Notice to Lessees, 2003-N06.31. This policy removes the requirement for maintaining a supplemental bond where the applicant can demonstrate financial strength and reliability through providing audited financial statements. A creditworthy lessee should be allowed to satisfy any financial assurance requirement by providing its audited financial statements, evidence of investment grade credit ratings, or other satisfactory evidence of its financial strength. Alternatively, MMS should permit lessees to supply a parent company guarantee.	We have revised the regulations at § 285.527 to allow a lessee to satisfy the financial assurance requirement by demonstrating financial strength and reliability. The regulations at § 285.528 also allow the use of a third-party guaranty. These forms of financial assurance are used in the OCS oil and gas program.
The MMS should consider allowing use of a power purchase agreement, sale agreement, or similar instrument with suitable financial assurances by the power purchaser to serve as financial assurances under this section. Since utilities will most likely be the purchasers of power generated by these projects under some	The final rule includes new forms of financial assurance at § 285.526. We did not include the use of a power purchase or sales agreement in the rule. However, a utility could play a role in financial assurance by becoming a third-party guaranty. No changes to the final regulation have been made in response to this comment.

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form of contract, this mechanism would meet the financial assurance requirements of this section.	
Although the proposed financial assurance generally track existing financial assurance rules for oil and gas or sulfur leases, the proposed rule conspicuously omits authorization for alternative energy developers to use the third-party guarantees that developers of oil and gas and sulfur deposits can provide in place of bonds.	We have added the use of a third-party guaranty to the final rule. See § 285.528.
In considering which additional financial assurance options should be made available to wind farm lessees and operators, MMS should review its rules governing financial assurances for supplemental oil spill liability. Those rules allow oil and gas lessees to guarantee payment using insurance, self-insurance (with an appropriate showing of adequate assets), and "alternative method[s]" approved by the Director.	We have included additional forms of financial assurance to the final rule, including insurance, at § 285.526.
The MMS should include other requirements in the lease process, such as bonds or investment portfolios, to provide greater financial assurance and reduce speculation during lease sales. It is clear that MMS intends to eventually require lessees to obtain financial assurances through bonding, but not clear when in the process.	The final rule is clear about the requirements and timing of financial assurance requirements for each stage of a lease or grant (§§ 285.516 and 285.520). No changes to the final regulation have been made in response to this comment.
§ 285.540: The MMS should consider providing affected States with a bonus revenue payment or other incentives under § 285.540 if a State pledges, through agreements, guidelines, or other means, to use a portion of the shared project revenues for activities related to advancing access and responsible development of alternative energy projects on the OCS.	Section 388 of the EPAct specifically provides for 27 percent of revenues to be shared with affected States. The MMS is not permitted to allocate funds, such as bonus revenue payments or other incentives, through regulation not authorized by statute. No changes to the final regulation have been made in response to this comment.
Basing revenue-sharing calculations for eligible projects solely on the proximity from the project center under § 285.540 is not the best allocation method. This approach assumes that most projects will be somewhat regular in geometric shape. In some situations however, alternative energy projects might assume irregular shapes so as to follow seabed contours or higher current velocities. It is possible that under the proposed distribution protocol, one State may qualify for the majority of shared revenue because of its proximity to the project "center," but in fact be subject to less of the actual project area.	Section 388 of the EPAct specifically states that equitable distribution of State revenue sharing be determined for States whose coastlines are located within 15 miles of the geographic center of the project. Further, geospatial software can be used to determine the geographic center of a project regardless of whether the project footprint is "regular" in shape. No changes to the final regulation have been made in response to this comment.
§ 285.540: The distribution protocol in § 285.540 should be amended to capture the disproportionate effects that a project may have on a more distant State's uses or resources. Because the revenue sharing focuses on proximity, the proposed rule for revenue sharing	Section 388 of the EPAct specifically states that equitable distribution of State revenue sharing funds will use a formula that is based on a State's proximity to the project. Consideration of sites for transmission cables and other off-lease infrastructure in the revenue sharing formula is not authorized by

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at § 285.540 does not account for possible disproportionate adverse effects. Proximity may be a useful surrogate in many cases, but there are readily identifiable situations where the impacts of a project would have greater effects on one State's uses or resources. The distribution protocol in § 285.540 should be amended to capture this important concept. Additionally, the rule at § 285.540 should be revised to share project revenue with any State where a cable or other infrastructure from the alternative energy facility is landed.	the statute. The MMS considered but rejected the option of defining a special project area that differs from the lease area to try to account for situations when proximity might not be a good surrogate. We concluded that it is better is to be vigilant in adjusting lease acreage to the evolution of a project.
§ 285.542: The rule at § 285.542 should clarify State revenue sharing for beyond 15 miles from the coastline and sharing of revenue with States for projects located on OCS adjacent to their State. The MMS has provided examples of revenue sharing for projects beyond 20 miles of a State's shoreline. Yet, the language of the rule appears to limit the sharing of revenue to projects that are within 15 miles of a State's coastline. Federal law does not seem to provide any restrictions for the MMS to share revenue for projects beyond 15 miles. States can be impacted by projects anywhere on the OCS adjacent to the State, and thus, should receive revenues from these projects as well. The regulations, as currently written, are very confusing with regard to State eligibility for project revenue sharing. The confusion results from the use of the term "qualified project." Without specific knowledge that there is a definition for "qualified project," it appears that a State becomes eligible for revenue sharing if a project is either or both of the following is true: the project is located within the 8(g) area or the project is within 15 miles of a State's coastline. Language should be added to this section to point the reader to the definition of "qualified project," or the definition needs to be integrated into the wording of this section.	Section 388 of the EPAct, specifically states that equitable distribution of State revenue sharing be determined for States whose coastlines are located within 15 miles of the geographic center of the project. The EPAct revenue sharing language does not provide for revenue sharing based on projects' impacts. Any change to the revenue sharing provision requires a new act by Congress. Section 285.541 explains what is meant by a "qualified project" for revenue sharing, and § 285.542 explains when a State is eligible for payment of revenues.
The rule should clarify how damages would be included in revenue sharing, if at all. Would mitigation and financial compensation for natural resource damages or loss be included in revenue sharing payments, or excluded? It is apparent from the calculations for revenue sharing that they are flexible, and can change based upon (1) proximity to qualified coastal States, (2) financial situation of the applicant, and (3) changing condition of the market. If this is correct, a clear mechanism is needed outside of revenue sharing that will address the loss or	The MMS collects payment as bonuses, acquisition fees, rentals, and operating fees (which are like royalties) for the value of the national interest in the OCS renewable energy resource and property. Other revenues do not qualify under the AEAU Program just as they do not qualify as payments. These other revenues include, but are not necessarily limited to, a forfeited bond or surety, cost recovery fees, and civil penalties. The MMS may assess civil penalties as authorized by section 24 of the OCS Lands Act and referenced in § 285.400(f) of this regulation. Any civil penalty levied for

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damage to any natural resources adjacent to State waters, or affected State waters or land. It is suggested that this issue can be addressed when the developer applies for a use authorization for State-owned aquatic lands.	noncompliance of lease obligations, including civil penalties for environmental damage, would be excluded under the State revenue sharing provision since they are not revenue from payments related to the Government's property interest in the lease. The EPAct does not require or authorize MMS to provide or require developers to provide compensation for mitigating adverse impacts to the States or local areas.
§ 285.540: The currently proposed "inverse distance" formula for revenue sharing in § 285.540(c) may result in an inequitable distribution of funds since the character and magnitude of impacts to affected fisheries users and resources and to other wildlife and their habitats may vary among States, regardless of distance from the proposed project. Consequently, we request that the formula be amended to expressly take into account, in addition to the proximity of the project, the proportionate resource impacts of the project on the affected States.	Section 388 of the EPAct specifically states that equitable distribution of State revenue sharing be based on a formula that is based on the proximity of the project. Changes to the distribution protocol, as suggested by the comment, would introduce less objective and transparent measures than proximity and would need a new legislative act by Congress. No changes to the final regulation have been made in response to this comment.
§ 285.540: The formula in § 285.540(c) used to determine the eligibility of States to participate in revenue sharing under various geographic circumstances appears to indicate that, if an AE producing facility is located outside the 8(g) zone and more than 15 miles from the coastline of any State, no State would be eligible to receive revenue. We seek clarification as to whether this interpretation is correct, and if so, how States that are, by this reasoning, not eligible for revenue sharing but might be affected by such alternative energy development activities would be compensated.	Section 388 of the EPAct specifically states that a project must be located wholly or partially within the area extending 3 nautical miles from State submerged land to be qualified for the State revenue sharing provision. Any changes to the revenue sharing provision will require a new act by Congress. The basis for our interpretation is found in the preamble discussion covering subpart E. No changes to the final regulation have been made in response to this comment.
§ 285.540: The term "project area" in § 285.540 with regard to revenue-sharing should be clarified, as it is unclear how it is different from a lease area. This should be clarified prior to adoption.	Project area means the geographic surface leased, or granted, for the purpose of a specific project. 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, but rent received from a project easement are included in calculating the revenue to be shared.
§ 285.540 The proposed revenue-sharing protocol in § 285.540 fails to account for distinctions in project timing like phase-in of production.	As stated in § 285.540, the MMS will base State revenue sharing eligibility and specific shares on the objective measure of the lease area active at the end of the fiscal year in which MMS collects the sharable revenue. Regardless of when, during that year, a change may have occurred in the lease or project area, the configuration of the area on the last day of the fiscal year will be used to determine State payments for that year. This procedure combines

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	the objective basis for revenue sharing with a dynamic process for adjusting to changes in project area over the life cycle of a project.
It is important that MMS recognize the need/requirement to assess "economic viability." In reviewing the discussion on 73 FR 39408, it appears MMS is conducting appropriate analysis of prospective projects. Nevertheless, these rules must make it clear that MMS has a fiduciary responsibility to protect public assets from frivolous exploitation. And if MMS states economic viability is a critical criterion, then to maintain credibility, MMS needs to enforce this for all projects.	With regard to the preamble discussion in the Federal Register, the discussion of economic viability, as referenced to the fiscal cost-benefit study, relates to the magnitude and appropriateness of the proposed fee payments in subpart E of the rule, and is not to be construed as critical criterion for screening potential projects. Results from the MMS economic evaluations would not serve as a formal profitability forecast suitable for private investment decisions, and hence would not be used to endorse or condemn a prospective project. The rule also provides due diligence provisions that addresses nonperformance issues, including financial assurances and lease relinquishment or cancellation in response to events that negatively affect the operations of a project. No changes to the final regulation have been made in response to this comment.

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General subpart F comment. Concerning coordination on various biological components of the proposed rule, such as surveys and migratory bird consultation, the proposed rule does not discuss or reference MMS's responsibilities regarding the Migratory Bird Treaty Act.	The final rule addresses the protection of migratory birds in several major ways. As described in the preamble, all NEPA reviews must examine biological resources including marine birds. In the rule, NEPA reviews occur at the lease issuance stage as well as for site assessment, construction and operations, and decommissioning stages. In addition, the rule requires that biological surveys, which include descriptions of the presence of sea birds, be submitted with the SAP, COP, GAP and decommissioning application Further, we are working with FWS on a Memorandum of Understanding to implement E.O. 13186, "Responsibilities of Federal Agencies to Protect Migratory Birds" (January 10, 2001).
General subpart F comment. The proposed rule does not mention the FWCA which applies to water resource development projects. Although a 1982 Solicitor's Opinion states that the FWCA does not apply to mineral development or oil and gas projects on the OCS, the Service believes the proposed alternative energy development program in the OCS, which is the subject of MMS rule, would be the type of project to which the FWCA would apply.	We have reviewed the 1982 Solicitor's Opinion, "the Fish and Wildlife Coordination Act Does not Apply to OCS leases and Permits Issued by the Secretary," and have concluded that it is also applicable to leases and grants issued for Renewable Energy and Alternate Use activities.
General subpart F comment. Subparts F and H need to be better integrated and coordinated to more clearly indicate to the applicant what environmental documentation is required to be	Subpart H has been revised to inform operators of their requirements for conducting activities under an approved plan. The MMS has revised subpart H, § 285.801 through 804, by moving items relating to

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completed while submitting GAP, SAP, and COP plans for approval.	requirements for plans to subpart F. The air quality requirements in proposed in § 285.807 were also moved to subpart F, § 285.659, since they apply to information requirements for plans. The information requirements will be further described in guidance to be issued after the rule is published.
General subpart F comment. The rule should clearly state the MMS decision process for plans in relation to consistency decisions by State CZM agencies.	The MMS decision process for plans in relation to consistency decisions by State CZM agencies is discussed in the rule's preamble under the CZMA Compliance for Plans. We have not made any changes to the rule.
General subpart F comment. The MMS should explain how it will determine an "affected" coastal state for the purpose of CZMA review?	The MMS will coordinate proposed activities with the appropriate CZM agencies to make that determination. The use of regional task forces could assist in this process including which States are affected. We did not make any changes to the rule.
General subpart F comment. The MMS should conduct consultation and coordination with stakeholders.	The MMS will conduct coordination and consultation with appropriate Federal, State, and local governments. The requirement for coordination and consultation is required by subsection 8(p) of the OCS Lands Act and is reflected in the rule (see § 285.102(e)). Additionally, MMS may establish task forces with Federal, State, local, and tribal governments at any time. The MMS is committed to this requirement.
General subpart F comment. The MMS should clarify in the rule which agencies will have the lead for other Federal reviews (e.g., Endangered Species Act, Clean Air Act, Clean Water Act).	The MMS will be the lead for the technical and NEPA reviews for the activities conducted on the OCS under subsection 8(p) of the OCS Lands Act on leases issued by MMS. The MMS and FERC finalized an MOU in April 2009, clarifying jurisdictional understandings regarding renewable energy projects on the OCS to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects. We did not make any changes to the rule based on this comment.
General subpart F comment. Applicants should be permitted to prepare draft environmental documents for MMS.	Section 285.111(b)(3) allows applicants to request approval from MMS to perform portions of or complete NEPA analyses themselves, or to directly pay a contractor to perform such analyses.
General subpart F comment. The MMS should adopt a phased approach to environmental documentation.	The MMS envisions a phased approach to environmental documentation under this program. The MMS published a Final PEIS in 2007 which considered the potential environmental effects of and mitigation for offshore renewable energy activities over a 5-year period (2007-2012), including the generic impacts of site assessment, construction, operations, and decommissioning on a national basis. When the MMS holds a lease sale, MMS will prepare an EIS for that proposed lease sale. This document will cover the potential effects of offshore REn activities including site assessment, construction, operations, and decommissioning,

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	based on hypothetical scenarios on a more localized area than the large-scale PEIS. Subsequent plans submitted under leases issued from these lease sales may tier-off both the PEIS and lease sale EIS, adopting the impact analyses and mitigation measures where appropriate. The NEPA documentation for a SAP and GAP would cover the specific activities proposed in those respective plans, including site-specific impacts and consideration of project-specific mitigation measures. The NEPA documentation for a COP would include the most detailed information about development at the project location and would assess site-specific impacts and consider project-specific mitigation measures. We did not make any changes to the regulation based on this comment. Also, § 285.629 states that an applicant may request in their COP the development of a lease in phases, requiring an applicant to 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
General subpart F comment. In order for States and local governments to use the MMS NEPA documents for their "equivalent" environmental process, specific information and analyses should be required in the rule.	The MMS will work closely with affected States and local governments to coordinate and consult on activities proposed under this program to ensure efficient preparation of environmental reviews and to ensure project-specific information and analyses are included, as appropriate. These reviews could be conducted jointly by MMS and the responsible agency or separately. We did not make any changes to the regulation based on this comment.
General subpart F comment. The MMS needs to consider the cumulative impacts of OCS AE projects.	The MMS will work closely with Federal agencies, affected States, local governments, and other stakeholders to coordinate and consult on activities proposed under this program and to identify critical issues including cumulative effects. Cumulative issues will be assessed at each stage of the environmental review of projects, including lease sales, in order to identify effects and to recommend appropriate mitigation measures and monitoring. We did not make any changes to the regulation based on this comment.
General subpart F comment. The rule is unclear as to the process available to States or other stakeholders to address and remedy disagreements arising from the content of the SAP, GAP, or COP, other than that offered by the comment review process. Particular concern was expressed over disagreements on projects that have ROWs through State waters.	The MMS will work closely with affected States and local governments to coordinate and consult on activities proposed under this program to ensure that there is a mechanism to raise issues and concerns. For competitive leases, MMS would address potential subsea cable route impacts through State waters in the NEPA documentation for lease sales and plans. The MMS is open to doing environmental reviews jointly with the affected State in a joint environmental document. Since MMS's authority is limited to the OCS (outside of State waters), the

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	affected State would have full authority to decide on access issues within a State's territorial sea. We did not make any changes to the regulation based on this comment.
General subpart F comment. The MMS should meaningfully incorporate the requirement of adaptive management into the rule.	The structure of these regulations is based on adaptive management. Operating companies are required to demonstrate and validate their performance. The MMS will set forth terms and conditions to be incorporated into plans and will determine when to require adjustments to mitigation and monitoring activities based on operating experience. Operating companies are required to certify compliance with certain of those terms and conditions. We did not make any changes to the regulation based on this comment.
General subpart F comment. The proposed rule does not state a reliable approach to protection of environmental quality.	The MMS will prepare NEPA documents and decisions pursuant to the regulations for implementing NEPA at 40 CFR parts 1500-1508. Review of lease issuances, plans, and other activities will be subject to all relevant Federal environmental statutes (e.g., ESA, MMPA, NHPA, MSA, etc.). Also see § 285.102(a) for additional requirements. We did not make any changes to the regulation based on this comment.
General subpart F comment. The MMS should develop standardized biological monitoring, mitigation, and restoration guidelines for inclusion within a project-specific EA or EIS. The regulations include standardized monitoring and mitigation guidelines for birds, bats, marine mammals, sea turtles, and fisheries; and the guidelines stipulate a minimum of 2 years of pre-construction avian monitoring data.	The MMS will use the NEPA process to develop appropriate monitoring, mitigation, and restoration guidelines on a case-by-case basis. Some of these requirements may be developed during the leasing process and incorporated into leases. Other requirements will be identified through the plan review process and incorporated into plans as conditions of approval. We did not make any changes to the regulation based on this comment.
General subpart F comment. Early permitted projects and leased areas should be closely monitored for their overall impacts on the environment, both beneficial and adverse. This information and data should be used by MMS to inform future phases of lease sales consistent with monitoring results.	We agree and will use information gained from early projects in the evaluation of future lease sales and proposed projects. We did not make any changes to the regulation based on this comment.
General subpart F comment. There is concern about potential safety and environmental risks from routine and accidental events posed by OCS AE facilities on commercial and recreational users of the territorial sea and ocean shore, and on the marine biological resources.	Using the coordination mechanisms within this rule and those in NEPA, the MMS will work with appropriate tribal, local, State, and Federal agencies, and interested public to identify concerns and issues associated with OCS REn activities. The MMS will identify, require, and enforce appropriate mitigating measures and operating conditions for all approved activities. We did not make any changes to the regulation based on this comment.
§ 285.601: The MMS should combine both the SAP and COP into one step or plan, thereby reducing the burden on developers.	Section 285.601 states that you may submit your COP with your SAP. The NEPA analyses and other required reviews could be performed on both submittals simultaneously, which could reduce the

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	burden on developers. This option was available in the proposed rule; therefore, no change to the rule is necessary.
§ 285.601: It is unclear why MMS has proposed to give the applicant only 60 days to prepare the SAP/GAP and all required environmental documentation for a noncompetitive lease while applicants for competitive leases are given 6 months to produce this documentation.	Since the unsolicited request for a noncompetitive lease is initiated by the applicant, MMS believes that 60 days after the publication of a notice of no competitive interest provides sufficient time to prepare the SAP/GAP. The applicant should have sufficient time to gather information prior to application for a lease and during the time it takes MMS to make a determination of no competitive interest. However, § 285.416(c) of the rule allows for an applicant to request a suspension to extend the term of a lease or grant for submission of a plan. We did not make any changes to the rule based on this comment.
§§ 285.601, 285.605, 285.610, 285.625, 285.640, and 285.645. The review and application time for projects is too long and burdensome. The MMS should reduce the time it takes for an applicant to receive approvals.	We have revised the rule to remove the MMS approval of the conduct of geophysical and geological surveys and baseline surveys (e.g., biological, archaeological) and the requirement to describe the survey designs in the SAP, COP, or GAP (§§ 285.605, 285.610, 285.625, 285.645). Applicants may now conduct these surveys pre- or post-lease under the verification of the ACOE Nationwide Permit program and pursuant to other applicable law. However, MMS strongly encourages applicants to coordinate any pre-lease or post-lease survey activities with MMS and the ACOE prior to their conduct. Applicants will now be required to submit the results of the surveys in the SAP, COP, or GAP (§§ 285.610(b), 285.626(a), 285.645(a)). The data collected from these surveys must meet the technical requirements that MMS will set forth in guidance to be issued after the rule is final. Any construction activities (e.g., installation of a meteorological tower, a meteorological buoy, technology testing) need to be proposed in the appropriate plan. We have also reduced the number of NEPA and CZMA reviews for a commercial lease issued competitively from 3 to 2 by combining the lease sale and site assessment activities into one review. This, in combination with the elimination of MMS approval of site assessment surveys, should greatly reduce the review time for commercial leases issued competitively. The MMS may review the effects of site assessment surveys (e.g., geophysical, geological, archaeological, biological) in the NEPA process for the lease sale. Additionally, § 285.601(d) states that you may submit your COP with your SAP. The NEPA analyses and other required reviews could be performed on both submittals simultaneously, which could reduce the time it takes for an applicant to receive approvals.

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§§ 285.605 and 285.640: The State CZM agency should make a determination of whether geophysical and geological surveys should be reviewed under the CZMA.	After the proposed rule was published, MMS determined that geophysical and geological surveys conducted for the purpose of preparing SAPs, COPs, and GAPs are covered under the verification of the ACOE's Nationwide Permit Program. Therefore, MMS will not take any action to approve or disapprove these surveys (§§ 285.605, 285.610, 285.625, 285.645). The MMS strongly encourages applicants to coordinate any pre-lease or post-lease survey activities with MMS and the ACOE prior to their conduct to determine CZMA applicability under the ACOE action.
§§ 285.605, 285.610, 285.640, and 285.645: The proposed environmental documentation requirements are too cumbersome, and the activities normally conducted under a GAP or SAP should not require an EIS or EA and instead should qualify for a categorical exclusion under NEPA.	After the proposed rule was published, MMS determined that geophysical and geological surveys conducted for the purpose of preparing SAPs, COPs, and GAPs are covered under the verification of the ACOE Nationwide Permit Program. Therefore, MMS will not take any action to approve or disapprove these surveys, and we will not require any environmental review of these surveys in a plan. This is reflected in the revised rule. However, bottom-founded activities, such as installation of a meteorological towers, meteorological buoys, current meters, technology testing, would need to be described in a SAP (see §§ 285.605 and 285.610) or GAP (see §§ 285.640 and 285.645), with technical and environmental review by MMS and other appropriate agencies. This type of activity is not categorically excluded. The MMS will make a determination of the level of NEPA review required for each action, based on a review of the proposed activity. As the program matures, MMS will review the impacts from the program and make a determination whether we can recommend categorical exclusions to the Council on Environmental Quality.
§§ 285.605 and 285.640: The construction of two or three identical meteorological towers should not trigger additional requirements, as stated in the rule, which will add significantly to the time and expense of plan submission.	The MMS has revised the rule to clarify the requirement by stating "if you propose to construct a facility or combination of facilities which MMS determines to be complex or significant, you must also comply with the requirements of subpart G. See §§ 285.605(d) and 285.645(c).
§§ 285.606, 285.621, and 285.641: The MMS should not require the strict language "Best Available and Safest Technology."	We kept the requirement of "Best Available and Safest Technology" in the rule, as it is authorized for activities conducted pursuant to the OCS Lands Act and it is important to ensure safety in the conduct of such activities.
§§ 285.606, 285.621, and 285.641: The MMS should publish the applicable best management practices in a specific guidance document to reflect adaptive management strategies, technology development, and monitoring results from early projects. The MMS should consider	The MMS prepared a Record of Decision (ROD) in December 2007 for its EIS on the AEAU Program. The ROD identified initial mitigation measures for the new program by adopting 15 interim policies and 52 initial best management practices. The ROD is published at:

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providing a regulatory incentive for the use and compliance of best management practices.	http://ocsenergy.anl.gov/documents/docs/OCS_PEIS_ROD.PDF. New measures will be identified as appropriate. The MMS will incorporate appropriate best management practices into the authorizing instruments and monitor and enforce compliance with the terms and condition of the lease or grant instrument. After the final rule is published, MMS will provide guidance to applicants that will include best management practices. Sections 285.606(a)(6), 285.621(f), and 285.641(f) require applicants to demonstrate in their SAP, COP, or GAP that they use best management practices. We did not make any changes to the regulation based on this comment.
§§ 285.610 and 285.626: These sections need to clarify how the applicant must demonstrate in the COP or SAP the items described, including not causing undue harm or damage to natural resources; life; property; or the marine, coastal, or human environment. The applicant should show compliance with the terms and conditions.	Sections 285.105, 285.606, and 285.621 set forth the general environmental protection requirements for these plans. The rule requires compliance with all applicable laws, regulations, and lease provisions (§§ 285.606(a)(1) and 285.621(a)). Certification of compliance with certain terms and conditions as identified by the MMS is also required (§§ 285.615(c) and 285.633(b)). The plans are subject to NEPA review and other reviews under all relevant Federal laws. No change to the rule is needed.
§ 285.610: Alternate deconstruction plans should not be part of the "conceptual decommissioning plans" in a SAP, expressing concern that MMS will give the perception of consent to an alternate deconstruction plan 30 years prior to the event.	The proposed rule states in § 285.902(c) that the approval of the decommissioning concept in the SAP, COP, or GAP is not an approval of a decommissioning application and, thus, not an approval of an alternate deconstruction plan. Section 285.902(b) requires that an applicant submit a decommissioning application and receive approval from MMS before actual decommissioning. We did not make any changes to the rule based on this comment.
§§ 285. 285.611, 285.627, and 285.646: The MMS should include specific requirements for environmental information in the rule.	We revised the rule at §§ 285.611, 285.627, and 285.646. After the final rule is published, MMS will issue guidance for the preparation of the required plans.
§§ 285.612, 285.627, and 285.647: The MMS should provide specific guidance to States and energy developers prior to promulgation of the rule that includes a full description and rationale of CZMA compliance for the proposed rule, including all of the MMS lease or grant pathways, decommissioning actions, and other related subjects such as determinations, certifications, and necessary data and information. The MMS also should identify in consultation with the States which activities are "Federal activities" that require consistency to the maximum extent practicable, or a "Federal permit or license" requiring full consistency.	The MMS disagrees with this comment that the final rule should be withheld until after MMS issues implementation guidance. The MMS will issue guidance after the final rule is published and hold workshops to discuss the final rule, including CZMA compliance issues. Additionally, MMS will provide for early coordination of proposed activities with the appropriate CZM agencies. The use of regional task forces would assist in this process as well. We have revised the rule at §§ 285.612, 285.627(b), and 285.647 to clarify the CZMA processes we will follow.
§ 285.612: A completeness determination of the	The MMS will follow the requirements of 15 CFR

SUBPART F—PLANS AND INFORMATIONS REQUIREMENTS	
Comment	**Response**
SAP and other included information should be made within a certain defined timeframe (e.g., 30 days). The MMS's determination of the completeness of the SAP should not delay MMS's submission of the CZMA certification to the State, so the State may start the consistency clock.	part 930, as appropriate. We did not change the rule to include timeframes for MMS to make a completeness determination. While such timeframes are required for the OCS oil and gas program, no such requirements exist under subsection 8(p) of the OCS Lands Act. We do not believe that establishing timeframes will be appropriate until we have actual experience in processing SAPs and making determinations regarding their completeness.
§ 285.612: One copy of the consistency certification, as stated in the proposed rule, may not be the appropriate number for all State CZM agencies; therefore, it is recommended that the number of copies be deleted.	The MMS will forward a copy and an electronic copy of the consistency certification and the plan to the State CZM agency (e.g., § 285.612(a)). The electronic copy should be sufficient to provide copies to the CZM State agency. We did not make any changes to the regulation based on this comment.
§§ 285.613, 285.628, and 285.648: The MMS should prescribe in the rule specific time periods for review of the SAP, COP, and GAP, including time for public review. Ample time should be given for environmental review.	The MMS has not set a review time period for a plan in the final regulation. After the final rule is published, MMS will issue guidance which shows targets for MMS processes. The MMS will conduct a NEPA review of the proposed activities to address all issues and concerns. The proposed activity will be subject to all relevant Federal laws and requirements, including public review.
§§ 285.613, 285.628, and 285.648: The MMS should share data and information collected at various stages of process with States, tribes, and Federal agencies.	The final rule states at §§ 285.613(c), 285.628(d), and 285.648(c) that, when appropriate, we will coordinate and consult with relevant State and Federal agencies and affected Indian tribes and provide to other local, State, and Federal agencies and affected Indian tribes relevant nonproprietary data and information pertaining to proposed activities in SAPs, COPs, and GAPs. Other than including Indian tribes to those government entities with which MMS will coordinate and consult, we did not make any changes to the regulation based on this comment.
§§ 285.613 and 285.628: What form of document will MMS issue as its final decision on a SAP or COP?	The MMS will issue decision letters for a SAP, COP, and GAP. In cases where EISs are prepared on the plan, a ROD will be prepared in addition. In situations where EAs are prepared, MMS will issue a Finding of No Significant Impact if there are no significant impacts, and a decision letter. In cases where there are significant impacts, an EIS would be prepared, and a decision letter. We did not make any changes to the regulation based on this comment.
§ 285.615, 285.633, and 285.653: The MMS received a comment applauding the requirement for lessees to submit certifications of compliance and summary reports that demonstrate compliance.	Comment noted. No change to the rule is required.
§§ 285.615, 285.633, 285.653, and 285.659: The reporting requirements in the proposed rule appear to oblige projects to report to MMS exclusively. The MMS should broaden this	The MMS will coordinate proposed activities and resultant reporting with the appropriate State CZM agencies. We did not make any changes to the regulation based on this comment.

SUBPART F—PLANS AND INFORMATIONS REQUIREMENTS	
Comment	**Response**
requirement to include affected State CZM agencies.	
§§ 285.616, 285.634, and 285.655: There is no explicit requirement or standards for commercial lease applicants to incorporate a response and recovery plan as a mandatory component of the SAP, GAP or COP.	The MMS revised the rule so that the applicant will be required to submit to MMS a revised SAP, COP, or GAP when there is a structural failure of one or more facilities to describe their response to the specific activity (see revisions at §§ 285.616(c)(7), 285.634(c)(7), and 285.655(c)(7)).
§ 285.617: The MMS should specify that a revised SAP will be required only for major changes to the original SAP.	Based on the changes proposed for a SAP, MMS will make a case-by-case determination whether the changes are authorized under the existing SAP or require a revised SAP (see § 285.617). We did not make any changes to the regulation based on this comment.
§§ 285.620 to 285.626: The applicant needs to identify the exact project location before the COP is submitted to MMS. The actual location affects the potential impacts of the project and Federal consistency determinations.	The final rule at § 285.626 requires the lessee submit project-specific information including, a location plat. Also, the MMS will begin its environmental analysis on the COP activities only after determining that the COP contains all the required information necessary to conduct our technical and environmental reviews, including those required under NEPA and CZMA (§ 285.626). We did not make any changes to the regulation based on this comment.
§§ 285.620 to 627: The COP should contain detailed information about a proposed AE facility for analysis of impacts.	Sections 285.620, 285.621, 285.625, 285.626, and 285.627 of the final rule do require the COP to contain detailed information about a proposed renewable energy facility. After the final rule is published, MMS will issue guidance for the preparation of the required plans to ensure the level of detail is adequate to analyze potential impacts. Section 285.627 was revised to clarify the information required for environmental review.
§ 285.626: The general decommissioning plans should be submitted as part of the COP that includes the estimated lifespan of the project and estimated costs for full site restoration.	Section 285.626 requires a discussion of the general concepts and methodologies for decommissioning and site clearance procedures that must be submitted as part of the COP. The MMS will use this and other information to ensure that an applicant meets the necessary financial assurance requirements. We did not make any changes to the regulation based on this comment.
§§ 285.627 and 647: The MMS should clarify what subsection of the CZMA regulations applies to noncompetitive leases.	A competitive lease sale is a Federal agency activity and must comply with 15 CFR part 930, subpart C. A noncompetitive lease issuance with decision on a SAP or GAP is a nonfederal activity that requires a Federal license or permit and must comply with 15 CFR part 930, subpart D. Under the CZMA and its implementing regulations, an OCS plan is any plan for the exploration or development of, or production from, any area leased under the OCS Lands Act that is submitted to the DOI which describes in detail Federal license or permit activities. Since, for leases issued noncompetitively, the lease and SAP or GAP

SUBPART F—PLANS AND INFORMATIONS REQUIREMENTS	
Comment	**Response**
	will be processed simultaneously (before the area has been leased), the SAP or GAP cannot qualify as an "OCS Plan" under the CZMA implementing regulations. For leases issued competitively, the GAP will be submitted and processed after the lease has been issued, and in those instances, the COP or GAP would be processed as an "OCS Plan" (as defined by 15 CFR 930.73), and follow the requirements of subsection 307(c)(3)(B) of the CZMA and 15 CFR part 930, subpart E. For competitive commercial leases, MMS will prepare a consistency determination for the lease sale and site assessment activities. However, if new information from the SAP submittal showed changes in impacts identified at the lease sale stage, the SAP could be subjected to further review. We revised the rule at §§ 285.612, 285.627(b), and 285.647 to clarify these issues.
§ 285.628: Clarify the process for MMS to coordinate with States, tribal, and local governments in adapting permits and conditions and adjusting mitigation and monitoring requirements. It is not clear to what extent MMS will coordinate with these other entities regarding permit approval conditions and updates, if needed. How will adaptive management processes work for projects?	States, tribal, and local governments will have the opportunity to provide input through the plan review and NEPA process. The MMS will coordinate with appropriate agencies prior to approving mitigation measures. The process is detailed in the regulation (e.g., see § 285.628(f)(1)). We did not make any changes to the regulation based on this comment.
§ 285.628: Applicants who decide to first pursue a limited lease or a lease under the Interim Policy and then later decide to pursue a commercial lease on the same site should not be required to produce the same environmental documentation twice.	The MMS will review the information submitted by an applicant to determine if it is current and meets the requirements for plan submittal (see § 285.628). It is possible that the applicant could meet the requirements for a commercial lease with the use of information previously submitted to MMS.
§ 285.632: The MMS should review and approve the Facility Design Report and Fabrication and Installation Report (see § 285.632) in parallel with MMS's preparation of the EIS and review of the COP.	The Facility Design Report and Fabrication and Installation Report are not needed in the preparation of an EIS or for the review of the COP.
§ 285.640: The proposed rule is unclear on when exactly a SAP and COP versus a GAP is required.	The MMS has amended the final rule to clearly state the requirements for submitting the appropriate plan for a lease, easement, or ROW.

SUBPART G—FACILITY DESIGN, FABRICATION, AND INSTALLATION	
Comment	**Response**
General design comment. The MMS should consider regional standards, given the difference in regional conditions and extreme weather events. For example, with regard to cables, sediment types vary nationally. However, in regions where sediments are such that burial can be accomplished, burial should be required, and cables should be routed around pockets of areas where burial is not feasible.	There are no regional or national standards at this time. Standards for the offshore renewable energy industry are being written by industry and class standards organizations. When these standards are completed, MMS will review them. It is highly likely that regional weather and seafloor conditions will be factored into the standards documents. The MMS will review these standards when available and will consider incorporating them through

	rulemaking and the public comment process into the regulations at that time. No change to the final regulation has been made in response to this comment.
General design comment. The offshore wind industry in Europe has developed criteria for certifying offshore wind farms and has successfully implemented approval strategies using standards developed by entities referenced by MMS, including the International Electrotechnical Commission, Det Norske Veritas, and Germanischer Lloyds. The offshore wind industry in Europe has nearly two decades of experience building and operating offshore wind farms (which now number more than two dozen) without major incident relating to structural or safety issues.	Comment noted.
General design comment. Safety and failure tolerances should reflect the inherently safe and environmentally benign nature of wind turbines. To do otherwise would work against the economics of this important, inherent feature of wind energy.	Industrial uses of the OCS, such as the installation of wind turbines, must be designed to pose as little environmental or safety risk as possible, as well as limit conflicts with other users of the OCS. In addition, § 285.701 requires lessees to establish that their proposed facility will not pose a risk, and MMS believes that these requirements will allow us to establish that projects are developed responsibly. No changes to the final regulation were necessary in response to this comment.
General design comment. Since no standards are specified in the proposed MMS rule, offshore wind developers will not have a design target, yet must still satisfy MMS that "accepted" engineering and industry practices and standards are being followed. The result is a subjective process that raises significant budgeting and scheduling concerns for projects under development.	Under § 285.705, a developer must design a project to accepted engineering and industry practices, and the design, fabrication and installation must have a third-party review (unless MMS grants a waiver under § 285.705(c)). This is the process MMS will use until there are recognized standards that cover all applications. Budget and schedule issues may be significant factors as the renewable energy industry develops early projects on the OCS. No change to the final regulation has been made in response to this comment.
General design comment. In adopting any new standards for offshore wind project certification, MMS should take into consideration that all offshore wind turbines are unmanned during normal operation and should be classified as such so that only necessary structural safety, commensurate with unmanned structures with only economic failure consequences, is mandated.	We will consider all the consequences associated with the failure of an unmanned wind turbine as we review design, fabrication, and installation reports submitted under §§ 285.701 and 285.702. We will also take these factors into account when we review new standards for incorporation in our regulations through rulemaking. No change to the final regulation has been made in response to this comment.
General design comment. A phased approach may be warranted. It would allow the offshore alternative energy industry to continue to grow and take advantage of the momentum that has been building in recent years. At the same time, by using the valuable information and knowledge embedded in existing standards, with which the CVAs will already be familiar, this phased approach can advance MMS's policies, including	The phased approach to using and adopting standards is a reasonable approach. This is essentially the approach that MMS has taken to this point. The MMS will review new standards when available and will consider incorporating them into the regulations through rulemaking at that time. No change to the final regulation has been made in response to this comment.

safety and reliability goals, without impeding the growth of the industry. Under the two-phase approach, MMS would (1) rely on existing standards that have been developed and successfully applied overseas to ensure safe and efficient development of the U.S. industry, while (2) pressing ahead with its analysis of those existing standards and other work required to determine the need for and, if necessary, formulate U.S.-specific standards.	
General design comment. Existing standards are, as new standards will need to be, comprehensive in the sense of applying to the entire generating plant and its operations. For example, it is not advisable or even feasible for one standard to apply to the foundation and support structure of a wind turbine and another to the turbine itself. While wind turbines do receive "Type" certification, such certification is in itself not sufficient to meet the needs of the MMS in this regulation.	Comment noted. The MMS will review new standards when available and will consider incorporating them into the regulations through rulemaking at that time. No change to the final regulation has been made in response to this comment.
General design comment. The MMS should expedite the necessary analysis of existing standards and current European practices and adopt a transparent certification plan that can be immediately implemented to serve projects that are already in the pre-construction design phase.	The MMS continues to assess how existing standards would apply to the characteristic regional environments (wind, wave, and current) that are representative of nearshore Gulf of Mexico and North East coasts through both analysis and the use of two major case studies. The MMS believes that adopting a certification plan before this regulation has been finalized and before the first designs for OCS facilities have been submitted is premature and thus beyond the scope of this rulemaking. No change to the final regulation has been made in response to this comment.
General design comment. Safety and failure tolerances should reflect the inherently safe and environmentally benign nature of wind turbines. To do otherwise would work against the economics of this important, inherent feature of wind energy.	Industrial uses of the OCS, such as the installation of wind turbines, must be designed to pose as little environmental or safety risk as possible, as well as limit conflicts with other users of the OCS. Lessees have a burden of proof to establish that their proposed facility will not pose a risk, and MMS believes that these requirements will allow us to establish that projects are developed responsibly.
General design and CVA comment. The MMS should use the following approach to certification. Upon issuance of the final rule, the CVA will be required to certify the project to one of the existing standards cited in the preamble to the proposed rule. The standard to which the project will be certified will be proposed by the developer when the CVA is nominated. The MMS would review the proposed standard in conjunction with its review of the CVA nomination.	The MMS did not adopt any of the standards cited in the preamble of the proposed rule. The regulations allow the developer and the CVA to use various industry standards provided the standards conform with accepted engineering practices. The regulations would allow a developer or a CVA to use an approach similar to the one described in the comment. We expect that lessees and MMS will have many discussions concerning the design of structure associated with this new program. No change to the final regulation has been made in response to this comment.
General CVA comment. CVAs will have access to considerable detail of the project's engineering, and this detail will often be competitive in nature.	Comment noted. Only general structural and design information (§ 285.701) must be submitted to MMS with your COP. The CVA will examine

Furthermore, CVAs will work for multiple project developers, and these developers will likely be competitors with one another. Much of the detailed information that a CVA will have access to is not actually needed by the MMS in order to perform its duties. The MMS should not require confidential data needed by the CVA to be released to MMS, but rather MMS should accept the findings of the CVA based on their analysis of the confidential data.	detailed design and construction plans and report to MMS on their adequacy. No change to the final regulation has been made in response to this comment.
General CVA comment. The MMS should include and expedite a training program to educate prospective CVA organizations and offshore developers in the United States and orient them to the MMS expectations so developers will not be delayed because of a CVA review that is not consistent with the expectations of MMS, or that is based on differing interpretations of MMS regulations.	A training program to educate prospective CVAs concerning MMS expectations is beyond the scope of this rulemaking. The regulation provides adequate notice of CVA roles and responsibilities. Furthermore, CVAs may discuss expectations with MMS when they are selected to verify a project. We did not make any changes to the final regulation in response to this comment.
285.700: The MMS should be obligated under the regulations to inform the lessee that reports (e.g., Facilities Design Report, Facilities Fabrication and Installation Report, etc.) have been received and deemed acceptable before a lessee can commence construction.	The MMS will respond to the applicant with any objections within the stated 60-day timeframe. We did not make any changes to the regulation based on this comment.
§ 285.701: Early projects need to know the standards immediately, and have those standards apply for the duration of the project, in order not to further delay projects and make them uneconomic.	Early projects will rely on sound engineering principles and judgment. The use of a CVA to assist in ensuring and verifying that lessees and operators used sound engineering principles and judgment will help move these projects through MMS's regulatory review. No change to the final regulation has been made in response to this comment.
§ 285.701: The offshore wind power is an internationally oriented industry. In order to facilitate U.S. participation in this global industry, the United States must adopt internationally accepted standards whenever possible.	The MMS will review any standards, including internationally developed standards when available, and will consider incorporating them into our regulations through rulemaking, as appropriate. We are not adopting any AE specific standards at this time. No change to the final regulation has been made in response to this comment.
§§ 285.701 and 285.702: The Facility Design Documents and Fabrication and Installation Reports cited in this section should be considered proprietary.	The final regulation at §§ 285.701(e) and 258.702(d) have been amended to clarify that MMS will treat this information as proprietary information. The amended sections state that MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA.
§§ 285.705 to 285.713: The required use of a CVA is expensive and redundant where such design, fabrication, installation, repairs and modifications are done under the direction of a licensed engineer. Further, since most projects will be developed under a project-financing structure, the lender will have already had its independent engineer review the wind farm	The purpose of the CVA in subpart G is to provide MMS with the assurance that an independent assessment has been conducted on the design, fabrication, and installation of the facility. This independent assessment will help assure that public lands and resources are both protected and used properly. Decisions by outside parties such as a lender's use of independent engineers to verify

design and construction.	design, fabrication and installation activities do not satisfy MMS's obligation under these regulations. A prudent lessee or operator will not have two different independent parties verify the same project. However, we have amended this section to allow MMS to waive the requirement for a CVA in cases where the lessee proposes to utilize facilities of a standardized design that have previously been successfully deployed in a similar offshore environment. Paragraph (b) of this section describes when MMS will waive CVA requirements.
§ 285.705: The MMS should delete CVA sections entirely or reserve such a requirement for particularly high-impact or higher-risk offshore energy activities and justify the necessity for such an unprecedented requirement in such instances.	The MMS believes that the services of a CVA are extremely important when utilizing new technology on public lands. The use of a CVA for new technologies is not unprecedented. The MMS has required the use of a CVA for many years for unique designs and facilities located in frontier areas. Most, if not all, AE projects will be unique in the areas they are located. The impacts and risks associated with these projects are unknown at this time, so MMS is not adopting the suggestion in the comment to eliminate the CVA requirement. However, we have amended this section to allow MMS to waive the requirement for a CVA in cases where the lessee proposes to utilize facilities of a standardized design that have previously been successfully deployed in a similar offshore environment. Paragraph (b) of the final regulation at § 285.705 describes when MMS will waive CVA requirements.
§§ 285.705 through 285.713: We have concerns about the potential unnecessary costs and delays. It would be appropriate for existing third-party verifications to be accepted as validation, and for any future validations to be carried out in such a way as to be applicable over a range of generic conditions and project formats.	As discussed in a previous response, we amended the final rule to allow MMS to waive the requirement for a CVA in cases where the lessee proposes to utilize facilities of a standardized design that have previously been successfully deployed in a similar offshore environment.
§§ 285.705 through 285.713: As the offshore wave and current industries have not yet established generally accepted technology and engineering guidelines, it is not clear to what standard CVAs would compare individual projects. Moreover, there is no governing body approving design standards for these projects, which could result in a high degree of variability between CVA inspection results. If the MMS keeps the CVA requirement, MMS must provide training and certification to companies interested in becoming CVAs so that expectations are clear, particularly in the absence of any standards.	Under § 285.705, a CVA will use best engineering practices and relevant engineering standards when reviewing offshore wave and current proposals. Standards for offshore wave and current engineering and technology will develop and grow as the AE industry grows. The concept of a third-party review or use of a CVA is not new. The offshore oil and gas industry has been using CVAs for many years. A qualified CVA will understand the expectations and requirements that are in these regulations. No MMS training is needed. No change to the final regulation has been made in response to this comment.
§§ 285.705 through 285.713. We agree with the use of a CVA because it should help ensure that facilities possess structural integrity and stability. However, MMS should carefully consider the implementation of the CVA requirements in a	As previously discussed, we amended § 285.705 to allow the waiver of the CVA requirement where the lessee proposes to utilize facilities of a standardized design that have previously been successfully deployed in a similar offshore environment.

manner that does not place undue financial burden on developers. The MMS should consider allowing a developer to certify a system design that would be approved by a CVA, but would not require recertification for unique installations.	However, the financial burden of having a CVA does not factor in MMS's decision to waive the CVA requirement. We will review the need for a CVA on a case-by-case basis and will follow the criteria describe in paragraph (b) of the final regulation in § 285.705 in deciding whether a waiver is appropriate.
§ 285.706: The CVAs should not be allowed to also be consultants to other competing developers (as opposed to being a CVA), nor should CVAs be allowed to be developers themselves. The CVAs will have access to considerable detail of the project's engineering, and this detail will often be competitive in nature. Furthermore, CVAs will work for multiple project developers, and these developers will likely be competitors with one another.	The final rule, at § 285.706, requires that individuals or organizations acting as a CVA must not function in any capacity that would create a conflict of interest or the appearance of a conflict of interest. Lessee or developer concerns about CVAs having access to proprietary information on multiple projects are beyond the scope and responsibility of this rulemaking. No change to the final regulation has been made in response to this comment.
§ 285.708: This section requires a CVA to "make periodic onsite inspections while fabrication is in progress." There is no guidance on the term "periodic." The MMS should revise this section to either define periodic or include a "not less than" limitation on the number of visits or time between them.	The MMS has chosen not to define the term "periodic" for purposes of the final regulation. The CVA will determine how often to schedule onsite inspections on a case-by-case basis. The CVA must inspect often enough to verify requirements found in §§ 285.709 and 285.710. The regulation, as written, allows maximum flexibility. No change to the final regulations has been made in response to this comment.
§§ 285.708 through 285.710: The proposed regulations require the CVA to "verify, witness, survey, or check" nearly every aspect of the installation process. Given the repetitive nature of installing numerous, identical structures, and given the information that will be available to the CVA both before and after the installation (e.g., geotechnical data or the ability to test bolt tensions), requiring the CVA to "verify, witness, survey, or check" most if not all of the installation is beyond what is necessary to ensure correct installation and could become economically challenging. Further, observing the installation process may not always be a particularly effective way to determine correct installation.	The primary responsibility of the CVA in §§ 285.708 through 285.710 during the fabrication and installation phase is to ensure that the facility is built and installed according to the approved procedures documented in the Fabrication and Installation Report. Observing the installation process is an important part of the verification process as well as periodic onsite inspections and as record checks. There is no requirement that the fabrication of every structure and every installation procedure must be witnessed. The CVA must use good engineering judgment that periodic onsite inspections are sufficient to ensure to the MMS that the fabrication and installation meet the approved standards. We believe that periodic inspections are an effective way to assess installation of facilities.

SUBPART H—ENVIRONMENTAL AND SAFETY MANAGEMENT, INSPECTIONS, AND FACILITY ASSESMENTS	
Comment	**Response**
General subpart H. A special section addressing protection of units of the NPS should be added to subpart H.	We did not add a section to address protection of units in the NPS because section 388 of the EPAct of 2005 expressly prohibits MMS from offering lease for AE within the boundaries of a unit of the NPS.
§ 285.800: Recommend that the applicable Occupational Safety and Health Administration (OSHA) requirements should be referenced here.	The OSHA regulations do not apply to activities on the OCS if the working conditions are regulated by the MMS and the US Coast Guard (USCG). The MMS is responsible for working conditions directly associated with AE production activities. The USCG is

SUBPART H—ENVIRONMENTAL AND SAFETY MANAGEMENT, INSPECTIONS, AND FACILITY ASSESMENTS	
Comment	**Response**
	responsible for working conditions associated with safe access/egress, personal protective equipment, housekeeping, guarding of deck areas, lifesaving devices and equipment, lifeboats, firefighting equipment, fire extinguishers and systems, emergency communications equipment, and commercial diving. Activities that must follow OSHA regulations are outside of the scope of these regulations. These regulations do not cover any activities that are governed by OSHA. No changes to the final regulations have been made in response to this comment.
§§ 285.800 through 285.804: Recommend that MMS use consistent terminology to describe the objective of having lessees and grantees avoid and/or minimize adverse effects to natural resources in coastal and marine environments.	We revised sections §§ 285.800 through 285.804 to use consistent terminology.
§ 285.801: Request MMS remove the consultation requirements included in § 285.801(d), (e), and (f), barring major changes to the ESA section 7 consultation requirements.	We retained the consultation requirements in §§ 285.801(d), (e), and (f) to address events that may involve threatened or endangered species or critical habitat that could occur while the lessee or grantees conducting activities in accordance with an MMS-approved plan. The MMS does not have the authority to remove the consultation requirements. No changes to the final regulations have been made in response to this comment.
§§ 285.801 through 285.804: The environmental documentation requirements in §§ 285.801 through 285.806 are confusing and redundant because the ESA, MMPA, NHPA, and MSFCM apply to activities covered by a lease, and all associated information requirements are found in subpart F.	Subpart H provides for the environmental compliance review and application of terms, conditions, stipulations, and other operating requirements for lease and grant plans (SAP, COP, or GAP). However we removed paragraph (c) in § 285.801 and all of § 285.802 because requirements were redundant with the requirements in subpart F.
§ 285.803: It is unclear why MMS would be incurring costs and what the boundaries of "carrying out preservation responsibilities" might be. Request that MMS clarify the authority under which the applicant may be required to reimburse the costs discussed (§ 285.803(d)).	Section 110(g) of the NHPA allows Federal agencies to charge "... reasonable costs ... to Federal licensees and permittees as a condition to the issuance of [a] license or permit." The MMS may incur such costs under the NHPA for which reimbursement would be required under § 285.803(d) if, for example, MMS had to conduct activities that the applicant failed to conduct in a timely manner. No changes to the final regulations have been made in response to this comment.
§ 285.807: Recommend MMS require lessees and grantees to hire third-party monitors similar to the model set forth in § 285.705 on hiring "certified verification agents" to monitor the construction of facilities under a COP.	The regulations will not require lessees and operators to hire third-party inspectors because MMS has its own inspectors. The MMS will inspect OCS facilities and vessels engaged in OCS activities to ensure that lessees and operators comply with the requirements in 30 CFR part 285. The MMS will conduct scheduled and periodic inspections as described in §§ 285.820 and 285.821.

SUBPART H—ENVIRONMENTAL AND SAFETY MANAGEMENT, INSPECTIONS, AND FACILITY ASSESMENTS	
Comment	**Response**
§ 285.810: Require Safety and Environmental Management System plans to be developed before, not after an event occurs and include recovery plans. Applicants should be able to predict reasonably foreseeable events, such as loss of equipment due to storms or equipment malfunction, and plan for their recovery in advance. The specific plan can include contingencies and be revised based on actual conditions, but there should be a plan in place to ensure quick action as needed.	The regulation at § 285.810 requires the lessee to submit a description of the Safety Management System (SMS) they will use with their COP. The implied intent of this requirement was that the lessee or operator would conduct all activities in accordance with the described SMS. We have added new § 285.811 to clarify that the lessee or operator is required to conduct all activities described in the approved COP, SAP, or GAP in accordance with the described SMS. The SMS will address emergency response procedures and foreseeable events. This new section will require that the SMS be prepared before events occur.
§ 285.810: It appears elements of the SMS plan are essentially emergency accident response procedures. However, none of these elements adequately address the possibility of a large-scale structural failure of the facility, brought about by extreme climate conditions, a tectonic geologic event, or a navigational error by a large vessel. Recommend that a distinct recovery plan be a mandatory component of the COP rather than a general description of operating procedures in case of emergencies.	The SMS covers more than emergency response. Both § 285.810(a) and § 285.810(b) address nonemergency conditions. The SMS must describe how the lessee will approach all of the elements in routine and emergency situations. We agree that the SMS is not the appropriate place for a distinct recovery plan in the event of large scale damage or failure of a facility. A more appropriate place to address a recovery plan is in a revised COP as suggested. A revised COP requires a detailed description of types of activities a lessee would conduct to deal with the failed structure. We have added language to § 285.815(b) that identifies what equipment and facility repairs must be reported to MMS. This section also states that MMS may require you to submit a revised COP depending on the magnitude of the damage to facilities. A revised COP will describe how the operator will address the damage or failed structure.
§ 285.813: The definition of "safety equipment" in § 285.813 is unclear. As written, it could apply to a personal flotation device, which would make these requirements onerous.	We revised § 285.813 by clarifying what equipment must be reported when removed from service. Under the final regulations, the lessee/operator must report the removal of equipment that is necessary for implementing the approved plan. A personal floatation device would not have to be reported because it is not a piece of equipment that is necessary for implementing the approved plan.
§ 285.815: In many cases, equipment failure (e.g., failure of a component) may not be noticeable from an environmental standpoint. The 3-day notification requirement should be restated to include equipment damage or failure which poses a significant risk to the environment, personnel, or property.	The notification of environmental damage resulting from equipment damage or failure is covered in § 285.831. That section requires immediate notification. The 3-day notification requirement in § 285.815(b) was for the completion of repairs, not for notification of the incident. No changes to the final regulations have been made in response to this comment.
§ 285.815: Suggest that the notice of repairs should be for emergencies or major repairs only. Section 285.815(b) requires lessees to notify MMS within 3 business days of	We have amended this section to clarify what repairs a lessee must report. The 3-day repair notification was removed from this section because it was redundant with reporting requirements found in § 285.711. The

SUBPART H—ENVIRONMENTAL AND SAFETY MANAGEMENT, INSPECTIONS, AND FACILITY ASSESMENTS	
Comment	**Response**
repairing any facility associated with the lease. This requirement may not be appropriate for routine repairs and may be better suited to repairs that are undertaken on an emergency basis or that will require environmental documentation.	requirements in § 285.711 address major repairs, so routine repairs do not have to be reported.
§§ 285.816: The MMS should require the facility operator to notify the appropriate State fish and wildlife agencies if environmental or other conditions adversely affect a cable, pipeline, or facility so as to endanger the safety or the environment, and should require the MMS to consult with such State agencies in determining the adequacy of the corrective action plan and the follow-up report, including seeking input on any required mitigation.	The MMS has not adopted the suggestion of requiring the operator to notify State or other Federal agencies in addition to the requirement of notifying MMS under § 285.816 after an incident occurs. The MMS will notify and coordinate with State and Federal agencies, as appropriate, after receiving a plan of corrective action. The MMS will also consult with appropriate State and Federal agencies on the adequacy of the corrective action plan. No changes to the final regulations have been made in response to this comment.
§ 285.816: Amend § 285.816(a) and (b) to state that the respective plan and follow-up report be submitted within 30 calendar days "or sooner, as directed by the MMS."	This section allows, but does not require at the direction of MMS, the submittal of the corrective action plan and the report of remedial action sooner than 30 days. We do not believe it is necessary to provide that MMS may require a shorter time period. No changes to the final regulations have been made in response to this comment.
§§ 285.820 and 821: Offshore AE facilities, like wind turbines, have few opportunities to produce pollution, and will likely be unmanned. Also, these are potentially dangerous facilities to approach and board, so unscheduled and unaccompanied inspections may create significant safety and liability concerns for a lessee. The 24-hour shoreside monitoring station would be more appropriate for unscheduled inspections.	As stated in § 285.821, all offshore facilities, whether manned or unmanned, and associated shoreside monitoring stations should be prepared for unscheduled inspections by MMS personnel, whether conducted in person or by plane or boat. No changes to the final regulations have been made in response to this comment. The MMS will coordinate with the company for inspections of unmanned facilities.
§ 285.830(b) could be interpreted to cover incidents that occur at the substation or onshore transmission line, to which OSHA regulations would apply. Suggest revising the language as follows: (b) These reporting requirements apply to incidents that occur on the area covered by your lease or grant under this part and that are related to activities, up to mean high water on the OCS, resulting from the exercise of your rights under your lease or grant under this part.	Under § 285.830(b), a lessee is required to report specific incidents that occur on activities that are covered by a plan approved by MMS. Incidents associated with onshore transmission lines or substations are not part of MMS plan requirements so such incidents do not need to be reported to the MMS. No changes to the final regulations have been made in response to this comment.

SUBPART I – DECOMMISSIONING	
Comment	**Response**
§ 285.901: The decommissioning obligation for a meteorological tower should not accrue at a minimum until after the development lease is awarded and MMS approves the plan. It does	We added a new section § 285.904 to clarify the circumstances when a lessee or grantee may request a departure from the decommissioning requirements under § 285.103. Under the new § 285.904, the

not make sense to require automatic decommissioning of a facility upon expiration of a data collection lease when there is a good possibility that the meteorological tower may continue to be of some use to the holder of the development lease, whether the holder is the prior lessee or a new developer. The MMS should not trigger decommissioning until a reasonable period has passed to determine whether a development lease will be sought and awarded, and the development lessee disclaims any interest in the continued operation of the meteorological tower.	lessee or grantee could request a departure from decommissioning requirements when a limited leaseholder installs a meteorological tower or other equipment, then the lessee acquires a commercial lease that encompasses the limited lease area.
§ 285.902: Include a requirement for the development site to be returned to the ecological baseline that existed prior to installation of the energy project. "Removing" materials as outlined in requirement (1), and "clearing the seafloor of all obstructions," per requirement (2), should be retained.	The MMS will consider decommissioning facilities on a case-by-case basis. Decisions under § 285.902 regarding complete restoration of the development site (i.e., to the "ecological baseline" as the comment suggests) will be based on a variety of factors, including evidence that the alternative does not increase adverse environmental effects or risks to human safety. No changes to the final regulations have been made in response to this comment.
§§ 285.902, 285.906, 285.907, and 285.910: Revise standards for decommissioning to incorporate a presumption that all facilities, cables, and obstructions will be removed. Submarine cables pose a long-term obstruction for much of the fishing gear used on the OCS, particularly clam dredges. Even if buried when installed, cables are subject to exposure over time due to weather conditions and sediment movement. Limited removal impacts due to short-term disturbance should not be sufficient cause to leave facilities in place. Generally a 6-foot restoration depth should be sufficient, and decommissioning should require removal to this depth.	The regulations at § 285.902 clearly require that the seafloor be cleared of all obstructions. We will not revise the standards to require the removal of everything. The decision on what facilities, cables, or pipelines may remain will be made on a case-by-case basis during the review of the decommissioning application. The MMS will consider other uses during that review. The regulations at § 285.910 require facilities to be removed to depth of 15 feet below the mudline. This removal depth has worked for OCS oil and gas activities for over 50 years. The MMS may approve an alternate removal depth on a case-by-case basis.
§ 285.903: The term of decommissioning should be a case-by-case determination in the COP based on site-specific circumstances, such as the size of the facility, the existence of seasonal restrictions on decommissioning activity, and other appropriate considerations. This should be decided when the COP is approved rather than having a one-size-fits-all requirement in the rule regardless of significantly varying circumstances. To the extent the rule continues to provide a target duration, the expectation should be at least a 2-year decommissioning period to account for larger facilities or those in more sensitive environmental areas.	The MMS disagrees with determining the decommissioning timeframe on a case-by-case basis or when the COP is approved. However, MMS agrees with the need for a longer time period and has amended the language of § 285.902 the final regulations to increase the period for decommissioning facilities regulated under this part from 1 year to 2 years. Two years is sufficient time for lessees to decommission facilities.
§§ 285.903 and 285.909: It may be desirable for components of offshore AE facilities, particularly cables, portions of turbine foundations, and scour protection to remain in	Based on our experience with the offshore oil and natural gas industry, we believe requiring removal of facilities is reasonable, technologically sound, and appropriate. However, the final regulation allows for

place. Currently, there is very little experience with decommissioning offshore wind farms. Removal of the electric cables from beneath the seafloor would create unnecessary marine disturbances. Oil and gas decommissioning regulations allow the decommissioning of certain equipment without removal. Finally, removal would be very expensive. If removal is required, it should be limited to the foundations, which should be cut off at a depth that is: (1) based on site-specific seabed conditions, (2) consistent with offshore wind standards in Europe, and (3) significantly shallower than 15 feet. The common removal depth for offshore wind projects in Europe is no more than 2 meters (6 feet).	departures at § 285.103 and provisions for allowing facilities to remain in place at § 285.909. We also added a new section in subpart I (§ 285.904) to clarify that MMS may approve departures from the decommissioning requirements under § 285.103. The MMS will consider requests to allow facilities to remaining in place following termination of a lease or grant on a case-by-case basis (§ 285.909(b)).
§ 285.906: Section 285.906 requires descriptions of removal methods and site-clearance activities, transportation and disposal plans, environmental analysis, and mitigation measures. Because of the extensive requirements of the decommissioning application, 90 days after termination of a lease or grant is not a sufficient amount of time to develop a complete decommissioning plan. Change § 285.905(d) "(d) 90 calendar days" to "(d) 180 calendar days."	The MMS disagrees that the 90-day timeframe in § 285.905(d) is insufficient to provide the required information. Lease cancellations, relinquishments, and terminations are generally not unforeseen events. The lessee or grant holder can begin planning the decommissioning when it is evident that the lease may be canceled, relinquished, or terminated. No changes have been made to the final regulations.
§ 285.907: Modify this section to require CZMA review as part of the decommissioning application.	The MMS will require CZMA reviews as required by laws and regulations. We did not make any changes to the regulations in response to this comment.
§ 285.908: Decommissioning of facilities by the MMS warrants consultation with the State. The rule should expressly require that any decommissioning notice to the MMS be sent to the appropriate State fish and wildlife agencies at the same time, that the State also be provided the decommissioning application and the after-action report concurrent with the MMS, and that the MMS consult with the State at each step in the decommissioning process, including on any mitigation.	The MMS will require CZMA reviews as required by laws and regulations and as required by the States involved. The MMS will consult with State and local agencies and tribal governments, as required by EPAct. The information that we share with various State agencies will depend on the nature of the action. For example, decommissioning a cable that crosses into State waters would require significant involvement of that State's fish and wildlife agencies, while decommissioning a meteorological tower that is 10 miles offshore may not require the involvement of those agencies. However, if State law requires the submission of such an application, the lessee or grantee would have to comply. We did not make any changes to the regulations in response to this comment.
§ 285.909: The MMS PEIS acknowledges the possibility "that all or some of the [wind park] facilities could remain in place and be used for other purposes (e.g., artificial fishing reefs)." Likewise, restoring a site to its "original condition" is not required for oil and gas facilities on the OCS and may cause more environmental harm than having structures	The MMS will consider requests for the decommissioning plan under § 285.909. To specify only partial removal or allowing structures to remain for use as artificial reefs on a case-by-case basis, we will base the decision on a number of factors including whether leaving any portion of the structure in place causes adverse environmental effects or risks to human safety. No changes to the

remain as artificial reefs or be removed just below the seafloor.	final regulations have been made in response to this comment.
§ 285.909: Because of high costs, the decommissioning standard needs to be carefully considered. Setting it too high could create financial disincentives to offshore wind energy development, with no additional enhancements of other characteristics or uses of the OCS environment.	Comment noted. The MMS will consider decommissioning facilities on a case-by-case basis, rather than enacting a set standard.
§ 285.909: With regard to facilities that lie on or beneath the ocean floor, there will often be less environmental impact if MMS allows the facilities to be decommissioned in place rather than requiring them to be dug up, removed and transported back to shore to be landfilled. Platforms, for example, often become useful artificial reefs which can benefit sea life. Our recommendation is consistent with MMS's pipeline regulations which authorize pipelines to be decommissioned in place provided they do not present a hazard to navigation or have adverse environmental effects. The regulations should provide the flexibility to allow decommissioning in place, especially where these facilities may have environmental benefit. Moreover, if MMS has decided to approve decommissioning in place for some foundations or pipelines, the applicant's decommissioning liability should be terminated for such facilities.	This rulemaking already provides for the approval of decommissioning in place under § 285.909. However, MMS does not believe it should terminate liability for such facilities in all cases. Section 285.909 provides that the former lessee or grantee may transfer the liability to another party, provided that the party that assumes the responsibility has adequate financial assurances. No changes to the final regulations have been made in response to this comment.
The proposed rule removes the phrase "or other use" from the introductory paragraph of § 250.1730, but makes no other changes. As such, it is our understanding that partial structure removal or toppling in place for conversion to an artificial reef would remain under the State's Artificial Reef Program as permitted by the ACOE, not under a program administered by the ACOE. If this is indeed the case, it is important to note that the existing California Artificial Reef Plan does not include platforms as an allowed artificial reef structure. Amendments to state law and the California Artificial Reef Program neither allows platforms to be used as artificial reefs, nor is it authorized to operate in Federal waters.	The comment refers to a program administered by a State. It would be inappropriate to include in regulatory text State-specific terms. In this case, the status of artificial reefs in California waters is a factual matter that does not depend on this rule and that is subject to change outside of MMS control. The MMS removed the phrase "or other use" from § 250.1730 because the EPAct amended the OCS Lands Act (43 U.S.C. 1337(p)(1)(D)) to give DOI authority to allow the use of OCS oil and gas platforms for other authorized marine-related purposes. This authority was delegated by the Secretary to MMS. Therefore, for uses that MMS authorizes, the structure would no longer need to meet the original requirements of § 250.1730(a).

SUBPART J—RIGHTS-OF-USE AND EASEMENT FOR ENERGY AND MARINE-RELATED ACTIVITIES USING EXISTING OCS FACITLITIES	
Comment	**Response**
Consider defining a programmatic set term for Alternate Use RUEs, and allow renewal contingent on continued use consistent with the terms and conditions of the RUE. Consider specifying payment and surety levels in alternate use subpart.	The MMS does not believe it appropriate to establish through regulation a defined term for conducting approved alternate use activities, or to set specific payment or surety levels. We would like to be flexible in its regulatory framework to accommodate potential alternate use proposals, and

SUBPART J—RIGHTS-OF-USE AND EASEMENT FOR ENERGY AND MARINE-RELATED ACTIVITIES USING EXISTING OCS FACITLITIES	
Comment	**Response**
	therefore believes it most appropriate to consider specific operating terms on a case-by-case basis considering the specifics of any project proposal. No changes have been made to the final regulations.
In proposed § 285.1006, clarify to acknowledge that there will be purposes of the public good under which it is appropriate to issue an Alternate Use RUE that inhibits or restrains mineral or energy resource development. The door should not be conclusively closed on this option.	The MMS believes that the language included in the proposed § 285.1006 clearly describes when the issuance of an Alternate Use RUE is appropriate. The provision is intended to explain that MMS will not authorize an Alternate Use RUE in a particular location if such proposed activities would unreasonably inhibit or restrain ongoing, planned, or proposed energy or mineral resource development in the same location.
The MMS abdicates responsibility and limits opportunity by allowing the owner of an existing OCS facility a disproportionately large degree of control over the selection of an alternate use project in subpart J.	Subsection 8(p) of OCS Lands Act requires that MMS consider proposed alternate use activities on a competitive basis if such competitive interest exists. In § 285.1007, MMS has set forth a process for awarding Alternate Use RUEs competitively (and at the agency's sole discretion), while respecting the fact that such existing OCS platforms are owned by the existing lessee or operator. Therefore, while MMS completes a comprehensive evaluation of potential alternate use proposals, and selects those that are permissible under § 285.1006, the owner of the existing OCS facility makes the ultimate decision regarding whether such activities will be permitted on its property. No changes to the final regulations have been made in response to this comment.
Opening the door to a boundless range of nonenergy-related alternate uses at OCS facilities could rapidly shackle MMS with administrative responsibility far beyond its resources and expertise, which could compromise or undermine its primary duty of responsible and environmentally sound development of U.S. public trust mineral resources.	The MMS will consider such concerns when it evaluates any proposal for alternate use of an existing OCS facility under § 285.1006, and will not authorize any alternate use proposal in contravention of its responsibilities under the OCS Lands Act. No changes have been made to the final regulations.
The MMS should maintain the position articulated in the ANPR and clarify that the Energy Policy Act of 2005 does not give the MMS authority to regulate "marine related" activities until those activities have already been authorized by another agency or statute.	The MMS has authority to issue leases, easements, or rights-of-way for activities on the OCS not otherwise authorized by law pursuant to the OCS Lands Act. Those activities include the use, for energy-related purposes or for other authorized marine-related purposes, of facilities currently or previously used for activities authorized under the OCS Lands Act. Consequently, MMS has the authority to issue such leases for "marine related" activities. The interpretation of EPAct, which amended the OCS Lands Act, by the commenter is inconsistent with the terms of the statute.
The MMS lacks authority under subsection 8(p) of OCS Lands Act to permit mariculture activities, and regulating such activities on the	The MMS does not intend to implement an OCS aquaculture program involving the use of existing OCS facilities. The statutory language in section

SUBPART J—RIGHTS-OF-USE AND EASEMENT FOR ENERGY AND MARINE-RELATED ACTIVITIES USING EXISTING OCS FACITLITIES	
Comment	**Response**
OCS raises significant environmental and economic concerns.	388 of the EPAct, amending section 8 of the OCS Lands Act was intended to provide the Department broad discretion in considering activities that involve the alternate use of an OCS facility. If MMS were to receive an application for an alternate use right of use and easement (RUE) for aquaculture activity, we *may* consider that application in light of engineering, environmental, adjudication, and other issues relating to MMS responsibility over the OCS facilities proposed for this use, but a different agency would be responsible for permitting and managing actual aquaculture activity under any RUE that is granted. The aforementioned notwithstanding, the DOI has supported legislation previously proposed in Congress that would grant the Department of Commerce regulatory authority for evaluating and authorizing aquaculture activities, including aquaculture activities that would involve use of existing OCS platforms and facilities. Should this or similar legislation become law, the DOI would reconsider whether aquaculture activities are appropriately regulated under this subpart.
Alternate Use RUE determinations should be augmented by comprehensive marine spatial planning and decision-making.	In evaluating any alternate use proposal under subpart J, MMS will consider all existing marine spatial data within its possession in evaluating any proposal for an Alternate Use RUE.
The proposed process for awarding Alternative Use RUEs on existing OCS platforms appears to lengthen the term of existing oil/gas leases. The process should be changed to require either a new lease or a revised lease, with current terms and stipulations that do not put the U.S. Government in jeopardy of a breach of contract if and when it complies with current laws and regulations.	An Alternate Use RUE does not extend the term of an existing OCS mineral lease. If an OCS mineral lease expires during the term of an Alternate Use RUE, MMS may defer the mineral lessee's obligation to decommission the platform for so long as the Alternate Use RUE remains in effect (see § 250.1725). No changes to the regulatory provisions of this subpart are necessary.
The specific substantive criteria for evaluating competing applications should be set forth in this subpart.	The MMS does not believe it appropriate to establish through regulation substantive criteria for evaluating competing applications. Substantive criteria for evaluating competing applications submitted under subpart J will be set on case-by-case basis considering the uniqueness of the existing OCS facility, its location on the OCS, and other pertinent factors. No changes have been made to the final regulations.
The MMS should hold public hearings addressing alternate use in the proposed rule.	The MMS hosted several public workshops on this proposed rule, including three workshops held on the West Coast (Seattle, WA; Portland, OR; and San Francisco, CA), one workshop in the Gulf of Mexico area (New Orleans, LA), and four workshops on the East Coast (Savannah, GA; Fort

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Comment	**Response**
	Lauderdale, FL; Newton, MA; and Monmouth, NJ).
This subpart should limit the term "existing" facilities for Alternate Use to only those facilities that are currently in place as of the time of publication of this proposed rule. Future alternative energy facilities should not be eligible for reuse in marine-related activities as is currently allowed by the proposed rule.	The MMS disagrees with the commenter that Congress intended such a limited reading of the alternate use authority in the OCS Lands Act. No change has been made to the final regulation.
All three options presented in subpart J for allocation of decommissioning liability should remain as options in the final regulations. Most commenters stated a preference for option 2, which would allow owners of existing OCS platforms to transfer such liability to the holder of an Alternative Use RUE. Option 1. Joint responsibility for the decommissioning obligations associated with approved alternate use activities. Option 2. Holder of the Alternative Use RUE would assume either primary or joint responsibility for all decommissioning obligations, including those associated with the existing OCS facility. Option 3. A regulatory option that divided equitably the responsibilities for decommissioning and necessary financial assurance between the existing lessee and/or operator and the holder of the Alternative Use RUE, and where the existing lessee/operator would retain responsibility for decommissioning the existing OCS facility.	The MMS will not alter its provisions for allocation of decommissioning liability as originally set forth in the proposed rule. The MMS is not offering the Alternate Use RUE as a means for existing lessees and operators to shed their decommissioning obligations under the OCS Lands Act and pertinent MMS regulations. Most alternate use proponents will not be as well capitalized as existing oil and gas operators and lessees. In the course of private negotiations between the platform owner and alternate use proponent, the parties are free to negotiate any provisions between themselves regarding apportionment of platform decommissioning liability (e.g., contractual indemnity or set-aside account).
Paragraphs (d) and (e) of proposed § 285.1013 are confusing in their treatment of liability allocation between the assignor and assignee following an assignment	The MMS believes the language in § 285.1013 is clear and consistent with other MMS regulatory precedent (see 30 CFR 256.62(d) & (e)). The intent of these provisions is to make clear that assignment does not relieve the assignor of any liability accrued by the assignor prior to the date of the assignment. If the assignee, or any subsequent assignee, fails to satisfy any obligation that originated during the assignor's period of liability, MMS could look to that original assignor to satisfy the accrued obligation.
The MMS should consult with States on the type of proposed alternate use activities to ensure consistency with State coastal programs, and other Federal regulatory authorities.	Comment noted. The MMS will address consistency of proposed alternate use activities with State coastal programs and other authorities through compliance with section 307 of the CZMA. The MMS will comply with all other pertinent Federal laws and regulations. No changes to the final regulations have been made in response to this comment.
The rule does not currently require MMS to prepare an EIS for individual permits, instead	This subpart makes clear that any alternate use proposal will be subject to review under the NEPA.

SUBPART J—RIGHTS-OF-USE AND EASEMENT FOR ENERGY AND MARINE-RELATED ACTIVITIES USING EXISTING OCS FACITLITIES	
Comment	**Response**
determining whether an EIS would be needed on a case-by-case basis.	The MMS determines the level of environmental review under NEPA based on the details of any particular project. Determining the level of environmental review on a project-specific basis is consistent with Council on Environmental Quality regulations at 40 CFR subparts 1500 through 1508. No change has been made to the final regulations.
Section 285.1006 should be revised to include, among the considerations for approval, the benefits of restoring the lease area to uses, such as fishing, that pre-dated construction of the OCS facility that is under consideration for reuse.	The final rule requires decommissioning of all facilities returning the lease area to pre-lease conditions. However, the final regulation allows for departures at § 285.103 and provisions for allowing facilities to remain in place at § 285.909. We also added a new section in subpart I (§ 285.903) to address when MMS will approve departures from the decommissioning requirements. The MMS will consider these requests on a case-by-case basis (§ 285.909(b)). No changes to the final regulations have been made in response to this comment.
The MMS should drop this case-by-case approach that offers little opportunity for public comment. The rule provides far too limited opportunity for notice and public comment. Section 388 requires "public notice and comment on any proposal submitted for a lease, easement, or right of way . . . ." The MMS's proposed rule flaunts this requirement for alternate uses. Apart from those proposals that MMS determines need an EIS, MMS's proposal only indicates that it will provide notice in the Federal Register so that members of the public can comment on whether "there is a competitive interest in using the proposed facility for alternate use activities." But section 388 requires notice and an opportunity to comment on "any" proposal; therefore, the opportunity to comment should be provided regardless of commenters' potential competitive interests. Adhering to the terms of the statute would enable those members of the public who are adversely affected by the proposal – not just those have the capital to fund a competing alternate use – to comment on MMS's proposed issuance of a RUE.	The process set forth in this subpart provides ample opportunity for public review and comment. Through the required determination of competitive interest, MMS will publish a notice informing the public of any proposed alternate use activity on the OCS. This public notice will provide an opportunity to the public to comment on any proposal. In addition, in connection with the required environmental analysis under NEPA, MMS may solicit and receive public comment on any alternate use proposal. No changes were made to the final rule in response to this comment.
Subpart J should be separated from the balance of the proposed rule, and promulgated as its own independent rule.	The MMS does not see any need to separate subpart J from the remainder of this rulemaking.
§ 285.1016: The MMS should modify § 285.1016 to add that owners of the Alternate Use RUE shall be given notice that their operations have caused an adverse impact, and then afforded the opportunity to correct or mitigate the impact before MMS cancels the RUE.	The MMS agrees with this comment, and has made the appropriate revisions in the final rule text of § 285.1016.

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Specific Comment Areas Identified in the Proposed Rule

The preamble of the proposed rule (73 FR 39440) requested public comments or all aspects of the proposed rule. In addition, the preamble requested comments on specific areas in the proposed rule that were of particular interest to MMS and to the regulated

community and other interested parties. We planned to use the comments on these specific areas as the starting place for responding to comments. However, we found that very few commenters responded directly to the specific areas identified in the preamble. Instead, the vast majority of commenters provided comments on a subpart-by-subpart and section-by-section basis. All comments that touched on the issues raised by the specific areas we identified are addressed in our response to comments in the comment table. In addition, any changes to the rule as a result of comments are discussed in the subpart-by-subpart and section-by-section discussions.

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This final rule is a significant rule as determined by the Office of Management and Budget (OMB) and is subject to review under E.O. 12866. We have made the assessments required by E.O. 12866, and the results are as follows:

(1) The final rule will not have an annual effect on the economy of $100 million or more for the first 15 years or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The final regulations are made necessary by compelling public need in that they will be used to oversee the nascent offshore renewable energy industry consistent with the EPAct.

The final rule does two things: (1) It sets forth clear regulatory requirements; and (2) it institutes payments to the Government as a fair return for use of public lands. Discussions between MMS and OMB resulted in a determination that the appropriate analysis of the rulemaking is one that focuses on the financial impacts of the rule over a 20-year period (2008–2027). While financial revenues (i.e., the revenues the Federal Government will receive due to economic activity that occurs under this rule) are traditionally considered a transfer payment, in this analysis they are treated as a ''benefit.'' The cost side of the analysis comprises the Federal Government's costs to implement the program that will administer the rules. While the program will generate new receipts for the U.S. Government primarily in the form of cash bonuses, acquisition fees, rentals, and operating fees, the aggregate annual amounts of these payments, as estimated in the fiscal cost-benefit study supporting this rulemaking, were found to be below $100 million for at least the next 15 years, and then slightly above that level only in intermediate and high case scenarios. Any projections beyond that time horizon should be considered highly speculative given the early stage of development in this industry on the OCS. Any economic effects characterized by the EA are predicated upon the assumption that there is available transmission capacity to carry the energy generated on the OCS to demand centers. The payments to Federal agencies represent a transfer of money from one set of entities to another, not the anticipated effect of the regulations on real resources in the economy. The MMS finds that the benefits of this rule, when weighed against the potential payments that may exceed $100 million, justify this regulation because it will establish a new regulatory program intended to encourage safe, efficient, and environmentally sound development of renewable energy sources on the OCS. The MMS included a detailed discussion of the results of the Final Technical report on the ''Fiscal Cost-Benefit Analysis to Support the Rulemaking Process for 30 CFR Part 285 Governing Alternative Energy Production and Alternate Uses of Existing Facilities on the Outer Continental Shelf,'' MMS 2007–050, February 2008, by Industrial Economics, Incorporated, in the NPR, published in the **Federal Register** on July 9, 2008 (73 FR 39376). The NPR and the Final Technical report are available on the Regulations.gov Web site.

(2) The rule will not create a serious inconsistency or otherwise interfere with the actions taken or planned by any other agency. Until March 2009, regulatory uncertainty existed regarding which Federal agencies had authority to regulate wave and current energy development on the outer Continental Shelf (OCS). Both MMS and the Federal Energy Regulatory Commission (FERC) claimed this authority based on differing interpretations of Part I of the Federal Power Act (FPA) and section 8(p) of OCSLA, as amended by EPAct. However, on March 17, 2009, the Secretary of the Interior and the Acting Chairman of the Federal Energy Regulatory Commission issued a joint statement on the development of renewable energy resources on the OCS. In this joint statement, the Secretary and the Acting Commissioner requested that MMS and FERC staff prepare a Memorandum of Understanding (MOU) to describe the process by which authorizations related to renewable energy resources in offshore waters will be developed.

The MMS and FERC finalized this MOU on April 09, 2009. This agreement clarifies jurisdictional understandings regarding renewable energy projects on the OCS in order to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects. Specifically, the MOU recognizes that (1) MMS has exclusive jurisdiction with regard to the production, transportation, or transmission of energy from non-hydrokinetic alternative energy projects on the OCS, including renewable energy sources such as wind and solar; (2) MMS has exclusive jurisdiction to issue leases, easements, and rights-of-way regarding OCS lands for hydrokinetic projects; and (3) the Commission has exclusive jurisdiction to issue licenses and exemptions for hydrokinetic projects located on the OCS.

Under this new agreement, those entities interested in operating a hydrokinetic project on the OCS must first obtain a lease from MMS. The MMS will issue a public notice to determine whether competitive interest exists in the area, and will proceed with either the competitive or noncompetitive lease issuance process depending on responses received to this public notice. The MMS will conduct the NEPA analysis necessary for the lease issuance and any site assessment activities that will occur on the lease. After an applicant acquires a lease from MMS, FERC may issue a license or exemption for the hydrokinetic project, and conduct any necessary NEPA analysis. After a license is issued, construction and operations of the project may begin as per the terms of the license. To facilitate efficient processing of the lease and license applications, it may be helpful for potential lessees to apprise both MMS and FERC of their interest in hydrokinetic development at the start of the process.

Further, the MOU states that MMS and FERC will work together to the extent practicable to develop policies and regulations with respect to OCS hydrokinetic projects, and coordinate to ensure that hydrokinetic projects meet the public interest, including the adequate protection, mitigation, and enhancement of fish, wildlife, and marine resources and other beneficial public uses. The MOU ensures that the interests of both agencies are adequately represented and that the process of developing renewable energy on the OCS happens efficiently, in an environmentally responsible manner, and with appropriate benefit to the people of the United States.

Importantly, the agreement addresses the issue of potential site-banking by developers on the OCS by eliminating redundant regulatory processes for acquiring use of OCS lands. In addition, by eliminating dual regulatory processes, the agreement addresses the potential for granting conflicting awards of OCS sites to developers by the two agencies. Specifically, FERC has agreed not to issue preliminary permits for hydrokinetic activities on the OCS, and MMS has agreed that FERC will have the primary responsibility to issue licenses for these activities. The Federal Government has effectively eliminated the opportunity for abuse by entities seeking to reserve, block, or acquire for speculative purposes large portions of the OCS. These concerns were raised by many commenters on the REAU rulemaking. The DOI/FERC MOU creates a unified, coherent process for the authorization of hydrokinetic activities on the OCS, ensuring that U.S. resources on the OCS will not be subject to a ''land rush,'' and will be developed in the most efficient manner possible.

(3) This final rule would not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients. The rule does not contain any requirements or regulations that will alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients.

(4) This final rule raises novel legal or policy issues because the rulemaking establishes a new regulatory program for the development of renewable energy on the OCS and to allow for alternate uses of existing OCS facilities. For these reasons, OMB determined that this is a significant rule.

Prior to the passage of the EPAct, the Federal Government lacked the authority to oversee all aspects of renewable energy project development on the OCS, including siting, construction, operation, and decommissioning. Additionally, prior to the passage of the EPAct, the Federal Government lacked the authority to seek payments from private interests for use of our Nation's OCS for purposes other than oil and gas production. These regulations will provide the framework for MMS's management of the Alternative Energy-Alternate Use Program. This program will create a system that provides a degree of regulatory certainty to those proposing, planning, or potentially financing an offshore renewable energy project on the OCS, as it will address lease and grant issuance, activity authorization, payment collection, financial assurance, and project decommissioning.

As described previously, MMS conducted an economic (''benefit-cost'') analysis of this rulemaking because it was determined to be a significant regulatory action, as defined in E.O. 12866. Discussions between MMS and OMB resulted in a determination that the appropriate analysis of the rulemaking is one that focuses on the financial impacts of the rule over a 20-year period (2008–2027). While financial revenues (i.e., the revenues the Federal Government will receive due to economic activity that occurs under this rule) are traditionally considered a transfer payment, in this analysis they are treated as a ''benefit.'' The cost side of the analysis comprises the Federal Government's costs to implement the program that will administer the rules. In addition, as required by the Regulatory Flexibility Act (RFA) of 1980 (as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) and E.O. 13272 (''Proper Consideration of Small Entities in Agency Rulemaking''), this analysis considers whether the financial payments made by the developers of regulated projects to MMS will significantly affect a substantial number of small entities. The MMS included a detailed discussion of the analysis in the NPR published in the **Federal Register** on July 9, 2008 (73 FR 39376). The NPR is available on the Regulations.gov Web site.

Regulatory Flexibility Act (RFA)

Under the requirements of the RFA (5 U.S.C. 601 *et seq.*), as amended by the SBREFA and E.O. 13272, Federal agencies must consider the potential distributional impact of new rules on small businesses, small governmental jurisdictions, and small organizations. The MMS prepared an initial regulatory flexibility analysis to determine the impacts of this regulation on small entities. Based on this analysis, we concluded that these regulations will impact a substantial number of small entities; however, the regulations would not have a significant economic impact on these small entities when compared to the economic impact the regulations will have on large entities. The MMS included a detailed discussion of the RFA analysis in the NPR published in the **Federal Register** on July 9, 2008 (73 FR 39376). The NPR is available on the Regulations.gov Web site. We did not receive any comments on the RFA section of the NPR.

Discussion of the Regulatory Flexibility Act Analysis

Number of Small Entities to Which the Rule Will Apply

The North American Industry Classification System (NAICS) code for the industry affected by the rule is 221119 (Other Electric Power Generation). The definition for this code is:

> This U.S. industry comprises establishments primarily engaged in operating electric power generation facilities (except hydroelectric, fossil fuel, nuclear). These facilities convert other forms of energy, such as solar, wind, or tidal power, into electrical energy. The electric energy produced in these establishments is provided to electric power transmission systems or to electric power distribution systems.

An entity within this classification is ''small'' if it is ''primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed four million megawatt hours'' (MWh). Some new companies may be created solely to develop one or more offshore renewable energy projects that combined will not have a total electric output greater than 4 million MWh. Some companies, either through a combination of projects or through the incorporation of offshore renewable energy projects into a larger portfolio of electricity generating stations, will exceed the 4 million MWh threshold.

Given the newness of the offshore renewable energy industry, it is difficult to develop an accurate count of the number of entities that will or may be subject to this rule in order to determine whether the rule will affect a ''substantial'' number of small entities. Several companies have formally or informally expressed interest in being granted access to the OCS for electricity generation purposes. At least 40 to 50 entities are identifiable as potential project or technology developers with a focus on utilizing offshore wind, wave, or ocean current resources. The U.S. Census Bureau's 2002 Economic Census reported 411 entities within NAICS Code 221119. However, for the purposes of this analysis MMS assumes that most of the relevant entities will be considered ''small,'' and therefore, can conclude that a substantial number of small entities will be affected.

It is possible that the final rule may eventually govern hydrogen production, affecting entities that fall under NAICS Code 325120, Industrial Gas Manufacturing. The definition for this code is:

This industry comprises establishments primarily engaged in manufacturing industrial organic and inorganic gases in compressed, liquid, and solid forms.

However, it is unlikely that hydrogen will be produced on the OCS in significant amounts during the next 20 years, given the lack of proposals for projects that would produce hydrogen, and MMS has no means to predict what kinds of entities would likely be involved in OCS hydrogen production.

Impacts of This Rule on Small Businesses

We believe that most affected companies will be small businesses according to the size standard. While large power/energy companies may engage in offshore renewable energy, we do not see that company size plays a factor in the economic impact of our rulemaking.

Both large and small business will be subject to the same regulations because we do not believe it is necessary to have different regulations for large and small companies.

For example, the payments for a commercial lease are rentals and operating fees. Rentals (during the preliminary and site assessment terms) are based on the size of the leased area. The operating fee is based on the potential generation capacity of a commercial project. The lease area needed will be determined by the size of the project, and the operating fee is determined by capacity of the actual installed project. The applicant determines the project size. As a result, the applicant's project size determines the fee the applicant pays without respect to its business size. Both small and large entities bear the equal burden of selecting a project for MMS' consideration and submitting all appropriate payments. The greater the project's ability to produce, the greater the fee, but also the greater the potential income from the project to the developer.

One factor that could influence a company's ability to deal with these new regulations will be its experience and knowledge in working in the offshore environment. This knowledge is not size dependent, as evidenced by the size of the companies that own leases and operate oil and gas facilities on the OCS. The vast majority of companies that operate oil and gas facilities on the OCS (70 percent) are considered to be small companies according the size standards.

Due to the significant costs involved to develop, construct, and produce energy in the offshore environment, a project would need to generate a significant amount of electricity or energy to be economical. There are provisions in the rule for short-term leases that would allow a company to do preliminary site work and research without the same level of commitment as a commercial production lease. This is one way a small company could approach offshore development without committing extensive resources to a project.

In addition, the costs of operating in an offshore environment are significantly higher than the costs of complying with this regulation. For example, this final rule will require the use of CVAs, in some cases. Although this is an additional cost to project developers, the cost of the CVA is small in comparison to the cost of designing and engineering the projects. In addition, we added a provision to the final rule that will allow a project developer to request a waiver of the CVA requirement. Much of the data required for this final rule will need to be gathered by the project developers anyway (i.e., site surveys). The rule requires the data be provided to MMS to ensure protection of the environment and endangered species.

The MMS also has provisions that allow for departures from the requirements in this rule. The MMS can evaluate, on a case-by-case basis, if any part of this final regulation places an unnecessary burden on a small business and can make adjustments to the requirements, as appropriate. However, MMS cannot waive requirements to comply with other Federal laws, such as NEPA and CZMA.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

The final rule is not a major rule under 5 U.S.C. 804(2) of the Small Business Regulatory Enforcement Fairness Act. This final rule:

a. Will not have an annual effect on the economy of $100 million or more, as discussed previously under the Regulatory Planning and Review section.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule will allow greater production of energy from the OCS and will make more energy available in the United States.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Leasing on the U.S. OCS is limited to residents of the United States or companies incorporated in the United States under this final rule. This final rule will encourage competition, employment, investment, productivity, and innovation, and will not have an adverse impact on the ability of U.S.-based companies to compete with foreign-based enterprises. This rule will allow production of energy (e.g., electricity) in areas where there is no production at this time. It will encourage companies to explore new avenues for generating electricity and other energy from sources other than oil and gas. The final rule includes a competitive process for leasing. New developments and projects will create new jobs and investment. Since this is a nascent industry in the United States, it will also encourage the development of new technology.

The MMS received a comment on the NPR requesting that we consider reducing or waiving civil penalties for small businesses regulated under this part. If a civil penalty is assessed, the company may submit a request to modify the payment schedule to the Office of Financial Management, with the Mineral Revenue Management Program of the MMS. This did not require any changes to the final rule.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this final rule does not have significant takings implications. The final rule is not a governmental action capable of interference with constitutionally protected property rights. There are not, at present, any property rights in renewable energy facilities. Further, the rule on alternate use of existing facilities will require consent of the owner of the existing facility to any RUE that MMS might issue. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this final rule does not have sufficient federalism implications. This final rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent

that State and local governments have a role in OCS activities, this rule will affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this final rule and determined that it may have substantial effects on federally recognized Indian tribes. Although there are no Indian or tribal lands on the OCS, tribes occupy land on or near the shoreline that may be impacted. The final rule provides opportunities for MMS to coordinate with affected tribes related to all activities that the rule covers. The provisions are the same as provisions we have for coordination with affected States and local communities.

Paperwork Reduction Act (PRA)

This rule contains new information collection (IC) requirements; therefore, a submission to OMB under the PRA is required. The OMB has approved the IC for the final rulemaking and assigned OMB Control Number 1010–0176, expiration 4/30/2012, for a total of 31,124 burden hours and $3,816,000 non-hour cost burdens.

The title of the collection of information is ''30 CFR 285—Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf.'' Respondents primarily will be an estimated 15–25 Federal OCS companies that submit unsolicited proposals, lessees and designated operators, and ROW or RUE grant holders. Other potential respondents are companies or States and local governments that submit information or comments relative to renewable energy-related uses of the OCS; CVAs; and surety or third-party guarantors. The frequency of response varies depending upon the requirement. Responses to this collection of information are mandatory or are required to obtain or retain a benefit. The MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552), its implementing regulations (43 CFR part 2), and 30 CFR 285.112 through 285.114.

Between the proposed and final rule, there have been some changes to the numbering of sections requiring the collection of information, as well as some clarifications. The final regulations also are more specific with respect to several reporting requirements. The changes were all based on comments received, approximately seven that affected IC, and were included in the subsequent information collection submission that OMB approved. The comments are addressed in detail in the preamble of this rulemaking.

The following is a description of the revisions to the IC in the final rule:

- § 285.223(a)—Revised section eliminates a reporting requirement for tied bidders who will now be allowed to resubmit revised bids (−4 burden hours).
- § 285.506(c)(4)—Added requirement to allow MMS the ability to verify that the numbers we use in our formula are accurate to determine the operating fee (+1 burden hour).
- § 285.516(a)(4)—Added requirement to provide a separate decommissioning bond or other financial assurance (+3 burden hours).
- § 285.526(c)—Added annual reporting requirement for new option to allow more choices for financial assurance security instruments (+1 burden hour).
- § 285.527—Added options to allow respondents to demonstrate financial strength and reliability instead of submitting a bond (+10 burden hours).
- § 285.528—Added option to allow a third-party guaranty to meet financial assurance requirements (+10 burden hours).
- § 285.612(b)—Clarified CZMA process (+4 burden hours).
- § 285.614—Removed requirement as the activities may be conducted under U.S. Army Corps of Engineers regulations (−180 burden hours).
- § 285.705(b)—Added option to allow respondents to request a CVA requirement waiver (+40 burden hours).
- § 285.802(a), (b)—Revised section eliminates a reporting requirement on the protection of archaeological resources (−10 burden hours).
- § 285.815(b)—Revised section eliminates requirement to report equipment and facility repairs to MMS (−2 burden hours).

The following table provides a breakdown of the hour burden and non-hour cost estimates.

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Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
	Subpart A – General Provisions			
102; 105; 110	These sections contain general references to submitting comments, requests, applications, plans, notices, reports, and/or supplemental information for MMS approval--burdens covered under specific requirements.			0
102(e)	State and local governments enter into task force or joint planning or coordination agreement with MMS.	1	6 agreements	6
103; 903	Request general departures not specifically covered elsewhere in part 285.	2	6 requests	12
105(c)	Make oral requests or notifications and submit written followup within 3 business days not specifically covered elsewhere in part 285.	1	8 requests	8
106; 107; 212(f); 230(f); 302(a); 408(b)(7); 409(c); 1005(c); 1007(c); 1013(b)(7)	Submit evidence of qualifications to hold a lease or grant, provide required information and supporting information.	2	20 evidence submissions	40
106(b)(1)	Request exception from exclusion or disqualification from participating in transactions covered by Federal nonprocurement debarment and suspension system.	1	1 exception	1
106(b)(2), (3); 225; 527(c); 705(b)(2); 1016	Request reconsideration and/or hearing.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
108; 530(b)	Notify MMS within 3-business days after learning of any action filed alleging respondent is insolvent or bankrupt.	1	1 notice	1
109	Notify MMS in writing of merger, name change, or change of business form no later than 120 days after earliest of either the effective date or filing date.	Requirement not considered IC under 5 CFR 1320.3(h)(1).		0
111	Within 30 days of receiving bill, submit processing fee payments for MMS document or study preparation to process applications and requests.	.5	4 fee submissions	2
		4 MMS payments x $4,000 = $16,000		

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
111(b)(2), (3)	Submit comments on proposed processing fee or request approval to perform or directly pay contractor for all or part of any document, study, or other activity, to reduce MMS processing costs.	2	4 processing fee comments or reduction requests	8
111(b)(3)	Perform, conduct, develop, etc., all or part of any document, study, or other activity, and provide results to MMS to reduce MMS processing fee.	19,000	1 submission	19,000
111(b)(3)	Pay contractor for all or part of any document, study, or other activity, and provide results to MMS to reduce MMS processing costs.	3 contractor payments x $950,000 = $2,850,000		
111(b)(7); 118(a); 436(c)	Appeal MMS estimated processing costs, decisions, or orders pursuant to 30 CFR part 290.	Exempt under 5 CFR 1320.4(a)(2), (c).		0
113(b)	Respondents submit agreement to allow MMS to disclose the data and information exempt from disclosure under the Freedom of Information Act.	4	1 agreement	4
115(c)	Request approval to use later edition of a document incorporated by reference or alternative compliance.	1	1 request	1
116	The Director may occasionally request information to administer and carry out the offshore alternative energy program via Federal Register Notices.	4	25	100
118(c); 225(b)	Within 15 days of bid rejection, request reconsideration of bid decision or rejection.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
Subtotal			**78 responses**	**19,183 hours**
			$2,866,000 non-hour costs	
Subpart B – Issuance of OCS Renewable Energy Leases				
200; 224; 231; 235; 236; 238	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 285.			0
210; 211(a), (b), (c); 213 thru 216	Submit comments in response to Federal Register notices on Request for Interest in OCS Leasing, Call for Information and Nominations (Call), Area Identification, and the Proposed Sale Notice.	4	16 comments	64
211(d); 216; 220 thru 223; 231(c)(2)	Submit bid, payments, and required information in response to Federal Register Final Sale Notice.	5	12 bids	60

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
224	Within 10 business days, execute 3 copies of lease form and return to MMS with required payments, including evidence that agent is authorized to act for bidder; if applicable, submit information to support delay in execution.	1	5 lease executions	5
230; 231(a)	Submit unsolicited request and acquisition fee for a commercial or limited lease.	5	5 unsolicited requests	25
231(b)	Submit comments in response to Federal Register notice regarding interest of unsolicited request for a lease.	4	4 unsolicited requests	16
231(g), (h)	Submit decision to accept or reject terms and conditions of noncompetitive lease.	2	4 lease decisions	8
235(b); 236(b)	Request additional time to extend preliminary or site assessment term of commercial or limited lease, including revised schedule for SAP, COP, or GAP submission.	1	2 requests	2
237(b)	Request lease be dated and effective 1st day of month in which signed.	1	1 request	1
	Subtotal		**49 responses**	**181 hours**
Subpart C – Rights-of-Way Grants and Right-of-Use and Easement Grants for Renewable Energy Activities				
306; 309; 315; 316	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 285.			0
302(a); 305; 306	Submit 1 paper copy and 1 electronic version of a request for a new or modified ROW or RUE and required information, including qualifications to hold a grant.	5	1 ROW/RUE request	5
307; 308(a)(1)	Submit comments on competitive interest in response to Federal Register notice of proposed ROW or RUE grant area or comments on notice of grant auction.	4	2 comments	8
308(a)(2), (b); 315; 316	Submit bid and payments in response to Federal Register Notice of auction for an ROW or RUE grant.	5	1 bid	5
309	Submit decision to accept or reject terms and conditions of noncompetitive ROW or RUE grant.	2	1 grant decision	2
	Subtotal		**5 responses**	**20 hours**
Subpart D – Lease and Grant Administration				
400; 401; 402; 405; 409; 416, 433	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 285.			0
401(b)	Take measures directed by MMS in cessation order and submit reports in order to resume activities.	100	1 cessation measures report	100
405(d)	Submit written notice of change of address.	Requirement not considered IC under 5 CFR 1320.3(h)(1).		0

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
405(e)	If designated operator (DO) changes, notify MMS and identify new DO for MMS approval.	1	1 new DO notice	1
408 thru 411	Within 90 days after last party executes a transfer agreement, submit 1 paper copy and 1 electronic version of a lease or grant assignment application, including originals of each instrument creating or transferring ownership of record title, eligibility and other qualifications; and evidence that agent is authorized to execute assignment.	1	2 assignment requests/ instruments submissions	2
415(a)(1); 416; 420(a), (b); 428(b)	Submit request for suspension and required information no later than 90 days prior to lease or grant expiration.	10	2 suspension requests	20
417(b)	Conduct and, if required, pay for site-specific study to evaluate cause of harm or damage; and submit 1 paper copy and 1 electronic version of study and results.	100	1 study/ submission	100
		1 study x $950,000 = $950,000		
425 thru 428; 652(a)	Request lease or grant renewal no later than 180 days before termination date of your limited lease or grant, or no later than 2 years before termination date of operations term of commercial lease.	6	2 renewal requests	12
435; 658(c)(2)	Submit 1 paper copy and 1 electronic version of application to relinquish lease or grant.	1	2 relinquish applications	2
436; 437	Provide information for reconsideration of MMS decision to contract or cancel lease or grant area.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
Subtotal			**11 responses**	**237 hours**
			$950,000	
Subpart E – Payments and Financial Assurance Requirements				
An * indicates the primary cites for providing bonds or other financial assurance, and the burdens include any previous or subsequent references throughout part 285 to furnish, replace, or provide additional bonds, securities, or financial assurance. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				0
500 thru 509; 1011	Submit payor information, payments and payment information, and maintain auditable records according to subchapter A regulations or guidance.	Burdens covered by information collections approved for 30 CFR subchapter A.		0
506(c)(4)	Submit documentation of the gross annual generation of electricity produced by the generating facility on the lease - use same form as authorized by the EIA (burden covered under DOE/EIA OMB Control Number 1905-0129 to gather information and fill out form. The MMS's burden is for submitting a copy).	10 min	6 forms	1
510	Submit application and required information for waiver or reduction of rental or other payment.	1	1 waiver or rental reduction	1

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
* 515; 516(a)(1), (b); 525(a) thru (f)	Execute and provide $100,000 minimum lease-specific bond or other approved security; or increase bond level if required.	1	6 base-level lease bonds or other security	6
* 516(a)(2), (3), (b); 517; 525(a) thru (f)	Execute and provide SAP and COP commercial lease bonds in amounts determined by MMS.	1	5 SAP and COP bonds	5
516(a)(4); 521(c)	Execute and provide decommissioning bond or other financial assurance; schedule for providing the appropriate amount.	1	3 decommis-sioning bonds	3
517(c)(1)	Submit comments on proposed adjustment to bond amounts.	1	3 adjustment comments	3
517(c)(2)	Request bond reduction and submit evidence to justify.	5	2 reduction requests	10
* 520; 521; 525(a) thru (f)	Execute and provide $300,000 minimum limited lease or grant-specific bond, or increase financial assurance if required.	1	1 base-level ROW/RUE bond	1
525(g)	Surety notice to lessee or ROW/RUE grant holder and MMS within 5 business days after initiating insolvency or bankruptcy proceeding, or Treasury decertifies surety.	1	1 surety notice	1
* 526	In lieu of surety bond, pledge other types of securities, including authority for MMS to sell and use proceeds.	2	1 other security pledge	2
526(c)	Provide annual certified statements describing the nature and market value, including brokerage firm statements/reports.	1	1 statement	1
* 527	Demonstrate financial worth/ability to carry out present and future financial obligations, annual updates, and related or subsequent actions/records/reports, etc.	10	1	10
528	Provide third-party indemnity, financial information/statements, additional bond information, executed guarantor agreement, and supporting information/documentation.	10	1	10
528(c)(6); 532(b)	Guarantor/surety requests MMS terminate period of liability and notifies lessee or ROW/RUE grant holder, etc.	1	1 request	1
* 529	In lieu of surety bond, request authorization to establish decommissioning account, including written authorizations and approvals associated with account.	2	1 decommis-sioning account	2
530	Notify MMS promptly of lapse in bond or other security/action filed alleging lessee, surety, or guarantor et al. is insolvent or bankrupt.	1	1 notice	1
533(a)(2)(ii), (iii)	Provide agreement from surety issuing new bond to assume all or portion of outstanding liabilities.	3	1 surety agreement	3

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
536(b)	Within 10 business days following MMS notice, lessee, grant holder, or surety agrees to and demonstrates to MMS that lease will be brought into compliance.	16	1 agreement demonstration	16
Subtotal			**37 responses**	**77 hours**
Subpart F – Plans and Information Requirements				
Two ** indicate the primary cites for Site Assessment Plans (SAPs), Construction and Operations Plans (COPs), and General Activities Plans (GAPs); and the burdens include any previous or subsequent references throughout part 285 to submission and approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				0
** 600(a); 601(a), (b), (c); 605 thru 613	Within 6 months after issuance of a competitive lease or grant, or within 60 days after determination of no competitive interest, submit 1 paper copy and 1 electronic version of a SAP, including information to assist MMS to comply with NEPA, such as hazard information, air quality, and all required information, certifications, etc.	240	6 SAPs	1,440
** 600(b); 601(c), (d)(1); 606(b); 618; 620 thru 629; 633	If requesting an operations term for commercial lease, at least 6 months before the end of site assessment term, submit 1 paper copy and 1 electronic version of a COP, including information to assist MMS to comply with NEPA, such as hazard information, air quality, and all required information, surveys and/or their results, reports, certifications, project easements, supporting data and information, etc.	1,000	3 COPs	3,000
** 600(c); 601(a), (b); 640 thru 648	Within 6 months after issuance of a competitive lease or grant, or within 60 days after determination of no competitive interest, submit 1 paper copy and 1 electronic version of a GAP, including information to assist MMS to comply with NEPA, such as hazard information, air quality, and all required information, surveys and reports, certifications, project easements, etc.	240	1 GAP	240
** 601(d)(2); 622; 628(f); 632(b); 634	Submit revised or modified COPs, including project easements, and all required additional information.	50	1 revised or modified COP	50
602[1]	Until MMS releases financial assurance, respondents must maintain, and provide to MMS if requested, all data and information related to compliance with required terms and conditions of SAP, COP, or GAP.	2	9 records maintenance/ submissions	18
** 613(d), (e); 616	Submit revised or modified SAPs and required additional information.	50	1 revised or modified SAP	50

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
612(b); 647(b)	Noncompetitive leases must submit copy of SAP or GAP consistency certification and supporting documentation.	1	4 leases	4
614(a)	Notify MMS in writing within 30 days of completion of construction and installation activities under SAP.	1	5 completion construction notices	5
614(b)	Submit annual report summarizing findings from site assessment activities.	30	8 annual reports	240
614(c)	Submit annual, or at other time periods as MMS determines, SAP compliance certification, effectiveness statement, recommendations, reports, supporting documentation, etc.	40	8 compliance certifications	320
617(a)	Notify MMS in writing before conducting any activities not approved, or provided for, in SAP; provide additional information if requested.	10	1 notice before activity	10
627(c)	Include oil spill response plan as required by part 254.	Burden covered 30 CFR part 254, 1010-0091.		0
631	Request deviation from approved COP schedule.	2	1 deviation request	2
633(b)	Submit annual, or at other time periods as MMS determines, COP compliance certification, effectiveness statement, recommendations, reports, supporting documentation, etc.	80	9 compliance certifications	720
634(a)	Notify MMS in writing before conducting any activities not approved or provided for in COP, and provide additional information if requested.	10	1 notice before activity	10
635	Notify MMS any time commercial operations cease without an approved suspension.	1	1 termination notice	1
636(a)	Notify MMS in writing no later than 30 days after commencing activities associated with placement of facilities on lease area.	1	3 commence notices	3
636(b)	Notify MMS in writing no later than 30 days after completion of construction and installation activities.	1	3 completion notices	3
636(c)	Notify MMS in writing at least 7 days before commencing commercial operations.	1	3 initial ops notices	3
** 642(b); 648(e); 655; 658(c)(3)	Submit revised or modified GAPs and required additional information.	50	1 revised or modified GAP	50
651	Before beginning construction of OCS facility described in GAP, complete survey activities identified in GAP and submit initial findings. This only includes the time involved in submitting the findings; it does not include the survey time, as these surveys would be conducted as good business practice.	30	5 surveys/ reports	150
653(a)	Notify MMS in writing within 30 days of completing installation activities under the GAP.	1	5 completion notices	5
653(b)	Submit annual report summarizing findings from activities conducted under approved GAP.	30	8 annual reports	240

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
653(c)	Submit annual, or at other time periods as MMS determines, GAP compliance certification, recommendations, reports, etc.	40	8 compliance certifications	320
655(a)	Notify MMS in writing before conducting any activities not approved or provided for in GAP, and provide additional information if requested.	10	1 notice before activity	10
656	Notify MMS if at any time approved GAP activities cease without an approved suspension.	1	1 termination notice	1
658(c)(1)	If after construction, cable or pipeline deviate from approved COP or GAP, notify affected lease operators and ROW/RUE grant holders of deviation, and provide MMS evidence of such notices.	3	1 deviation notice/MMS evidence	3
659	Determine appropriate air quality modeling protocol, conduct air quality modeling, and submit 3 copies of air quality modeling report and 3 sets of digital files as supporting information to plans.	70	10 air quality modeling reports/ information	700
Subtotal			**108 responses**	**7,598 hours**
Subpart G – Facility Design, Fabrication, and Installation				
Three *** indicate the primary cites for the reports discussed in this subpart, and the burdens include any previous or subsequent references throughout part 285 to submitting and obtaining approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				0
***700(a)(1), (b), (c); 701	Submit Facility Design Report, including 1 paper copy and 1 electronic copy of the cover letter, certification statement, and all required information (1-3 paper or electronic copies, as specified).	200	3 Facility Design Reports	600
***700(a)(2), (b), (c); 702	Submit 1 paper copy and 1 electronic copy of a Fabrication and Installation Report, certification statement, and all required information.	160	3 Fabrication & Installation Reports	480
705(a)(3); 707; 712	The CVA conducts independent assessment of the facility design and submits reports to lessee or grant holder and MMS -- interim reports if required, and 1 electronic copy and 1 paper copy of the final report.	100	3 CVA design interim reports	300
		100	3 CVA final reports	300
705(a)(3); 708; 709; 710; 712	CVA conducts independent assessments on the fabrication and installation activities, informs lessee or grant holder if procedures are changed or design specifications are modified, and submits reports to lessee or grant holder and MMS -- interim reports if required, and 1 electronic copy and 1 paper copy of the final report.	100	3 CVA interim reports	300
		100	3 CVA final reports	300
705(a)(3); *** 711; 712	CVA/project engineer monitors major project modifications and repairs and submits reports to lessee or grant holder and MMS -- interim	20	1 CVA interim report	20

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
	reports if required, and 1 electronic copy and 1 paper copy of the final report.	15	1 CVA final report	15
705(b)	Request waiver of CVA requirement in writing; lessee must demonstrate standard design and best practices.	40	1 waiver	40
706	Submit for approval, with SAP, COP, or GAP, initial nominations for a CVA or new replacement CVA nomination, and required information.	16	13 new CVA nominations	208
708(b)(2)	Lessee or grant holder must notify MMS if modifications identified by CVA/project engineer are accepted.	1	1 notice	1
709(a)(14); 710(a)(2), (e)[1]	Make fabrication quality control, installation towing, and other records available to CVA/project engineer for review (retention required by § 285.714).	1	3 records retention	3
713(a)	Notify MMS within 10 business days after commencing commercial operations.	1	2 commence notices	2
714;[1]	Until MMS releases financial assurance, compile, retain, and make available to MMS and/or CVA the as-built drawings, design assumptions/analyses, summary of fabrication and installation examination records, inspection results, and records of repairs not covered in inspection report. Record original and relevant material test results of all primary structural materials; retain records during all stages of construction.	100	3 lessees	300
Subtotal			**43 responses**	**2,869 hours**
Subpart H – Environmental and Safety Management, Inspections, and Facility Assessments				
801(c), (d)	Notify MMS if endangered or threatened species, or their designated critical habitat, may be in the vicinity of the lease or grant or may be affected by lease or grant activities.	1	2 notices	2
801(e), (f)	Submit information to ensure proposed activities will be conducted in compliance with the ESA and MMPA; including, agreements and mitigating measures designed to avoid or minimize adverse effects and incidental take of endangered species or critical habitat.	6	2 ESA/MMPA submissions	12
802; 902(e)	Notify MMS of archaeological resource within 72 hours of discovery.	3	1 archaeo-logical notice	3
802(b)	If requested, conduct further archaeological investigations and submit report.	10	1 archaeo-logical report	10
803(d)	If applicable, submit payment for MMS costs in carrying out NHPA responsibilities.	.5	1 payment	.5
804(b), (c)	If required, conduct additional surveys to define boundaries and avoidance distances and submit report.	15	2 survey/ report	30

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
810	Submit safety management system description with the SAP, COP, or GAP.	35	10 safety management systems	350
813(b)(1)	Report within 24 hours when any required safety equipment taken out of service for more than 12 hours; provide written confirmation if oral report.	.5	3 safety equipment reports	1.5
813(b)(2)	Submit written confirmation when equipment removed from service for greater than 60 days.	1	1 written confirmation	1
813(b)(3)	Notify MMS when equipment returned to service; provide written confirmation if oral notice.	.5	3 return to service notices	1.5
815(c)	When required, analyze cable, pipeline, or facility damage or failures to determine cause and, as soon as available, submit comprehensive written report.	1.5	1 analysis report	1.5
816	Submit plan of corrective action report on observed detrimental affects on cable, pipeline, or facility within 30 days of discovery; take remedial action and submit report of remedial action within 30 days after completion.	2	1 corrective action plan and report	2
822(a)(2)(iii), (b); 824(a)[1]	Until MMS releases financial assurance, maintain records of design, construction, operation, maintenance, repairs, and investigation on or related to lease or ROW/RUE area; make available to MMS for inspection.	1	4 records retention	4
823	Request reimbursement within 90 days for food, quarters, and transportation provided to MMS representatives during inspection.	2	1 reimburse-ment request	2
824(a)	Develop annual self inspection plan covering all facilities; retain with records, and make available to MMS upon request.	24	4 self assess-ment plans	96
824(b)	Conduct annual self inspection and submit report by November 1.	36	4 annual reports	144
825	Perform assessment of structures, initiate mitigation actions for structures that do not pass assessment process, retain information, and make available to MMS upon request.	60	4 assess-ments and mitigation actions	240
830(a), (b), (c); 831 thru 833	Immediately report incidents to MMS via oral communications, submit written followup report within 15 business days after the incident, and submit any required additional information.	Oral .5	6 incidents	3
		Written 4	1 incident	4
830(d)	Report oil spills as required by part 254.	Burden covered by 1010-0091, 30 CFR part 254.		0
Subtotal			**52 responses**	**908 hours**
Subpart I – Decommissioning				

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
Four **** indicate the primary cites for the reports discussed in this subpart, and the burdens include any previous or subsequent references throughout part 285 to submitting and obtaining approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				
**** 902(b), (c), (d), (f); 905, 906; 907; 908(c); 909	Submit for approval 1 paper copy and 1 electronic copy of the decommissioning application and site clearance plan at least 2 years before decommissioning activities begin, 90 days after completion of activities; or 90 days after cancellation, relinquishment, or other termination of lease or grant. Include documentation of coordination efforts with States, local, or tribal governments regarding requests that certain facilities remain in place for other activities, be converted to an artificial reef, or be toppled in place. Submit additional information requested or modify and resubmit application.	20	1 decommissioning application	20
902(d); 908;	Notify MMS at least 60 days before commencing decommissioning activities.	1	1 decommissioning notice	1
910	Within 60 days after removing a facility, verify to MMS that site is cleared.	1	1 removal verification	1
912	Within 60 days after removing a facility, cable, or pipeline, submit a written report.	8	1 removal report	8
We don't anticipate decommissioning activities for at least 5 years so the requirements have been given a minimal burden.				
	Subtotal		**4 responses**	**30 hours**
Subpart J – Right-of-Use and Easement for Energy and Marine-Related Activities Using Existing OCS Facilities				
1004, 1005, 1006	Contact owner of existing facility and/or lessee of the area to reach preliminary agreement to use facility and obtain concurring signatures; submit request to MMS for an alternate use RUE, including all required information/modifications.	1	1 request for RUE to use existing facility	1
1007(a), (b), (c)	Submit indication of competitive interest in response to Federal Register Notice.	4	1 response	4
1007(c)	Submit description of proposed activities and required information in response to Federal Register Notice of competitive offering.	5	1 submission	5
1007(f)	Lessee or owner of facility submits decision to accept or reject proposals deemed acceptable by MMS.	1	1 decision	1
1010(c)	Request renewal of Alternate Use RUE.	6	1 renewal request	6
1012; 1016(b)	Provide financial assurance as MMS determines in approving RUE for an existing facility, including additional security if required.	1	1 bond or other security	1

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
1013	Submit request for assignment of an Alternate Use RUE for an existing facility, including all required information.	1	1 RUE assignment request	1
1015	Request relinquishment of RUE for an existing facility.	1	1 RUE relinquish	1
Subtotal			**8 responses**	**20 hours**
30 CFR Parts 250 & 290 Proposed Revisions				
250.1730	Request departure from requirement to remove a platform or other facility.	No change to burden covered by 1010-0142, 30 CFR part 250, subpart Q.		0
250.1731(c)	Request deferral of facility removal subject to RUE issued under this subpart.	1	1 deferral request	1
250.290.2	Request reconsideration of an MMS decision concerning a lease bid.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
Subtotal			**1 response**	**1 hour**
Total Burden			**396 Responses**	**31,124 Hours**
			$3,816,000 Non-Hour Cost Burdens	

[1] Retention of these records is usual and customary business practice; the burden is primarily to make them available to MMS and CVAs.

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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. The public may comment, at any time, on the accuracy of the IC burden in this rule and may submit any comments to the Department of the Interior; Minerals Management Service; Attention: Regulations and Standards Branch; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

National Environmental Policy Act (NEPA) of 1969

The MMS has analyzed this rule under the criteria of the National Environmental Policy Act. This rule meets the criteria set forth in 516 Departmental Manual 3.2 A for the preparation of an "Environmental Assessment." The MMS prepared an EA analyzing the regulations for the MMS Alternative Energy and Alternate Use program. The EA incorporates by reference the PEIS, *Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final Environmental Impact Statement, October 2007.*

Based on the analysis in the EA, and the PEIS that it tiers off of, we have determined that the rule would not significantly affect the quality of the human environment (40 CFR 1508.27) and will not cause "undue or serious harm or damage to the human, marine, or coastal environment." Therefore, the MMS has made a determination that results in a Finding of No Significant Impact. The EA and the PEIS are available on the MMS Web site at: *http://www.mms.gov/offshore/AlternativeEnergy/RegulatoryInformation.htm.*

Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C section 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Energy Supply (E.O. 13211)

While this final rule is a significant regulatory action under E.O. 12866, the final rule will not have a significant adverse effect on the supply, distribution, or use of energy. In fact, this rule is expected to have a positive effect on the production, supply, and distribution of energy because the rule would establish a framework for allowing the development and production of new energy sources on the OCS. Furthermore, the Administrator of the Office of Information and Regulatory Affairs, OMB, has not designated this final rule a significant energy action. Therefore, this final rule is not a significant energy action and does not require a Statement of Energy Effects. Executive Order 13211 requires the agency to prepare a Statement of Energy Effects when it takes a regulatory action that is identified as a significant energy action. According to E.O. 13211, a significant energy action means any action by an agency that promulgates or is expected to lead to promulgation of a final rule or regulations that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental protection, Public lands—rights-of-way, Reporting and recordkeeping requirement.

30 CFR Part 285

Bonding, Coastal zone, Continental shelf, Electric power, Energy, Environmental impact statements, Environmental protection, Incorporation by Reference, Marine resources, Natural resources, Payments, Public lands, Public lands—rights-of-way, Reporting and recordkeeping requirements, Revenue sharing, Solar energy.

30 CFR Part 290

Administrative practice and procedure.

Dated: April 21, 2009.

Richard T. Cardinale,

Acting Assistant Secretary—Land and Minerals Management.

■ For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR chapter II as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for 30 CFR part 250 continues to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

■ 2. Amend § 250.1703 by revising paragraph (c) to read as follows:

§ 250.1703 What are the general requirements for decommissioning?

* * * * *

(c) Remove all platforms and other facilities, except as provided in sections 1725(a) and 1730.

* * * * *

■ 3. Amend § 250.1725 by adding a third and fourth sentence to the introductory text of paragraph (a), and adding new paragraphs (a)(1) and (a)(2) to read as follows:

§ 250.1725 When do I have to remove platforms and other facilities?

(a) * * * Other activities include those supporting OCS oil and gas production and transportation, as well as other energy-related or marine-related uses (including LNG) for which adequate financial assurance for decommissioning has been provided to a Federal agency which has given MMS a commitment that it has and will exercise authority to compel the performance of decommissioning within a time following cessation of the new use acceptable to MMS. The approval will specify:

(1) Whether you must continue to maintain any financial assurance for decommissioning; and

(2) Whether, and under what circumstances, you must perform any decommissioning not performed by the new facility owner/user.

* * * * *

§ 250.1730 [Amended]

■ 4. In § 250.1730, amend the introductory text by removing the words ''or other use''.

■ 5. Add § 250.1731, to read as follows:

§ 250.1731 Who is responsible for decommissioning an OCS facility subject to an Alternate Use RUE?

(a) The holder of an Alternate Use RUE issued under part 285 of this subchapter is responsible for all decommissioning obligations that accrue following the issuance of the Alternate Use RUE and which pertain to the Alternate Use RUE. See 30 CFR part 285, subpart J, for additional information concerning the decommissioning responsibilities of an Alternate Use RUE grant holder.

(b) The lessee under the lease originally issued under 30 CFR part 256 will remain responsible for decommissioning obligations that accrued before issuance of the Alternate Use RUE, as well as for decommissioning obligations that accrue following issuance of the Alternate Use RUE to the extent associated with continued activities authorized under this part.

(c) If a lease issued under 30 CFR part 256 is cancelled or otherwise terminated under any provision of this subchapter, the lessee, upon our approval, may defer removal of any OCS facility within the lease area that is subject to an Alternate Use RUE. If we elect to grant such a deferral, the lessee remains responsible for removing the facility upon termination of the Alternate Use RUE and will be required to retain sufficient bonding or other financial assurances to ensure that the structure is removed or otherwise decommissioned in accordance with the provisions of this subpart.

■ 6. Add 30 CFR part 285 to subchapter B to read as follows:

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

Subpart A—General Provisions

Sec.
285.100 Authority.
285.101 What is the purpose of this part?
285.102 What are MMS's responsibilities under this part?
285.103 When may MMS prescribe or approve departures from these regulations?
285.104 Do I need an MMS lease or other authorization to produce or support the production of electricity or other energy product from a renewable energy resource on the OCS?
285.105 What are my responsibilities under this part?
285.106 Who can hold a lease or grant under this part?
285.107 How do I show that I am qualified to be a lessee or grant holder?
285.108 When must I notify MMS if an action has been filed alleging that I am insolvent or bankrupt?
285.109 When must I notify MMS of mergers, name changes, or changes of business form?
285.110 How do I submit plans, applications, reports, or notices required by this part?
285.111 When and how does MMS charge me processing fees on a case-by-case basis?
285.112 Definitions.
285.113 How will data and information obtained by MMS under this part be disclosed to the public?
285.114 Paperwork Reduction Act statements—information collection.
285.115 Documents incorporated by reference.
285.116 Requests for information on the state of the offshore renewable energy industry.
285.117 [Reserved]
285.118 What are my appeal rights?

Subpart B—Issuance of OCS Renewable Energy Leases

General Lease Information

285.200 What rights are granted with a lease issued under this part?
285.201 How will MMS issue leases?
285.202 What types of leases will MMS issue?
285.203 With whom will MMS consult before issuance of a lease?
285.204 What areas are available for leasing consideration?
285.205 How will leases be mapped?
285.206 What is the lease size?
285.207–285.209 [Reserved]

Competitive Lease Process

285.210 How does MMS initiate the competitive leasing process?
285.211 What is the process for competitive issuance of leases?
285.212 What is the process MMS will follow if there is reason to believe that competitors have withdrawn before the Final Sale Notice is issued?
285.213 What must I submit in response to a Request for Interest or a Call for Information and Nominations?
285.214 What will MMS do with information from the Requests for Information or Calls for Information and Nominations?
285.215 What areas will MMS offer in a lease sale?
285.216 What information will MMS publish in the Proposed Sale Notice and Final Sale Notice?
285.217–285.219 [Reserved]

Competitive Lease Award Process

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

285.221 What bidding systems may MMS use for commercial leases and limited leases?
285.222 What does MMS do with my bid?
285.223 What does MMS do if there is a tie for the highest bid?
285.224 What happens if MMS accepts my bid?
285.225 What happens if my bid is rejected, and what are my appeal rights?
285.226–285.229 [Reserved]

Noncompetitive Lease Award Process

285.230 May I request a lease if there is no Call?
285.231 How will MMS process my unsolicited request for a noncompetitive lease?
285.232 May I acquire a lease noncompetitively after responding to a Request for Interest or Call for Information and Nominations under § 285.213?
285.233–285.234 [Reserved]

Commercial and Limited Lease Terms

285.235 If I have a commercial lease, how long will my lease remain in effect?
285.236 If I have a limited lease, how long will my lease remain in effect?
285.237 What is the effective date of a lease?
285.238 Are there any other renewable energy research activities that will be allowed on the OCS?

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

ROW Grants and RUE Grants

285.300 What types of activities are authorized by ROW grants and RUE grants issued under this part?
285.301 What do ROW grants and RUE grants include?
285.302 What are the general requirements for ROW grant and RUE grant holders?
285.303 How long will my ROW grant or RUE grant remain in effect?
285.304 [Reserved]

Obtaining ROW Grants and RUE Grants

285.305 How do I request an ROW grant or RUE grant?
285.306 What action will MMS take on my request?
285.307 How will MMS determine whether competitive interest exists for ROW grants and RUE grants?
285.308 How will MMS conduct an auction for ROW grants and RUE grants?
285.309 When will MMS issue a noncompetitive ROW grant or RUE grant?
285.310 What is the effective date of an ROW grant or RUE grant?
285.311–285.314 [Reserved]

Financial Requirements for ROW Grants and RUE Grants

285.315 What deposits are required for a competitive ROW grant or RUE grant?
285.316 What payments are required for ROW grants or RUE grants?

Subpart D—Lease and Grant Administration

Noncompliance and Cessation Orders

285.400 What happens if I fail to comply with this part?
285.401 When may MMS issue a cessation order?
285.402 What is the effect of a cessation order?
285.403–285.404 [Reserved]

Designation of Operator

285.405 How do I designate an operator?
285.406 Who is responsible for fulfilling lease and grant obligations?
285.407 [Reserved]

Lease or Grant Assignment

285.408 May I assign my lease or grant interest?
285.409 How do I request approval of a lease or grant assignment?
285.410 How does an assignment affect the assignor's liability?
285.411 How does an assignment affect the assignee's liability?
285.412–285.414 [Reserved]

Lease or Grant Suspension

285.415 What is a lease or grant suspension?
285.416 How do I request a lease or grant suspension?
285.417 When may MMS order a suspension?
285.418 How will MMS issue a suspension?
285.419 What are my immediate responsibilities if I receive a suspension order?
285.420 What effect does a suspension order have on my payments?
285.421 How long will a suspension be in effect?
285.422–285.424 [Reserved]

Lease or Grant Renewal

285.425 May I obtain a renewal of my lease or grant before it terminates?
285.426 When must I submit my request for renewal?
285.427 How long is a renewal?
285.428 What effect does applying for a renewal have on my activities and payments?
285.429 What criteria will MMS consider in deciding whether to renew a lease or grant?
285.430–285.431 [Reserved]

Lease or Grant Termination

285.432 When does my lease or grant terminate?
285.433 What must I do after my lease or grant terminates?
285.434 [Reserved]

Lease or Grant Relinquishment

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

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

Subpart A—General Provisions

§ 285.100 Authority.

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

(a) Produce or support production, transportation, or transmission of energy from sources other than oil and gas; or

(b) Use, for energy-related purposes or for other authorized marine-related purposes, facilities currently or previously used for activities authorized under the OCS Lands Act.

§ 285.101 What is the purpose of this part?

The purpose of this part is to:

(a) Establish procedures for issuance and administration of leases, right-of-way (ROW) grants, and right-of-use and easement (RUE) grants for renewable energy production on the Outer Continental Shelf (OCS) and RUEs for the alternate use of OCS facilities for energy or marine-related purposes;

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

(c) Ensure that renewable energy activities on the OCS and activities involving the alternate use of OCS facilities for energy or marine-related purposes are conducted in a safe and environmentally sound manner, in conformance with the requirements of subsection 8(p) of the OCS Lands Act, other applicable laws and regulations, and the terms of your lease, ROW grant, RUE grant, or Alternate Use RUE grant.

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

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

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

(1) Safety;

(2) Protection of the environment;

(3) Prevention of waste;

(4) Conservation of the natural resources of the OCS;

(5) Coordination with relevant Federal agencies (including, in particular, those agencies involved in planning activities that are undertaken to avoid conflicts among users and maximize the economic and ecological benefits of the OCS, including multifaceted spatial planning efforts);

(6) Protection of national security interests of the United States;

(7) Protection of the rights of other authorized users of the OCS;

(8) A fair return to the United States;

(9) Prevention of interference with reasonable uses (as determined by the Secretary or Director) of the exclusive economic zone, the high seas, and the territorial seas;

(10) Consideration of the location of and any schedule relating to a lease or

grant under this part for an area of the OCS, and any other use of the sea or seabed;

(11) Public notice and comment on any proposal submitted for a lease or grant under this part; and

(12) Oversight, inspection, research, monitoring, and enforcement of activities authorized by a lease or grant under this part.

(b) The MMS will require compliance with all applicable laws, regulations, other requirements, and the terms of your lease or grant under this part and approved plans. The MMS will approve, disapprove, or approve with conditions any plans, applications, or other documents submitted to MMS for approval under the provisions of this part.

(c) Unless otherwise provided in this part, MMS may give oral directives or decisions whenever prior MMS approval is required under this part. The MMS will document in writing any such oral directives within 10 business days.

(d) The MMS will establish practices and procedures to govern the collection of all payments due to the Federal Government, including any cost recovery fees, rents, operating fees, and other fees or payments. The MMS will do this in accordance with the terms of this part, the leasing notice, the lease or grant under this part, and applicable Minerals Revenue Management regulations or guidance.

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

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

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

(1) Facilitate the appropriate activities on a lease or grant under this part;

(2) Conserve natural resources;

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

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

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

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

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

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

(4) Be documented in writing.

§ 285.104 Do I need an MMS lease or other authorization to produce or support the production of electricity or other energy product from a renewable energy resource on the OCS?

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

§ 285.105 What are my responsibilities under this part?

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

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

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

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

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

(e) Make all applicable payments on time;

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

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

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

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

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

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

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

(1) Citizen or national of the United States;

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

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

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

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

(6) State of the United States; and

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

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

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

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

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

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

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

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

(a) You must demonstrate your technical and financial capability to construct, operate, maintain, and terminate/decommission projects for

which you are requesting authorization. Documentation can include:

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

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

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

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

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

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

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

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

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

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Requirements to qualify to hold leases or grants on the OCS:	Corp.	Ltd. Prtnsp.	Gen. Prtnsp.	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: (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.	XX				
(4) Original certificate or certified copy of partnership or organization paperwork registering with the appropriate State official.		XX	XX	XX	
(5) Copy of articles of partnership or organization evidencing filing with appropriate Secretary of State, certified by Secretary/Assistant Secretary of partnership or member or manager of LLC.		XX	XX	XX	
(6) Original certificate or certified copy evidencing State where partnership or LLC is registered. Statement of authority to hold OCS leases, certified by Secretary/Assistant Secretary, OR original paperwork registering with the appropriate State official.		XX	XX	XX	
(7) Statements from each partner or LLC member indicating the following: (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.		XX	XX	XX	
(8) Statement from general partner, certified by Secretary/Assistant Secretary that: (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.		XX			
(9) Evidence of authority to bind partnership or LLC, if not specified in partnership agreement, articles of organization, or LLC regulations, i.e.,		XX	XX	XX	

Requirements to qualify to hold leases or grants on the OCS:	Corp.	Ltd. Prtnsp.	Gen. Prtnsp.	LLC	Trust
certificates of authority from Secretary/Assistant Secretary reflecting authority of officers.					
(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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) You may comment on the proposed fee.

(3) You may:

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

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

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

(i) If we encounter higher or lower processing costs than anticipated, we will re-estimate our reasonable processing costs following the procedures in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section, but we will not 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.

§ 285.112 Definitions.

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

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

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

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

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

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

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

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

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

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

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

Archaeological resource means any material remains of human life or activities that are at least 50 years of age and that are of archaeological interest (i.e., which are capable of providing scientific or humanistic understanding of past human behavior, cultural adaptation, and related 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 MMS determines to be economically feasible wherever failure of equipment would have a significant effect on safety, health, or the environment.

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

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

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

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

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

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

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

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

Distance means the minimum great circle distance.

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

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

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

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

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

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

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

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

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

Limited lease means a lease issued under this part that specifies the terms and conditions under which a person

may conduct activities on the OCS that support the production of energy, but do not result in the production of electricity or other energy product for sale, distribution, or other commercial use exceeding a limit specified in the lease.

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

Miles mean nautical miles, as opposed to statute miles.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If you have a...	Then MMS 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.

§ 285.114 Paperwork Reduction Act statements—information collection.

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

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

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

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

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

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30 CFR 285 subpart, title, and/or MMS Form (OMB Control No.)	Reasons for collecting information and how used.
(1) Subpart A – General Provisions.	To inform MMS 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 MMS 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.
(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 an MMS-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 – Plans and Information Requirements.	To enable MMS 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.
(7) Subpart G – Facility Design, Fabrication, and Installation.	To enable MMS to review the final design, fabrication, and installation of facilities on a lease or grant to ensure that these facilities are designed, fabricated, and installed according to appropriate standards in compliance with MMS regulations, and where applicable, the approved plan.
(8) Subpart H – Environmental and Safety Management, Inspections, and Facility Assessments.	To ensure that lease and grant operations are conducted in a manner that is safe and protects the environment. To ensure compliance with other Federal laws, these regulations, the lease or grant, and approved plans.
(9) Subpart I – Decommissioning.	To determine that decommissioning activities comply with regulatory requirements and approvals. To ensure that site clearance and platform or pipeline removal are properly performed to protect marine life and the environment and do not conflict with other users of the OCS.
(10) Subpart J – RUEs for Energy and Marine-Related Activities Using Existing OCS Facilities.	To enable MMS to review information regarding the design, installation, and operation of RUEs on the OCS, to ensure that RUE operations are safe and protect the human, marine, and coastal environment. To ensure compliance with other Federal laws, these regulations, the RUE grant, and, where applicable, the approved plan.

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§ 285.115 Documents incorporated by reference.

(a) The MMS is incorporating by reference the documents listed in the table in paragraph (e) of this section. The Director of the Federal Register has approved this incorporation by

reference according to 5 U.S.C. 552(a) and 1 CFR part 51.

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

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

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

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

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

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

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

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

For...	Write to...
API Recommended Practices	American Petroleum Institute, 1220 L Street, NW, Washington, DC 20005-4070; 202-682-8000; http://www.api.org/publications/

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

Title of documents.	Incorporated by reference at...
API RP 2A-WSD, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms—Working Stress Design; Twenty-first Edition, December 2000; Errata and Supplement 1, December 2002; Errata and Supplement 2, September 2005; Errata and Supplement 3, October 2007; Product No. G2AWSD.	§ 285.825

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

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

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

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

§ 285.117 [Reserved]

§ 285.118 What are my appeal rights?

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

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

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

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

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

Subpart B—Issuance of OCS Renewable Energy Leases

General Lease Information

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

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

(1) Commercial activities; or

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

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

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

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

(c) A commercial lease issued under this part may be developed in phases, with MMS approval as provided in § 285.629.

§ 285.201 How will MMS issue leases?

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

§ 285.202 What types of leases will MMS issue?

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

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

For leases issued under this part, through either the competitive or noncompetitive process, MMS prior to issuing the lease, will coordinate and consult with relevant Federal agencies (including, in particular, those agencies involved in planning activities that are undertaken to avoid conflicts among users and maximize the economic and ecological benefits of the OCS, including multifaceted spatial planning efforts), the Governor of any affected State, the executive of any affected local government, and any affected Indian tribe, as directed by subsections 8(p)(4) and (7) of the OCS Lands Act or other relevant Federal laws. Federal statutes that require us to consult with or respond to findings include the Endangered Species Act (ESA), and the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

§ 285.204 What areas are available for leasing consideration?

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

§ 285.205 How will leases be mapped?

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

§ 285.206 What is the lease size?

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

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

§§ 285.207—285.209 [Reserved]

Competitive Lease Process

§ 285.210 How does MMS initiate the competitive leasing process?

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

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

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

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

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

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

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

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

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

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

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

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

(c) *Proposed Sale Notice.* The MMS will publish the Proposed Sale Notice in the **Federal Register** and send it to the Governor of any affected State and the executive of any local government that

might be affected. The comment period following issuance of a Proposed Sale Notice will be 60 days.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Identify the lease area;

(b) Develop options for the environmental analysis and leasing provisions (stipulations, payments, terms, and conditions); and

(c) Prepare appropriate documentation to satisfy applicable Federal requirements, such as NEPA, CZMA, the ESA, and the MSA.

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

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

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

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

(a) The area available for leasing.

(b) Proposed and final lease provisions and conditions, including, but not limited to:

(1) Lease size;

(2) Lease term;

(3) Payment requirements;

(4) Performance requirements; and

(5) Site-specific lease stipulations.

(c) Auction details, including:

(1) Bidding procedures and systems;

(2) Minimum bid;

(3) Deposit amount;

(4) The place and time for filing bids and the place, date, and hour for opening bids;

(5) Lease award method; and

(6) Bidding or application instructions.

(d) The official MMS lease form to be used or a reference to that form.

(e) Criteria MMS will use to evaluate competing bids or applications and how the criteria will be used in decision-making for awarding a lease.

(f) Award procedures, including how and when MMS will award leases and how MMS will handle unsuccessful bids or applications.

(g) Procedures for appealing the lease issuance decision.

(h) Execution of the lease instrument.

§§ 285.217–285.219 [Reserved]

Competitive Lease Award Process

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

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

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. Stage-two sealed or ascending bidding commences at some predetermined time after the end of stage-one bidding.
(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.	One proposal per company per lease or packaged bidding unit.

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

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

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

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 § 285.506 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 § 285.506 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 (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 (3) of this section (two-stage auction format only).
(6) Multiple-factor combination of nonmonetary and monetary factors.	The MMS 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.

§ 285.222 What does MMS do with my bid?

(a) If sealed bidding is used:

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

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

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

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

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

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

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

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

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

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

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

§ 285.224 What happens if MMS accepts my bid?

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

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

(1) Execute the lease;

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

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

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

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

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

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

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

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

(h) The MMS will consider the highest submitted qualified bid to be the winning bid when bidding occurs under the systems described in §§ 285.221(a)(1) through (5). We will determine the winning bid for proposals submitted under the multiple-factor bidding format on the basis of selection by the panel as specified in § 285.222(d) when the bidding system under § 285.221(a)(6) is used. We will refund the deposit on all other bids.

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

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

(b) You may ask the MMS Director for reconsideration, in writing, within 15 business days of bid rejection, under § 285.118(c)(1). We will send you a written response either affirming or reversing the rejection.

§§ 285.226–285.229 [Reserved]

Noncompetitive Lease Award Process

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

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

(a) The area you are requesting for lease.

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

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

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

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

(f) Documentation showing that you meet the qualifications to become a lessee, as specified in § 285.107.

(g) An acquisition fee, as specified in § 285.502(a).

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

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

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

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

(1) The MMS will proceed with the competitive process set forth in §§ 285.210 through 285.225;

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

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

(d) If MMS determines that there is no competitive interest in a lease:

(1) We will publish a notice, in the **Federal Register,** of such determination; and

(2) You must submit within 60 days of the date of the notice to MMS:

(i) For a commercial lease, a SAP, as described in §§ 285.605 through 285.613; or

(ii) For a limited lease, a GAP, as described in §§ 285.640 through 285.648.

(e) The MMS will coordinate and consult with affected Federal agencies, State, and local governments, and affected Indian tribes in the review of noncompetitive lease requests and associated plans.

(f) If we approve or approve with conditions your SAP or GAP, we may offer you a noncompetitive lease.

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

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

(i) Execute the lease;

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

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

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

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

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

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

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

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

§§ 285.233–285.234 [Reserved]

Commercial and Limited Lease Terms

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

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

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Lease Term	Automatic Extensions	Requirements
(1) Each commercial lease issued competitively will have a preliminary term of 6 months to submit: (i) a SAP; or (ii) a combined SAP and COP. The preliminary term begins on the effective date of the lease. A commercial lease issued noncompetitively does not have a preliminary term.	If we receive a SAP that satisfies the requirements of §§ 285.605 through 285.613 or a SAP/COP that satisfies the requirements of §§ 285.605 through 285.613 and §§ 285.620 through 285.629, 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 §§ 285.605 through 285.613. The SAP/COP must meet the requirements of §§ 285.605 through 285.613 and §§ 285.620 through 285.629.
(2) A commercial lease will have a site assessment term of 5 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 MMS approves your SAP or SAP/COP.	If we receive a COP that satisfies the requirements of §§ 285.620 through 285.629, 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 §§ 285.620 through 285.629 of this part.
(3) A commercial lease will have an operations term of 25 years, unless a longer term is negotiated by applicable parties. A request for lease renewal must be submitted 2 years before the end of the operations term. If you submit a COP, your operations term begins on the date that we approve the COP. If you submit a SAP/COP, your operations term begins 5 years after the date we approve the SAP/COP, or when fabrication and installation commence, whichever is earlier.		The lease renewal request must meet the requirements, as provided in §§ 285.425 through 285.429.
(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 applicable parties. The lease renewal term begins upon expiration of the original operations term.		We may order or grant a suspension of the operations term, as provided in §§ 285.415 through 285.421.

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

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

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

Lease Term	Extension or Suspension	Requirements
(1) Each limited lease issued competitively has a preliminary term of 6 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 §§ 285.640 through 285.648 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 §§ 285.640 through 285.648.
(2) The operations term begins when MMS approves your GAP and issues your lease. A limited lease issued noncompetitively does not have a preliminary term.		You must submit and MMS must approve your GAP before we will issue a lease. The GAP must meet the requirements of §§ 285.640 through 285.648.
(3) Each limited lease has an operations term of 5 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 §§ 285.415 through 285.421.	

(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.

§ 285.237 What is the effective date of a lease?

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

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

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

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

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

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

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

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

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

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

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

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

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

ROW Grants and RUE Grants

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

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

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

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

§ 285.301 What do ROW grants and RUE grants include?

(a) An ROW grant:

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

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

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

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

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

(a) To acquire an ROW grant or RUE grant you must provide evidence that you meet the qualifications as required in § 285.107.

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

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

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

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

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

§ 285.304 [Reserved]

Obtaining ROW Grants and RUE Grants

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

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

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

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

(c) A general schedule of proposed activities.

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

§ 285.306 What action will MMS take on my request?

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

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

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

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

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

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

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

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

To determine whether or not there is competitive interest:

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

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

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

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

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

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

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

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

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

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

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

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

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

§§ 285.311–285.314 [Reserved]

Financial Requirements for ROW Grants and RUE Grants

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

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

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

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

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

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

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

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

Subpart D—Lease and Grant Administration

Noncompliance and Cessation Orders

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

(a) The MMS may take appropriate corrective action under this part if you fail to comply with applicable provisions of Federal law, the regulations in this part, other applicable regulations, any order of the Director, the provisions of a lease or grant issued under this part, or the requirements of an approved plan or other approval under this part.

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

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

(d) Failure of a lessee, operator, or grant holder under this part to take the actions specified in a notice of noncompliance within the time limit specified provides the basis for MMS to issue a cessation order as provided in § 285.401, and/or a cancellation of the lease or grant as provided in § 285.437.

(e) If the MMS determines that any incident of noncompliance poses an imminent threat of serious or irreparable damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance, MMS may include with its notice of noncompliance an order directing you to take immediate remedial action to alleviate threats and to abate the violation and, when appropriate, a cessation order.

(f) The MMS may assess civil penalties, as authorized by section 24 of the OCS Lands Act, if you fail to comply with any provision of this part or any term of a lease, grant, or order issued under the authority of this part, after notice of such failure and expiration of any reasonable period allowed for corrective action. Civil penalties will be determined and assessed in accordance with the procedures set forth in 30 CFR part 250, subpart N.

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

§ 285.401 When may MMS issue a cessation order?

(a) The MMS may issue a cessation order during the term of your lease or grant when you fail to comply with an applicable law; regulation; order; or provision of a lease, grant, plan, or other MMS approval under this part. Except as provided in § 285.400(e), MMS will allow you a period of time to correct any noncompliance before issuing an order to cease activities.

(b) A cessation order will set forth what measures you are required to take, including reports you are required to prepare and submit to MMS, to receive approval to resume activities on your lease or grant.

§ 285.402 What is the effect of a cessation order?

(a) Upon receiving a cessation order, you must cease all activities on your lease or grant, as specified in the order. The MMS may authorize certain activities during the period of the cessation order.

(b) A cessation order will last for the period specified in the order or as otherwise specified by MMS. If MMS determines that the circumstances giving rise to the cessation order cannot be resolved within a reasonable time period, the Secretary may initiate cancellation of your lease or grant, as provided in § 285.437.

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

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

§§ 285.403–285.404 [Reserved]

Designation of Operator

§ 285.405 How do I designate an operator?

(a) If you intend to designate an operator who is not the lessee or grant holder, you must identify the proposed operator in your SAP (under § 285.610(a)(3)), COP (under § 285.626(b)(2)), or GAP (under § 285.645(b)(3)), as applicable. If no operator is designated in a SAP, COP, or GAP, MMS will deem the lessee or grant holder to be the operator.

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

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

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

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

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

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

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

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

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

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

§ 285.407 [Reserved]

Lease or Grant Assignment

§ 285.408 May I assign my lease or grant interest?

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

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

(1) The MMS-assigned lease or grant number;

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

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

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

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

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

(7) The qualifications of the assignee to hold a lease or grant under § 285.107; and

(8) A statement on how the assignee will comply with the financial assurance requirements of §§ 285.515 through 285.537. No assignment will be approved until the assignee provides the required financial assurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

§§ 285.412–285.414 [Reserved]

Lease or Grant Suspension

§ 285.415 What is a lease or grant suspension?

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

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

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

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

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

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

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

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

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

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

(d) Any other information MMS may require.

§ 285.417 When may MMS order a suspension?

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

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

(2) When continued activities pose an imminent threat of serious or irreparable harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; or

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

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

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

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

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

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

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

(ii) To determine any actions that you must take to mitigate or avoid any damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance.

§ 285.418 How will MMS issue a suspension?

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

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

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

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

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

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

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

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

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

§ 285.421 How long will a suspension be in effect?

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

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

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

§§ 285.422–285.424 [Reserved]

Lease or Grant Renewal

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

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

§ 285.426 When must I submit my request for renewal?

(a) You must request a renewal from MMS:

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

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

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

§ 285.427 How long is a renewal?

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

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

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

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

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

If you timely request a renewal:

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

(b) You may request a suspension of your lease or grant, as provided in § 285.416, while we consider your request.

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

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

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

(a) Design life of existing technology.

(b) Availability and feasibility of new technology.

(c) Environmental and safety record of the lessee or grantee.

(d) Operational and financial compliance record of the lessee or grantee.

(e) Competitive interest and fair return considerations.

(f) Effects of the lease or grant on generation capacity and reliability within the regional electrical distribution and transmission system.

§§ 285.430–285.431 [Reserved]

Lease or Grant Termination

§ 285.432 When does my lease or grant terminate?

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

(a) The expiration of the applicable term of your lease or grant, unless your term is automatically extended under §§ 285.235 or 285.236, a request for renewal of your lease or grant is pending a decision by MMS, or your lease or grant is suspended or renewed as provided in this subpart;

(b) A cancellation, as set forth in § 285.437; or

(c) Relinquishment, as set forth in § 285.435.

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

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

(1) Make all payments due, including any accrued rentals and deferred bonuses; and

(2) Perform any other outstanding obligations under the lease or grant within 6 months.

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

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

(1) The MMS may call for the forfeiture of your financial assurance; and

(2) You remain liable for removal or disposal costs and responsible for

accidents or damages that might result from such failure.

§ 285.434 [Reserved]

Lease or Grant Relinquishment

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

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

(1) Make all payments due on the lease or grant, including any accrued rent and deferred bonuses;

(2) Decommission all facilities on the lease or grant to be relinquished to the satisfaction of MMS; and

(3) Perform any other outstanding obligations under the lease or grant.

(b) Your relinquishment application must include:

(1) Name;

(2) Contact name;

(3) Telephone number;

(4) Fax number;

(5) E-mail address;

(6) The MMS-assigned lease or grant number, and, if applicable, the name of any facility;

(7) A description of the geographic area you are relinquishing;

(8) The name, title, and signature of your authorizing official (the name, title, and signature must match exactly the name, title, and signature in MMS qualification records); and

(9) A statement that you will adhere to the requirements of subpart I of this part.

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

Lease or Grant Contraction

§ 285.436 Can MMS require lease or grant contraction?

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

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

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

(c) You may appeal this decision under § 285.118 of this part.

Lease or Grant Cancellation

§ 285.437 When can my lease or grant be canceled?

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

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

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

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

(3) Required by national security or defense; or

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

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

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

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

Subpart E—Payments and Financial Assurance Requirements

Payments

§ 285.500 How do I make payments under this part?

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

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

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

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	Payment	Amount	Due Date	Payment Mechanism	Section Reference
Initial payments for leases					
(1) If your lease is issued competitively	Bid Deposit	As set in Final Sale Notice/depends on bid	With bid	Pay.Gov	§ 285.501
	Bonus Balance		Lease issuance	§ 218.51	
(2) If your lease is issued noncompetitively	Acquisition Fee	$0.25 per acre, unless otherwise set by the Director	With application	Pay.gov	§ 285.502
(3) All leases	Initial Rent	$3 per acre per year	45 days after lease issuance	Pay.gov	§ 285.503
Subsequent payments for leases and project easements					
(4) All leases	Subsequent Rent	$3 per acre per year	Annually	§ 218.51	§§ 285.503 and 285.504
(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	§ 218.51	§ 285.507
(7) If your commercial lease is producing	Operating Fee	Determined by the formula in § 285.506	Annually	§ 218.51	§ 285.506
Payments for ROW grants and RUE grants[1]					
(8) 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	Pay.gov	§ 285.508
	Subsequent Rent		Annually or in 5-year batches	§ 218.51	

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

BILLING CODE 4310–MR–C

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 285.503 What are the rent and operating fee requirements for a commercial lease?

(a) The rent for a commercial lease is $3 per acre per year, unless otherwise established in the Final Sale Notice or lease.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) F is the dollar amount of the annual operating fee;

(2) M is the nameplate capacity expressed in megawatts;

(3) H is the number of hours in a year, equal to 8,760, used to calculate an annual payment;

(4) c is the ''capacity factor'' representing the anticipated efficiency of the facility's operation expressed as a decimal between zero and one;

(5) P is a measure of the annual average wholesale electric power price expressed in dollars per megawatt hour, as provided in paragraph (c)(2) of this section; and

(6) r is the operating fee rate expressed as a decimal between zero and one.

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

$$\underset{\text{(annual operating fee)}}{F} = \underset{\text{(nameplate capacity)}}{M} * \underset{\text{(hours per year)}}{H} * \underset{\text{(capacity factor)}}{c} * \underset{\text{(power price)}}{P} * \underset{\text{(operating fee rate)}}{r}$$

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

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

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

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

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

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

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

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

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

(4) Ten days after the anniversary date of when you began to commercially generate electricity, you must submit to

MMS documentation of the gross annual generation of electricity produced by the generating facility on the lease. You must use the same information collection form as authorized by the EIA for this information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) $5 per acre per year; or

(2) A minimum of $450 per year.

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

(1) An annual basis;

(2) For a 5-year period; or

(3) For multiples of 5 years.

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

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

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

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

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

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

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

(1) The number of the lease, ROW grant, or RUE grant involved;

(2) Name of each lessee or grant holder of record;

(3) Name of each operator;

(4) A demonstration that:

(i) Continued activities would be uneconomic without the requested reduction or waiver, or

(ii) A reduction or waiver is necessary to encourage additional activities; and

(5) Any other information required by the Director.

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

§ 285.511–285.514 [Reserved]

Financial Assurance Requirements for Commercial Leases

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

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

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

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

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

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

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

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

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

Before MMS 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.
(2) Approve your SAP.	A supplemental bond or other financial assurance, in an amount determined by MMS, if upon reviewing your SAP, MMS 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 MMS 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 MMS based on anticipated decommissioning costs. The MMS will allow you to provide your financial assurance for decommissioning in accordance with the number of facilities installed or being installed. The MMS must approve the schedule for providing the appropriate financial assurance coverage.

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

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

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

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

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

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

(2) Any past due rent and other payments;

(3) Other monetary obligations; and

(4) The estimated cost of facility decommissioning, as required by subpart I of this part.

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

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

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

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

(ii) Any past due rent and other payments;

(iii) Other monetary obligations; and

(iv) The estimated cost of facility decommissioning.

§ 285.518–285.519 [Reserved]

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

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

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

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

(2) Another approved financial assurance instrument of such minimum level as specified in §§ 285.526 through 285.529.

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

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

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

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

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

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

(2) Any past due rent and other payments;

(3) Other monetary obligations; and

(4) The estimated cost of facility decommissioning.

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

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

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

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

§§ 285.522–285.524 [Reserved]

Requirements for Financial Assurance Instruments

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

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

(1) Be payable to MMS upon demand; and

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

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

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

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

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

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

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

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

(2) The Treasury decertifies the surety.

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

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

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

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

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

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

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

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

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

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

(b) If you use a Treasury security:

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

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

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

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

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

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

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

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

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

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

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

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

(c) If the annual updates to the information required by paragraph (a) of

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

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

(a) You may use a third-party guaranty if the guarantor meets the criteria prescribed in paragraph (b) of this section and submits an agreement meeting the criteria prescribed in paragraph (c) of this section. The agreement must guarantee compliance with the obligations of all lessees and operators and grant holders.

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

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

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

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

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

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

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

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

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.
(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 § 285.107.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Changes in Financial Assurance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The following occurs:

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

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

(iii) The surety issuing the new bond has agreed to assume that portion of the outstanding liabilities that accrued during the terminated period of liability that exceeds the coverage of the bond prescribed under §§ 285.515, 285.516, 285.520, or 285.521, and of which you were notified.

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

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

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

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

§ 285.534 When may MMS cancel my bond?

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

Bond.	The period of liability ends.	Your bond will not be released until.
(a) Bonds for commercial leases submitted under § 285.515.	When MMS 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. The MMS will reduce the amount of your bond or return a portion of your security if MMS 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 § 285.516.	When MMS 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. The MMS will reduce the amount of your bond or return a portion of your security if MMS determines that you need less than the full amount of the bond to meet any possible future obligations; and (2) The MMS 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 §§ 285.520 and 285.521 for limited leases, ROW grants, or RUE grants.	When MMS 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. The MMS will reduce the amount of your bond or return a portion of your security if MMS determines that you need less than the full amount of the bond to meet any possible future obligations.

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

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

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

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

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

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

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

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

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

(2) Your surety agrees to and demonstrates that it will bring your lease or grant into compliance within the timeframe we prescribe, even if the cost of compliance exceeds the face amount of the bond.

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

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

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

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

§§ 285.538–285.539 [Reserved]

Revenue Sharing With States

§ 285.540 How will MMS equitably distribute revenues to States?

(a) The MMS will distribute among the eligible coastal States 27 percent of the following revenues derived from qualified projects, where a qualified project and qualified project area is determined in § 285.541 and an eligible State is determined in § 285.542, with each term defined in § 285.112. Revenues subject to distribution to eligible States include all bonuses, acquisition fees, rentals, and operating fees derived from the entire qualified project area and associated project easements not limited to revenues attributable to the portion of the project area within 3 miles of the seaward boundary of a coastal State. The revenues to be shared do not include administrative fees such as service fees and those assessed for civil penalties and forfeiture of bond or other surety obligations.

(b) The project area is the area included within a single lease or grant. For each qualified project, MMS will determine and announce the project area and its geographic center at the time it grants or issues a lease, easement, or right-of-way on the OCS. If a qualified project lease or grant's boundaries change significantly due to

actions pursuant to §§ 285.435 or 285.436, MMS will re-evaluate the project area to determine whether the geographic center has changed. If it has, MMS will re-determine State eligibility and shares accordingly.

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

$F_i = (1/S_i) \div (\Sigma_{i=1 \ldots n} (1/S_i))$.

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

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

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

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

§ 285.543 Example of how the inverse distance formula works.

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

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

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

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

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

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

Subpart F—Plans and Information Requirements

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

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

Before you:	you must:
(a) Conduct any site assessment activities on your commercial lease.	Submit and obtain approval for your SAP according to §§ 285.605 through 285.613.
(b) Conduct any activities pertaining to construction of facilities for commercial operations on your commercial lease,	Submit and obtain approval for your COP, according to §§ 285.620 through 285.629.
(c) Conduct any activities on your limited lease, ROW grant, or RUE grant in any OCS area,	Submit and obtain approval for your GAP according to §§ 285.640 through 285.648.

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

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

(a) If your lease or grant is issued competitively, you must submit your SAP or your GAP within 6 months of issuance.

(b) If you request that a lease or grant be issued noncompetitively, you must submit your SAP or your GAP within 60 days after the Director issues a determination that there is no competitive interest.

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

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

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

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

§ 285.602 What records must I maintain?

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

§§ 285.603–285.604 [Reserved]

Site Assessment Plan and Information Requirements for Commercial Leases

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

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

(1) Your SAP must describe how you will conduct your resource assessment (e.g., meteorological and oceanographic

data collection) or technology testing activities; and

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

(b) Your SAP must include data from:

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

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

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

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

§ 285.606 What must I demonstrate in my SAP?

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

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

(2) Is safe;

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

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

(5) Uses best available and safest technology;

(6) Uses best management practices; and

(7) Uses properly trained personnel.

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

§ 285.607 How do I submit my SAP?

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

§§ 285.608–285.609 [Reserved]

Contents of the Site Assessment Plan

§ 285.610 What must I include in my SAP?

Your SAP must include the following information, as applicable.

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

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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 § 285.405.
(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.
(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 subpart H of this part.
(9) CVA nomination, if required.	CVA nominations for reports in subpart G of this part, as required by § 285.706, or a request to waive the CVA requirement, as required by § 285.705(c).
(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 MMS.
(11) Decommissioning and site clearance procedures.	A discussion of methodologies.
(12) Air quality information	Information as described in § 285.659 of this section.
(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 §§ 285.515 and 285.516.
(16) Other information.	Additional information as requested by MMS.

(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; (ii) 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.
(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.

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

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

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

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

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

(b) For competitively issued commercial leases, MMS will have prepared a NEPA document and consistency determination for the lease sale and site assessment activities. However, if you submit a SAP that shows changes in impacts from those identified in the NEPA document or consistency determination prepared for the lease, MMS may determine that your SAP is subject to a new NEPA/CZMA

and other relevant Federal reviews. In that case, MMS will notify you of the determination, and you must submit a SAP that describes those resources, conditions, and activities listed in the following table that could be affected by your proposed activities, or that could affect the activities proposed in your SAP, including:

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 required by the Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531 et. seq.).
(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, and calving grounds; barrier islands, beaches, dunes, and wetlands.
(6) Archaeological resources.	As required by the NHPA (16 U.S.C. 470 et. seq.), 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 nonenergy mineral exploration or development.
(9) Consistency Certification	As required by CZMA, as appropriate: (i) 15 CFR part 930, subpart D, for noncompetitive leases; (ii) 15 CFR part 930, subpart E, for competitive leases.
(10) Other resources, conditions, and activities.	As identified by MMS.

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

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

If your commercial lease was issued...	Your SAP will be handled as follows:
(a) Competitively	The MMS will prepare a consistency determination that will cover the lease sale and site assessment activities. However, if you submit a SAP that shows changes in impacts from those identified in the lease sale consistency determination, you may be subject to a new consistency review. In that case, MMS will notify you of the determination and we will forward to the State CZM agency 1 copy and 1 electronic copy of your SAP, consistency certification, and necessary data and information required under 15 CFR part 930, subpart E, after MMS has determined that all information requirements for the SAP are met and MMS prepares its NEPA compliance document.
(b) Noncompetitively	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 State's CZM agency and MMS at the same time.

§ 285.613 How will MMS process my SAP?

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

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

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

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

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

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

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

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

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

Activities Under an Approved SAP

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

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

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

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

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

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

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

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

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

§ 285.616 [Reserved]

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

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

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

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

(1) Activities not described in your approved SAP;

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

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

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

(5) Changes in the location of your onshore support base from one State to another, or to a new base requiring expansion;

(6) Changes in the location of bottom disturbances (anchors, chains, etc.) by 500 feet (152 meters) or greater from the approved locations. If a specific anchor pattern was approved as a mitigation measure to avoid contact with bottom features, any change in the proposed bottom disturbances would likely trigger the need for a revision;

(7) Structural failure of one or more facilities; or

(8) Changes to any other activity specified by MMS.

(d) We may begin the appropriate NEPA analysis and other relevant consultations when we determine that a proposed revision could:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional Federal authorizations; or

(3) Involve activities not previously identified and evaluated.

(e) When you propose a revision, we may approve the revision if we determine that the revision is:

(1) Designed not to cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; and

(2) Otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

§ 285.618 What must I do upon completion of approved site assessment activities?

(a) If, prior to the expiration of your site assessment term, you timely submit a COP meeting the requirements of this subpart, or a complete FERC license application, that describes the continued use of existing facilities approved in your SAP, you may keep such facilities in place on your lease during the time that MMS reviews your COP for approval or FERC reviews your license application for approval.

(b) You are not required to initiate the decommissioning process for facilities that are authorized to remain in place under your approved COP or approved FERC license.

(c) If, following the technical and environmental review of your submitted COP, MMS determines that such facilities may not remain in place, you must initiate the decommissioning process, as provided in subpart I of this part.

(d) If FERC determines that such facilities may not remain in place, you must initiate the decommissioning process as provided in subpart I of this part.

(e) You must initiate the decommissioning process, as set forth in subpart I of this part, upon the termination of your lease.

§ 285.619 [Reserved]

Construction and Operations Plan for Commercial Leases

§ 285.620 What is a Construction and Operations Plan (COP)?

The COP describes your construction, operations, and conceptual decommissioning plans under your commercial lease, including your project easement. The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of § 285.113.

(a) Your COP must describe all planned facilities that you will construct and use for your project, including onshore and support facilities and all anticipated project easements.

(b) Your COP must describe all proposed activities including your proposed construction activities, commercial operations, and conceptual decommissioning plans for all planned facilities, including onshore and support facilities.

(c) You must receive MMS approval of your COP before you can begin any of the approved activities on your lease.

§ 285.621 What must I demonstrate in my COP?

Your COP must demonstrate that you have planned and are prepared to conduct the proposed activities in a manner that conforms to your responsibilities listed in § 285.105(a) and:

(a) Conforms to all applicable laws, implementing regulations, lease provisions, and stipulations or conditions of your commercial lease;

(b) Is safe;

(c) Does not unreasonably interfere with other uses of the OCS, including those involved with National security or defense;

(d) Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(e) Uses best available and safest technology;

(f) Uses best management practices; and

(g) Uses properly trained personnel.

§ 285.622 How do I submit my COP?

(a) You must submit one paper copy and one electronic version of your COP to MMS at the address listed in § 285.110(a).

(b) You may submit information and a request for any project easement as part of your original COP submission or as a revision to your COP.

§§ 285.623–285.625 [Reserved]

Contents of the Construction and Operations Plan

§ 285.626 What must I include in my COP?

(a) You must submit the results of the following surveys for the proposed site(s) of your facility(ies). Your COP must include the following information:

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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: (i) Shallow faults; (ii) Gas seeps or shallow gas; (iii) Slump blocks or slump sediments; (iv) Hydrates; or (v) Ice scour of seabed sediments.
(2) Geological survey relevant to the design and siting of your facility.	The results of the geological survey with supporting data.	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 in situ 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 et. seq.), 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

Information:	Report contents:	Including:
		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 § 285.405.
(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 § 285.629.
(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 MMS 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 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., interconnection 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 subpart H of this part.
(16) Information you incorporate by reference.	A listing of the documents you referenced.
(17) A list of agencies and persons	Contact information and issues discussed.

Project information:	Including:
with whom you have communicated, or with whom you will communicate, regarding potential impacts associated with your proposed activities.	
(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 MMS.
(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 §§ 285.515 and 285.516.
(20) CVA nominations for reports required in subpart G of this part.	CVA nominations for reports in subpart G of this part, 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 § 285.659 of this section.
(23) Other information.	Additional information as required by MMS.

§ 285.627 What information and certifications must I submit with my COP to assist the MMS in complying with NEPA and other relevant laws?

(a) You must submit with your COP detailed information to assist MMS in complying with NEPA and other relevant laws. Your COP must describe those resources, conditions, and activities listed in the following table that could be affected by your proposed activities, or that could affect the activities proposed in your COP, including:

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. 1531et. seq.).
(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, and calving grounds; barrier islands, beaches, dunes, and wetlands.
(6) Archaeological resources.	As required by the NHPA (16 U.S.C. 470 et. seq.), 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 nonenergy mineral exploration or development.
(9) Consistency Certification	As required by the CZMA: (i) 15 CFR part 930, subpart D, for noncompetitive leases. (ii) 15 CFR part 930, subpart E, for competitive leases.
(10) Other resources, conditions, and activities.	As identified by MMS.

(b) You must submit one paper copy and one electronic copy of your consistency certification. Your consistency certification must include:

(1) One copy of your consistency certification under subsection 307(c)(3)(B) of the CZMA (16 U.S.C. 1456(c)(3)(B)) and 15 CFR 930.76 stating that the proposed activities described in detail in your plans comply with the State(s) approved coastal management program(s) and will be conducted in a manner that is consistent with such program(s); and

(2) "Information," as required by 15 CFR 930.76(a) and 15 CFR 930.58(a)(2), and "Analysis," as required by 15 CFR 930.58(a)(3).

(c) You must submit your oil spill response plan, as required by part 254 of this subchapter.

(d) You must submit your Safety Management System as required by § 285.810.

§ 285.628 How will MMS process my COP?

(a) The MMS will review your submitted COP, and the information provided pursuant to § 285.627, to determine if it contains all the required information necessary to conduct our technical and environmental reviews. We will notify you if your submitted COP lacks any necessary information.

(b) The MMS will prepare an appropriate NEPA analysis.

(c) The MMS will forward one copy of your COP, consistency certification, and associated data and information under the CZMA to the State's CZM agency after all information requirements for the COP are met.

(d) As appropriate, MMS will coordinate and consult with relevant Federal, State, and local agencies and affected Indian tribes, and provide to them relevant nonproprietary data and information pertaining to your proposed activities.

(e) During the review process, we may request additional information if we determine that the information provided is not sufficient to complete the review and approval process. If you fail to provide the requested information, MMS may disapprove your COP.

(f) Upon completion of our technical and environmental reviews and other reviews required by Federal law (e.g., CZMA), MMS may approve, disapprove, or approve with modifications your COP.

(1) If we approve your COP, we will specify terms and conditions to be incorporated into your COP. You must certify compliance with certain of those terms and conditions, as required under § 285.633(b); and

(2) If we disapprove your COP, we will inform you of the reasons and allow you an opportunity to resubmit a revised plan addressing the concerns identified, and may suspend the term of your lease, as appropriate, to allow this to occur.

(g) If MMS approves your project easement, MMS will issue an addendum to your lease specifying the terms of the project easement. A project easement may include off-lease areas that:

(1) Contain the sites on which cable, pipeline, or associated facilities are located;

(2) Do not exceed 200 feet (61 meters) in width, unless safety and environmental factors during construction and maintenance of the associated cables or pipelines require a greater width; and

(3) For associated facilities, are limited to the area reasonably necessary for power or pumping stations or other accessory facilities.

§ 285.629 May I develop my lease in phases?

In your COP, you may request development of your commercial lease in phases. In support of your request, you must provide details as to what portions of the lease will be initially developed for commercial operations and what portions of the lease will be reserved for subsequent phased development.

§ 285.630 [Reserved]

Activities Under an Approved COP

§ 285.631 When must I initiate activities under an approved COP?

After your COP is approved, you must commence construction by the date given in the construction schedule required by § 285.626(b)(21), and included as a part of your approved COP, unless MMS approves a deviation from your schedule.

§ 285.632 What documents must I submit before I may construct and install facilities under my approved COP?

(a) You must submit to MMS the documents listed in the following table:

Document:	Requirements are found in:
(1) Facility Design Report.	§ 285.701.
(2) Fabrication and Installation Report.	§ 285.702.

(b) You must submit your Safety Management System, as required by § 285.810 of this part.

(c) These activities must fall within the scope of your approved COP. If they do not fall within the scope of your approved COP, you will be required to submit a revision to your COP, under § 285.634, for MMS approval before commencing the activity.

§ 285.633 How do I comply with my COP?

(a) Based on MMS's environmental and technical reviews, we will specify terms and conditions to be incorporated into your COP.

(b) You must submit a certification of compliance annually (or other frequency as determined by MMS) with certain terms and conditions of your COP that MMS identifies. Together with your certification, you must submit:

(1) Summary reports that show compliance with the terms and conditions which require certification; and

(2) A statement identifying and describing any mitigation measures and monitoring methods, and their effectiveness. If you identified measures that were not effective, then you must make recommendations for new mitigation measures or monitoring methods.

(c) As provided at § 285.105(i), MMS may require you to submit any supporting data and information.

§ 285.634 What activities require a revision to my COP, and when will MMS approve the revision?

(a) You must notify MMS in writing before conducting any activities not described in your approved COP, describing in detail the type of activities you propose to conduct. We will determine whether the activities you propose are authorized by your existing COP or require a revision to your COP. We may request additional information from you, if necessary, to make this determination.

(b) The MMS will periodically review the activities conducted under an approved COP. The frequency and extent of the review will be based on the significance of any changes in available information, and on onshore or offshore conditions affecting, or affected by, the activities conducted under your COP. If the review indicates that the COP should be revised to meet the requirement of this part, we will require you to submit the needed revisions.

(c) Activities for which a proposed revision to your COP will likely be necessary include:

(1) Activities not described in your approved COP;

(2) Modifications to the size or type of facility or equipment you will use;

(3) Change in the surface location of a facility or structure;

(4) Addition of a facility or structure not described in your approved COP;

(5) Change in the location of your onshore support base from one State to another or to a new base requiring expansion;

(6) Changes in the location of bottom disturbances (anchors, chains, etc.) by 500 feet (152 meters) or greater from the approved locations (e.g., if a specific anchor pattern was approved as a mitigation measure to avoid contact with bottom features, any change in the proposed bottom disturbances would likely trigger the need for a revision);

(7) Structural failure of one or more facilities; or

(8) Change in any other activity specified by MMS.

(d) We may begin the appropriate NEPA analysis and relevant consultations when we determine that a proposed revision could:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional Federal authorizations; or

(3) Involve activities not previously identified and evaluated.

(e) When you propose a revision, we may approve the revision if we determine that the revision is:

(1) Designed not to cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; and

(2) Otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

§ 285.635 What must I do if I cease activities approved in my COP before the end of my commercial lease?

You must notify the MMS, within 5 business days, any time you cease commercial operations, without an approved suspension, under your approved COP. If you cease commercial operations for an indefinite period which extends longer than 6 months, we may cancel your lease under § 285.437, and you must initiate the decommissioning process, as set forth in subpart I of this part.

§ 285.636 What notices must I provide MMS following approval of my COP?

You must notify MMS in writing of the following events, within the time periods provided:

(a) No later than 30 days after commencing activities associated with the placement of facilities on the lease area under a Fabrication and Installation Report.

(b) No later than 30 days after completion of construction and installation activities under a Fabrication and Installation Report.

(c) At least 7 days before commencing commercial operations.

§ 285.637 When may I commence commercial operations on my commercial lease?

If you are conducting activities on your lease that:

(a) Do not require a FERC license (i.e. wind), then you may commence commercial operations 30 days after the CVA or project engineer has submitted to MMS the final Fabrication and Installation Report for the fabrication and installation review, as provided in § 285.708.

(b) Require a FERC license or exemption, then you may commence commercial operations when permitted by the terms of your license or exemption.

§ 285.638 What must I do upon completion of my commercial operations as approved in my COP or FERC license?

(a) Upon completion of your approved activities under your COP, you must initiate the decommissioning process as set forth in subpart I of this part. You must submit your decommissioning application as provided in §§ 285.905 and 285.906.

(b) Upon completion of your approved activities under your FERC license, the terms of your FERC license will govern your decommissioning activities.

§ 285.639 [Reserved]

General Activities Plan Requirements for Limited Leases, ROW Grants, and RUE Grants

§ 285.640 What is a General Activities Plan (GAP)?

(a) A GAP describes your proposed construction, activities, and conceptual decommissioning plans for all planned facilities, including testing of technology devices and onshore and support facilities that you will construct and use for your project, including any project easements for the assessment and development of your limited lease or grant.

(b) You must receive MMS approval of your GAP before you can begin any of the approved activities on your lease or grant. For a ROW grant or RUE grant issued competitively, you must submit your GAP within 6 months of issuance.

§ 285.641 What must I demonstrate in my GAP?

Your GAP must demonstrate that you have planned and are prepared to conduct the proposed activities in a manner that:

(a) Conforms to all applicable laws, implementing regulations, lease provisions and stipulations;

(b) Is safe;

(c) Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;

(d) Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(e) Uses best available and safest technology;

(f) Uses best management practices; and

(g) Uses properly trained personnel.

§ 285.642 How do I submit my GAP?

(a) You must submit one paper copy and one electronic version of your GAP to MMS at the address listed in § 285.110(a).

(b) If you have a limited lease, you may submit information on any project easement as part of your original GAP submission or as a revision to your GAP.

§§ 285.643–285.644 [Reserved]

Contents of the General Activities Plan

§ 285.645 What must I include in my GAP?

(a) You must provide the following results of geophysical and geological surveys, hazards surveys, archaeological surveys (if required), and baseline collection studies (e.g., biological) with the supporting data in your GAP:

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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; (ii) 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 et. seq.), 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 § 285.405.
(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 MMS.
(11) Decommissioning and site clearance procedures.	A discussion of methodologies.
(12) Air quality information	As described in § 285.659 of this section.
(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 §§ 285.520 and 285.521.
(16) Other information.	Additional information as requested by MMS.

(c) If you are applying for a project easement or constructing a facility, or a combination of facilities deemed by MMS to be complex or significant, you must provide the following information in addition to what is required in paragraphs (a) and (b) of this section and comply with the requirements of subpart G of this part:

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 subpart G of this part.	CVA nominations for reports in subpart G of this part, as required by § 285.706, or a request for a waiver under § 285.705(c).
(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 MMS.

(d) The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure in accordance with the terms of § 285.113.

§ 285.646 What information and certifications must I submit with my GAP to assist MMS in complying with NEPA and other relevant laws?

You must submit with your GAP detailed information to assist MMS in complying with NEPA and other relevant laws. Your GAP must describe those resources, conditions, and activities listed in the following table that could be affected by your proposed activities, or that could affect the activities proposed in your GAP, including:

Type of information:	Including:
(a) Hazard information.	Meteorology, oceanography, sediment transport, geology, and shallow geological or manmade hazards.
(b) Water quality.	Turbidity and total suspended solids from construction.
(c) Biological resources.	Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, plankton, seagrasses, and plant life.
(d) Threatened or endangered species.	As required by the ESA (16 U.S.C. 1531et. seq.).
(e) 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, and calving grounds; barrier islands, beaches, dunes, and wetlands
(f) Archaeological resources.	As required by NHPA (16 U.S.C. 470 et. seq.), as amended.
(g) 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.
(h) Coastal and marine uses.	Military activities, vessel traffic, and energy and nonenergy mineral exploration or development.
(i) Consistency Certification	As required by CZMA: (1) 15 CFR part 930, subpart D, for noncompetitive leases; (2) 15 CFR part 930, subpart E, for competitive leases.
(j) Other resources, conditions, and activities.	As required by MMS.

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§ 285.647 How will my GAP be processed for Federal consistency under the Coastal Zone Management Act?

Your GAP will be processed based on how your limited lease, ROW grant, or RUE grant was issued:

If your limited lease, ROW, or RUE grant was issued:	Your GAP will be processed as follows:
(a) Competitively	The MMS will forward 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 MMS has determined that all information requirements for the GAP are met and MMS prepares its NEPA compliance document.
(b) Noncompetitively	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 State's CZM agency and MMS at the same time.

§ 285.648 How will MMS process my GAP?

(a) The MMS will review your submitted GAP, along with the information and certifications provided pursuant to § 285.646, to determine if it contains all the required information necessary to conduct our technical and environmental reviews.

(1) We will notify you if we deem your proposed facility or combination of facilities to be complex or significant; and

(2) We will notify you if your submitted GAP lacks any necessary information.

(b) The MMS will prepare appropriate NEPA analysis.

(c) When appropriate, we will coordinate and consult with relevant State and Federal agencies and affected Indian tribes and provide to other local, State, and Federal agencies and affected Indian tribes relevant nonproprietary data and information pertaining to your proposed activities.

(d) During the review process, we may request additional information if we determine that the information provided is not sufficient to complete the review and approval process. If you fail to provide the requested information, MMS may disapprove your GAP.

(e) Upon completion of our technical and environmental reviews and other reviews required by Federal law (e.g., CZMA), MMS may approve, disapprove, or approve with modifications your GAP.

(1) If we approve your GAP, we will specify terms and conditions to be incorporated into your GAP. You must certify compliance with certain of those terms and conditions, as required under § 285.653(c); and

(2) If we disapprove your GAP, we will inform you of the reasons and allow you an opportunity to resubmit a revised plan making the necessary corrections, and may suspend the term of your lease or grant, as appropriate, to allow this to occur.

§ 285.649 [Reserved]

Activities Under an Approved GAP

§ 285.650 When may I begin conducting activities under my GAP?

After MMS approves your GAP, you may begin conducting the approved activities that do not involve a project easement or the construction of facilities on the OCS that MMS has deemed to be complex or significant.

§ 285.651 When may I construct complex or significant OCS facilities on my limited lease or any facilities on my project easement proposed under my GAP?

If you are applying for a project easement, or installing a facility or a combination of facilities on your limited lease deemed by MMS to be complex or significant, as provided in § 285.648(a)(1), you also must comply with the requirements of subpart G of this part and submit your Safety Management System required by § 285.810 before construction may begin.

§ 285.652 How long do I have to conduct activities under an approved GAP?

After MMS approves your GAP, you have:

(a) For a limited lease, 5 years to conduct your approved activities, unless we renew the term under §§ 285.425 through 285.429.

(b) For a ROW grant or RUE grant, the time provided in the terms of the grant.

§ 285.653 What other reports or notices must I submit to MMS under my approved GAP?

(a) You must notify MMS in writing within 30 days after completing installation activities approved in your GAP.

(b) You must prepare and submit to MMS annually a report that summarizes the findings from any activities you conduct under your approved GAP and the results of those activities. We will protect the information from public disclosure as provided in § 285.113.

(c) You must annually (or other frequency as determined by MMS) submit a certification of compliance with those terms and conditions of your GAP that MMS identifies under § 285.648(e)(1). Together with your certification, you must submit:

(1) Summary reports that show compliance with the terms and conditions which require certification; and

(2) A statement identifying and describing any mitigation measures and monitoring methods and their effectiveness. If you identified measures that were not effective, you must include your recommendations for new mitigation measures or monitoring methods.

§ 285.654 [Reserved]

§ 285.655 What activities require a revision to my GAP, and when will MMS approve the revision?

(a) You must notify MMS in writing before conducting any activities not described in your approved GAP, describing in detail the type of activities you propose to conduct. We will determine whether the activities you propose are authorized by your existing GAP or require a revision to your GAP. We may request additional information from you, if necessary, to make this determination.

(b) The MMS will periodically review the activities conducted under an approved GAP. The frequency and extent of the review will be based on the significance of any changes in available information and on onshore or offshore conditions affecting, or affected by, the activities conducted under your GAP. If the review indicates that the GAP should be revised to meet the requirement of this part, we will require you to submit the needed revisions.

(c) Activities for which a proposed revision to your GAP will likely be necessary include:

(1) Activities not described in your approved GAP;

(2) Modifications to the size or type of facility or equipment you will use;

(3) Change in the surface location of a facility or structure;

(4) Addition of a facility or structure not contemplated in your approved GAP;

(5) Change in the location of your onshore support base from one State to another or to a new base requiring expansion;

(6) Changes in the locations of bottom disturbances (anchors, chains, etc.) by 500 feet (152 meters) or greater from the approved locations. If a specific anchor pattern was approved as a mitigation measure to avoid contact with bottom features, any change in the proposed bottom disturbances would likely trigger the need for a revision;

(7) Structural failure of one or more facilities; or

(8) Change to any other activity specified by MMS.

(d) We may begin the appropriate NEPA analysis and any relevant consultations when we determine that a proposed revision could:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional Federal authorizations; or

(3) Involve activities not previously identified and evaluated.

(e) When you propose a revision, we may approve the revision if we determine that the revision is:

(1) Designed not to cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; and

(2) Otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

§ 285.656 What must I do if I cease activities approved in my GAP before the end of my term?

You must notify the MMS any time you cease activities under your approved GAP without an approved suspension. If you cease activities for an indefinite period that exceeds 6 months, MMS may cancel your lease or grant

under § 285.437, as applicable, and you must initiate the decommissioning process, as set forth in subpart I of this part.

§ 285.657 What must I do upon completion of approved activities under my GAP?

Upon completion of your approved activities under your GAP, you must initiate the decommissioning process as set forth in subpart I of this part. You must submit your decommissioning application as provided in §§ 285.905 and 285.906.

Cable and Pipeline Deviations

§ 285.658 Can my cable or pipeline construction deviate from my approved COP or GAP?

(a) You must make every effort to ensure that all cables and pipelines are constructed in a manner that minimizes deviations from the approved plan under your lease or grant.

(b) If MMS determines that a significant change in conditions has occurred that would necessitate an adjustment to your ROW, RUE or lease before the commencement of construction of the cable or pipeline on the grant or lease, MMS will consider modifications to your ROW grant, RUE grant, or your lease addendum for a project easement in connection with your COP or GAP.

(c) If, after construction, it is determined that a deviation from the approved plan has occurred, you must:

(1) Notify the operators of all leases (including mineral leases issued under this subchapter) and holders of all ROW grants or RUE grants (including all grants issued under this subchapter) which include the area where a deviation has occurred and provide MMS with evidence of such notification;

(2) Relinquish any unused portion of your lease or grant; and

(3) Submit a revised plan for MMS approval as necessary.

(d) Construction of a cable or pipeline that substantially deviates from the approved plan may be grounds for cancellation of the lease or grant.

§ 285.659 What requirements must I include in my SAP, COP, or GAP regarding air quality?

(a) You must comply with the Clean Air Act (42 U.S.C. 7409) and its implementing regulations, according to the following table.

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 MMS 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 MMS three copies of the modeling report and three sets of digital files as supporting information. The digital files must contain the formatted meteorological files used in the modeling runs, the model input file, and the model output file.

Subpart G—Facility Design, Fabrication, and Installation

Reports

§ 285.700 What reports must I submit to MMS before installing facilities described in my approved SAP, COP, or GAP?

(a) You must submit the following reports to MMS before installing facilities described in your approved COP (§ 285.632(a)) and, when required by this part, your SAP (§ 285.614(b)) or GAP (§ 285.651):

(1) A Facility Design Report; and

(2) A Fabrication and Installation Report.

(b) You may begin to fabricate and install the approved facilities after MMS notifies you that it has received your reports and has no objections. If MMS receives the reports, but does not respond with objections within 60 days of receipt or 60 days after we approve your SAP, COP, or GAP, if you submitted your report with the plan, MMS is deemed not to have objections to the reports, and you may commence fabrication and installation of your facility or facilities.

(c) If MMS has any objections, we will notify you verbally or in writing within 60 days of receipt of the report. Following initial notification of objections, MMS may follow up with written correspondence outlining its specific objections to the report and request that certain actions be undertaken. You cannot commence activities addressed in such report until you resolve all objections to MMS's satisfaction.

§ 285.701 What must I include in my Facility Design Report?

(a) Your Facility Design Report provides specific details of the design of any facilities, including cables and pipelines, that are outlined in your approved SAP, COP, or GAP. Your Facility Design Report must demonstrate that your design conforms to your responsibilities listed in § 285.105(a). You must include the following items in your Facility Design Report:

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Required documents:	Required contents:	Other requirements:
(1) Cover letter.	(i) Proposed facility designations; (ii) Lease, ROW grant or RUE grant number; (iii) Area; name and block numbers; and (iv) The type of facility.	You must submit 1 paper copy and 1 electronic copy.
(2) Location plat.	(i) Latitude and longitude coordinates, Universal Mercator grid-system coordinates, state plane coordinates in the Lambert or Transverse Mercator Projection System; (ii) Distances in feet from the nearest block lines. These coordinates must be based on the NAD (North American Datum) 83 datum plane coordinate system; and (iii) The location of any proposed project easement.	Your plat must be drawn to a scale of 1 inch equals 100 feet and include the coordinates of the lease, ROW grant, or RUE grant block boundary lines. You must submit 1 paper copy and 1 electronic copy
(3) Front, Side, and Plan View drawings.	(i) Facility dimensions and orientation; (ii) Elevations relative to Mean Lower Low Water; and (iii) Pile sizes and penetration.	Your drawing sizes must not exceed 11" x 17". You must submit 1 paper copy and 1 electronic copy.
(4) Complete set of structural drawings.	The approved for construction fabrication drawings should be submitted including, e.g., (i) Cathodic protection systems; (ii) Jacket design; (iii) Pile foundations; (iv) Mooring and tethering systems; (v) Foundations and anchoring systems; and (vi) Associated cable and pipeline designs.	Your drawing sizes must not exceed 11" x 17". You must submit 1 paper copy and 1 electronic copy.
(5) Summary of environmental data used for design.	A summary of the environmental data used in the design or analysis of the facility. Examples of relevant data include information on: (i) Extreme weather; (ii) Seafloor conditions; and (iii) Waves, wind, current, tides, temperature, snow and ice effects, marine growth, and water depth.	You must submit 1 paper copy and 1 electronic copy. If you submitted these data as part of your SAP, COP, or GAP, you may reference the plan.
(6) Summary of the engineering design data.	(i) Loading information (e.g., live, dead, environmental); (ii) Structural information (e.g., design-life; material types; cathodic protection systems; design criteria; fatigue life; jacket design; deck design; production component design; foundation pilings and templates, and mooring or tethering systems; fabrication and installation guidelines); and (iii) Location of foundation boreholes and foundation piles; and (iv) Foundation information (e.g., soil stability, design criteria).	You must submit 1 paper copy and 1 electronic copy.
(7) A complete set of design calculations.	Self-explanatory	You must submit 1 paper copy and 1 electronic copy.
(8) Project-specific studies used in the facility design or installation.	All studies pertinent to facility design or installation, e.g., oceanographic and soil reports including the results of the surveys required in §§ 285.610(b), 285.627(a), or 285.645(a).	You must submit 1 paper copy and 1 electronic copy.

Required documents:	Required contents:	Other requirements:
(9) Description of the loads imposed on the facility.	(i) Loads imposed by jacket; (ii) Decks; (iii) Production components; (iv) Foundations, foundation pilings and templates, and anchoring systems; and (v) Mooring or tethering systems.	You must submit 1 paper copy and 1 electronic copy.
(10) Geotechnical Report.	A list of all data from borings and recommended design parameters.	You must submit 1 paper copy and 1 electronic copy.

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(b) For any floating facility, your design must meet the requirements of the U.S. Coast Guard for structural integrity and stability (e.g., verification of center of gravity). The design must also consider:

(1) Foundations, foundation pilings and templates, and anchoring systems; and

(2) Mooring or tethering systems.

(c) You must provide the location of records, as required in § 285.714(c).

(d) If you are required to use a CVA, the Facility Design Report must include one paper copy of the following certification statement: ''The design of this structure has been certified by a MMS approved CVA to be in accordance with accepted engineering practices and the approved SAP, GAP, or COP as appropriate. The certified design and as-built plans and specifications will be on file at (given location).''

(e) The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of § 285.113.

§ 285.702 What must I include in my Fabrication and Installation Report?

(a) Your Fabrication and Installation Report must describe how your facilities will be fabricated and installed in accordance with the design criteria identified in the Facility Design Report; your approved SAP, COP, or GAP; and generally accepted industry standards and practices. Your Fabrication and Installation Report must demonstrate how your facilities will be fabricated and installed in a manner that conforms to your responsibilities listed in § 285.105(a). You must include the following items in your Fabrication and Installation Report:

Required documents:	Required contents:	Other requirements:
(1) Cover letter.	(i) Proposed facility designation, lease, ROW grant, or RUE grant number; (ii) Area, name, and block number; and (iii) The type of facility.	You must submit 1 paper copy and 1 electronic copy.
(2) Schedule.	Fabrication and installation.	You must submit 1 paper copy and 1 electronic copy.
(3) Fabrication information.	The industry standards you will use to ensure the facilities are fabricated to the design criteria identified in your Facility Design Report.	You must submit 1 paper copy and 1 electronic copy.
(4) Installation process information.	Details associated with the deployment activities, equipment, and materials, including onshore and offshore equipment and support, and anchoring and mooring patterns.	You must submit 1 paper copy and 1 electronic copy.
(5) Federal, State, and local permits (e.g., EPA, Army Corps of Engineers).	Either 1 copy of the permit or information on the status of the application.	You must submit 1 paper copy and 1 electronic copy.
(6) Environmental information.	(i) Water discharge; (ii) Waste disposal; (iii) Vessel information; and (iv) Onshore waste receiving treatment or disposal facilities.	You must submit 1 paper copy and 1 electronic copy. If you submitted these data as part of your SAP, COP, or GAP, you may reference the plan.
(7) Project easement.	Design of any cables, pipelines, or facilities. Information on burial methods and vessels.	You must submit 1 paper copy and 1 electronic copy.

(b) You must provide the location of records, as required in § 285.714(c).

(c) If you are required to use a CVA, the Fabrication and Installation Report must include one paper copy of the following certification statement: "The fabrication and installation of this structure has been certified by a MMS approved CVA to be in accordance with accepted engineering practices and the approved SAP, GAP, or COP as appropriate. The certified design and as-built plans and specifications will be on file at (given location)."

(d) The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of § 285.113.

§ 285.703 What reports must I submit for project modifications and repairs?

(a) You must verify and, in a report to us, certify that major repairs and major modifications to the project conform to accepted engineering practices.

(1) A major repair is a corrective action involving structural members affecting the structural integrity of a portion of or all the facility.

(2) A major modification is an alteration involving structural members affecting the structural integrity of a portion of or all the facility.

(b) The report must also identify the location of all records pertaining to the major repairs or major modifications, as required in § 285.714(c).

(c) The MMS may require you to use a CVA for project modifications and repairs.

§ 285.704 [Reserved]

Certified Verification Agent

§ 285.705 When must I use a Certified Verification Agent (CVA)?

You must use a CVA to review and certify the Facility Design Report, the Fabrication and Installation Report, and the Project Modifications and Repairs Report.

(a) You must use a CVA to:

(1) Ensure that your facilities are designed, fabricated, and installed in conformance with accepted engineering practices and the Facility Design Report and Fabrication and Installation Report;

(2) Ensure that repairs and major modifications are completed in conformance with accepted engineering practices; and

(3) Provide MMS immediate reports of all incidents that affect the design, fabrication, and installation of the project and its components.

(b) The MMS may waive the requirement that you use a CVA if you can demonstrate the following:

If you demonstrate that...	Then MMS may waive the requirement for a CVA for the following:
(1) The facility design conforms to a standard design that has been used successfully in a similar environment, and the installation design conforms to accepted engineering practices.	The design of your structure(s).
(2) The manufacturer has successfully manufactured similar facilities, and the facility will be fabricated in conformance with accepted engineering practices.	The fabrication of your structure(s).
(3) The installation company has successfully installed similar facilities in a similar offshore environment, and your structure(s) will be installed in conformance with accepted engineering practices.	The installation of your structure(s).
(4) Repairs and major modifications will be completed in conformance with accepted engineering practices.	The repair or major modification of your structure(s).

(c) You must submit a request to waive the requirement to use a CVA to MMS in writing, along with your SAP under § 285.610(a)(9), COP under § 285.626(b)(20), or GAP under § 285.645(c)(5).

(1) The MMS will review your request to waive the use of the CVA and notify you of our decision along with our decision on your SAP, COP, or GAP.

(2) If MMS does not waive the requirement for a CVA, you may file an appeal under § 285.118.

(3) If MMS waives the requirement that you use a CVA, your project engineer must perform the same duties and responsibilities as the CVA, except as otherwise provided.

§ 285.706 How do I nominate a CVA for MMS approval?

(a) As part of your COP (as provided in § 285.626(b)(20) and, when required by this part, your SAP (§ 285.610(a)(9)) or GAP (§ 285.645(c)(5)), you must nominate a CVA for MMS approval. You must specify whether the nomination is for the Facility Design Report, Fabrication and Installation Report, Modification and Repair Report, or for any combination of these.

(b) For each CVA that you nominate, you must submit to MMS a list of documents used in your design that you will forward to the CVA and a qualification statement that includes the following:

(1) Previous experience in third-party verification or experience in the design, fabrication, installation, or major modification of offshore energy facilities;

(2) Technical capabilities of the individual or the primary staff for the specific project;

(3) Size and type of organization or corporation;

(4) In-house availability of, or access to, appropriate technology (including computer programs, hardware, and testing materials and equipment);

(5) Ability to perform the CVA functions for the specific project considering current commitments;

(6) Previous experience with MMS requirements and procedures, if any; and

(7) The level of work to be performed by the CVA.

(c) Individuals or organizations acting as CVAs must not function in any capacity that will create a conflict of interest, or the appearance of a conflict of interest.

(d) The verification must be conducted by or under the direct supervision of registered professional engineers.

(e) The MMS will approve or disapprove your CVA as part of its review of the COP or, when required, of your SAP or GAP.

(f) You must nominate a new CVA for MMS approval if the previously approved CVA:

(1) Is no longer able to serve in a CVA capacity for the project; or

(2) No longer meets the requirements for a CVA set forth in this subpart.

§ 285.707 What are the CVA's primary duties for facility design review?

If you are required to use a CVA:

(a) The CVA must use good engineering judgment and practices in conducting an independent assessment of the design of the facility. The CVA must certify in the Facility Design Report to MMS that the facility is designed to withstand the environmental and functional load conditions appropriate for the intended service life at the proposed location.

(b) The CVA must conduct an independent assessment of all proposed:

(1) Planning criteria;

(2) Operational requirements;

(3) Environmental loading data;

(4) Load determinations;

(5) Stress analyses;

(6) Material designations;

(7) Soil and foundation conditions;

(8) Safety factors; and

(9) Other pertinent parameters of the proposed design.

(c) For any floating facility, the CVA must ensure that any requirements of the U.S. Coast Guard for structural integrity and stability (e.g., verification of center of gravity), have been met. The CVA must also consider:

(1) Foundations, foundation pilings and templates, and anchoring systems; and

(2) Mooring or tethering systems.

§ 285.708 What are the CVA's or project engineer's primary duties for fabrication and installation review?

(a) The CVA or project engineer must do all of the following:

(1) Use good engineering judgment and practice in conducting an independent assessment of the fabrication and installation activities;

(2) Monitor the fabrication and installation of the facility as required by paragraph (b) of this section;

(3) Make periodic onsite inspections while fabrication is in progress and verify the items required by § 285.709;

(4) Make periodic onsite inspections while installation is in progress and satisfy the requirements of § 295.710; and

(5) Certify in a report that project components are fabricated and installed in accordance with accepted engineering practices; your approved COP, SAP, or GAP (as applicable); and the Fabrication and Installation Report.

(i) The report must also identify the location of all records pertaining to fabrication and installation, as required in § 285.714(c); and

(ii) You may commence commercial operations or other approved activities 30 days after MMS receives that certification report, unless MMS notifies you within that time period of its objections to the certification report.

(b) To comply with paragraph (a)(5) of this section, the CVA or project engineer must monitor the fabrication and installation of the facility to ensure that it has been built and installed according to the Facility Design Report and Fabrication and Installation Report.

(1) If the CVA or project engineer finds that fabrication and installation procedures have been changed or design specifications have been modified, the CVA or project engineer must inform you; and

(2) If you accept the modifications, then you must also inform MMS.

§ 285.709 When conducting onsite fabrication inspections, what must the CVA or project engineer verify?

(a) To comply with § 285.708(a)(3), the CVA or project engineer must make periodic onsite inspections while fabrication is in progress and must verify the following fabrication items, as appropriate:

(1) Quality control by lessee (or grant holder) and builder;

(2) Fabrication site facilities;

(3) Material quality and identification methods;

(4) Fabrication procedures specified in the Fabrication and Installation Report, and adherence to such procedures;

(5) Welder and welding procedure qualification and identification;

(6) Structural tolerances specified, and adherence to those tolerances;

(7) Nondestructive examination requirements and evaluation results of the specified examinations;

(8) Destructive testing requirements and results;

(9) Repair procedures;

(10) Installation of corrosion-protection systems and splash-zone protection;

(11) Erection procedures to ensure that overstressing of structural members does not occur;

(12) Alignment procedures;

(13) Dimensional check of the overall structure, including any turrets, turret-and-hull interfaces, any mooring line and chain and riser tensioning line segments; and

(14) Status of quality-control records at various stages of fabrication.

(b) For any floating facilities, the CVA or project engineer must ensure that any requirements of the U.S. Coast Guard for structural integrity and stability (e.g., verification of center of gravity) have been met. The CVA or project engineer must also consider:

(1) Foundations, foundation pilings and templates, and anchoring systems; and

(2) Mooring or tethering systems.

§ 285.710 When conducting onsite installation inspections, what must the CVA or project engineer do?

To comply with § 285.708(a)(4), the CVA or project engineer must make periodic onsite inspections while installation is in progress and must, as appropriate, verify, witness, survey, or check, the installation items required by this section.

(a) The CVA or project engineer must verify, as appropriate, all of the following:

(1) Loadout and initial flotation procedures;

(2) Towing operation procedures to the specified location, and review the towing records;

(3) Launching and uprighting activities;

(4) Submergence activities;

(5) Pile or anchor installations;

(6) Installation of mooring and tethering systems;

(7) Final deck and component installations; and

(8) Installation at the approved location according to the Facility Design Report and the Fabrication and Installation Report.

(b) For a fixed or floating facility, the CVA or project engineer must verify that proper procedures were used during the following:

(1) The loadout of the jacket, decks, piles, or structures from each fabrication site; and

(2) The actual installation of the facility or major modification and the related installation activities.

(c) For a floating facility, the CVA or project engineer must verify that proper procedures were used during the following:

(1) The loadout of the facility;

(2) The installation of foundation pilings and templates, and anchoring systems; and

(3) The installation of the mooring and tethering systems.

(d) The CVA or project engineer must conduct an onsite survey of the facility after transportation to the approved location.

(e) The CVA or project engineer must spot-check the equipment, procedures, and recordkeeping as necessary to determine compliance with the applicable documents incorporated by reference and the regulations under this part.

§ 285.711 [Reserved]

§ 285.712 What are the CVA's or project engineer's reporting requirements?

(a) The CVA or project engineer must prepare and submit to you and MMS all reports required by this subpart. The CVA or project engineer must also submit interim reports to you and MMS, as requested by the MMS.

(b) For each report required by this subpart, the CVA or project engineer must submit one electronic copy and one paper copy of each final report to MMS. In each report, the CVA or project engineer must:

(1) Give details of how, by whom, and when the CVA or project engineer activities were conducted;

(2) Describe the CVA's or project engineer's activities during the verification process;

(3) Summarize the CVA's or project engineer's findings; and

(4) Provide any additional comments that the CVA or project engineer deems necessary.

§ 285.713 What must I do after the CVA or project engineer confirms conformance with the Fabrication and Installation Report on my commercial lease?

After the CVA or project engineer files the certification report, you must notify MMS within 10 business days after commencing commercial operations.

§ 285.714 What records relating to SAPs COPs and GAPs must I keep?

(a) Until MMS releases your financial assurance under § 285.534, you must compile, retain, and make available to MMS representatives, within the time specified by MMS, all of the following:

(1) The as-built drawings;

(2) The design assumptions and analyses;

(3) A summary of the fabrication and installation examination records;

(4) The inspection results from the inspections and assessments required by §§ 285.820 through 285.825; and

(5) Records of repairs not covered in the inspection report submitted under § 285.824(b)(3).

(b) You must record and retain the original material test results of all primary structural materials during all stages of construction until MMS releases your financial assurance under § 285.534. Primary material is material that, should it fail, would lead to a significant reduction in facility safety, structural reliability, or operating capabilities. Items such as steel brackets, deck stiffeners and secondary braces or beams would not generally be

considered primary structural members (or materials).

(c) You must provide MMS with the location of these records in the certification statement, as required in §§ 285.701(c), 285.703(b), and 285.708(a)(5)(i).

Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs and GAPs

§ 285.800 How must I conduct my activities to comply with safety and environmental requirements?

(a) You must conduct all activities on your lease or grant under this part in a manner that conforms with your responsibilities in § 285.105(a), and using:

(1) Trained personnel; and

(2) Technologies, precautions, and techniques that will not cause undue harm or damage to natural resources, including their physical, atmospheric, and biological components.

(b) You must certify compliance with those terms and conditions identified in your approved SAP, COP, or GAP, as required under §§ 285.615(c), 285.633(b), or 285.653(c).

§ 285.801 How must I conduct my approved activities to protect marine mammals, threatened and endangered species, and designated critical habitat?

(a) You must not conduct any activity under your lease or grant that may affect threatened or endangered species or that may affect designated critical habitat of such species until the appropriate level of consultation is conducted, as required under the ESA, as amended (16 U.S.C. 1531 *et seq.*), to ensure that your actions are not likely to jeopardize a threatened or endangered species and are not likely to destroy or adversely modify designated critical habitat.

(b) You must not conduct any activity under your lease or grant that may result in an incidental taking of marine mammals until the appropriate authorization has been issued under the Marine Mammal Protection Act of 1972 (MMPA) as amended (16 U.S.C. 1361 *et seq.*).

(c) If there is reason to believe that a threatened or endangered species may be present while you conduct your MMS approved activities or may be affected by the direct or indirect effects of your actions:

(1) You must notify us that endangered or threatened species may be present in the vicinity of the lease or grant or may be affected by your actions; and

(2) We will consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, you may proceed.

(d) If there is reason to believe that designated critical habitat of a threatened or endangered species may be affected by the direct or indirect effects of your MMS approved activities:

(1) You must notify us that designated critical habitat of a threatened or endangered species in the vicinity of the lease or grant may be affected by your actions; and

(2) We will consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, you may proceed.

(e) If there is reason to believe that marine mammals may be incidentally taken as a result of your proposed activities:

(1) You must agree to secure an authorization from National Oceanic and Atmospheric Administration (NOAA) or the U.S. Fish and Wildlife Service (FWS) for incidental taking, including taking by harassment, that may result from your actions; and

(2) You must comply with all measures required by the NOAA or FWS, including measures to affect the least practicable impact on such species and its habitat and to ensure no unmitigable adverse impact on the availability of the species for subsistence use.

(f) Submit to us:

(1) Measures designed to avoid or minimize adverse effects and any potential incidental take of the endangered or threatened species or marine mammals;

(2) Measures designed to avoid likely adverse modification or destruction of designated critical habitat of such endangered or threatened species; and

(3) Your agreement to monitor for the incidental take of the species and adverse effects on the critical habitat, and provide the results of the monitoring to MMS as required; and

(4) Your agreement to perform any relevant terms and conditions of the Incidental Take Statement that may result from the ESA consultation.

(5) Your agreement to perform any relevant mitigation measures under an MMPA incidental take authorization.

§ 285.802 What must I do if I discover a potential archaeological resource while conducting my approved activities?

(a) If you, your subcontractors, or any agent acting on your behalf discovers a potential archaeological resource while conducting construction activities, or any other activity related to your project, you must:

(1) Immediately halt all seafloor-disturbing activities within the area of the discovery;

(2) Notify MMS of the discovery within 72 hours; and

(3) Keep the location of the discovery confidential and not take any action that may adversely affect the archaeological resource until we have made an evaluation and instructed you on how to proceed.

(b) We may require you to conduct additional investigations to determine if the resource is eligible for listing in the National Register of Historic Places under 36 CFR 60.4. We will do this if:

(1) The site has been impacted by your project activities; or

(2) Impacts to the site or to the area of potential effect cannot be avoided.

(c) If investigations under paragraph (b) of this section indicate that the resource is potentially eligible for listing in the National Register of Historic Places, we will tell you how to protect the resource, or how to mitigate adverse effects to the site.

(d) If we incur costs in protecting the resource, under section 110(g) of the NHPA, we may charge you reasonable costs for carrying out preservation responsibilities under the OCS Lands Act.

§ 285.803 How must I conduct my approved activities to protect essential fish habitats identified and described under the Magnuson-Stevens Fishery Conservation and Management Act?

(a) If, during the conduct of your approved activities, MMS finds that essential fish habitat or habitat areas of particular concern may be adversely affected by your activities, MMS must consult with National Marine Fisheries Service.

(b) Any conservation recommendations adopted by MMS to avoid or minimize adverse affects on Essential Fish Habitat will be incorporated as terms and conditions in the lease and must be adhered to by the applicant. The MMS may require additional surveys to define boundaries and avoidance distances.

(c) If required, MMS will specify the survey methods and instrumentations for conducting the biological survey and will specify the contents of the biological report.

§§ 285.804–285.809 [Reserved]

Safety Management Systems

§ 285.810 What must I include in my Safety Management System?

You must submit a description of the Safety Management System you will use with your COP (provided under

§ 285.627(d)) and, when required by this part, your SAP (as provided in § 285.614(b)) or GAP (as provided in § 285.651). You must describe:

(a) How you will ensure the safety of personnel or anyone on or near your facilities;

(b) Remote monitoring, control, and shut down capabilities;

(c) Emergency response procedures;

(d) Fire suppression equipment, if needed;

(e) How and when you will test your Safety Management System; and

(f) How you will ensure personnel who operate your facilities are properly trained.

§ 285.811 When must I follow my Safety Management System?

Your Safety Management System must be fully functional when you begin activities described in your approved COP, SAP, or GAP. You must conduct all activities described in your approved COP, SAP, or GAP in accordance with the Safety Management System you described, as required by § 285.810.

§ 285.812 [Reserved]

Maintenance and Shutdowns

§ 285.813 When do I have to report removing equipment from service?

(a) The removal of any equipment from service may result in MMS applying remedies, as provided in this part, when such equipment is necessary for implementing your approved plan. Such remedies may include an order from MMS requiring you to replace or remove such equipment or facilities.

(b)(1) You must report within 24 hours when equipment necessary for implementing your approved plan is removed from service for more than 12 hours. If you provide an oral notification, you must submit a written confirmation of this notice within 3 business days, as required by § 285.105(c);

(2) You do not have to report removing equipment necessary for implementing your plan if the removal is part of planned maintenance or repair activities; and

(3) You must notify MMS when you return the equipment to service.

§ 285.814 [Reserved]

Equipment Failure and Adverse Environmental Effects

§ 285.815 What must I do if I have facility damage or an equipment failure?

(a) If you have facility damage or the failure of a pipeline, cable, or other equipment necessary for you to implement your approved plan, you must make repairs as soon as practicable. If you have a major repair, you must submit a report of the repairs to MMS, as required in § 285.711.

(b) If you are required to report any facility damage or failure under § 285.831, MMS may require you to revise your SAP, COP, or GAP to describe how you will address the facility damage or failure as required by § 285.634 (COP), § 285.617 (SAP), § 285.655 (GAP). You must submit a report of the repairs to MMS, as required in § 285.703.

(c) The MMS may require that you analyze cable, pipeline, or facility damage or failure to determine the cause. If requested by MMS, you must submit a comprehensive written report of the failure or damage to MMS as soon as available.

§ 285.816 What must I do if environmental or other conditions adversely affect a cable, pipeline, or facility?

If environmental or other conditions adversely affect a cable, pipeline, or facility so as to endanger the safety or the environment, you must:

(a) Submit a plan of corrective action to MMS within 30 days of the discovery of the adverse effect.

(b) Take remedial action as described in your corrective action plan.

(c) Submit to the MMS a report of the remedial action taken within 30 days after completion.

§§ 285.817–285.819 [Reserved]

Inspections and Assessments

§ 285.820 Will MMS conduct inspections?

The MMS will inspect OCS facilities and any vessels engaged in activities authorized under this part. We conduct these inspections:

(a) To verify that you are conducting activities in compliance with subsection 8(p) of the OCS Lands Act; the regulations in this part; the terms, conditions, and stipulations of your lease or grant; approved plans; and other applicable laws and regulations.

(b) To determine whether proper safety equipment has been installed and is operating properly according to your Safety Management System, as required in § 285.810.

§ 285.821 Will MMS conduct scheduled and unscheduled inspections?

The MMS will conduct both scheduled and unscheduled inspections.

§ 285.822 What must I do when MMS conducts an inspection?

(a) When MMS conducts an inspection, you must:

(1) Provide access to all facilities on your lease (including your project easement) or grant; and

(2) Make the following available for MMS to inspect:

(i) The area covered under a lease, ROW grant, or RUE grant;

(ii) All improvements, structures, and fixtures on these areas; and

(iii) All records of design, construction, operation, maintenance, repairs, or investigations on or related to the area.

(b) You must retain these records in paragraph (a)(2)(iii) of this section until MMS releases your financial assurance under § 285.534 and provide them to MMS upon request, within the time period specified by MMS.

(c) You must demonstrate to the inspector how you are in compliance with your Safety Management System.

§ 285.823 Will MMS reimburse me for my expenses related to inspections?

Upon request, MMS will reimburse you for food, quarters, and transportation that you provide for our representatives while they inspect your lease or grant facilities and associated activities. You must send us your reimbursement request within 90 days of the inspection.

§ 285.824 How must I conduct self-inspections?

(a) You must develop a comprehensive annual self-inspection plan covering all of your facilities. You must keep this plan wherever you keep your records and make it available to MMS inspectors upon request. Your plan must specify:

(1) The type, extent, and frequency of in-place inspections that you will conduct for both the above-water and the below-water structures of all facilities and pertinent components of the mooring systems for any floating facilities; and

(2) How you are monitoring the corrosion protection for both the above-water and below-water structures.

(b) You must submit a report annually to us no later than November 1 that must include:

(1) A list of facilities inspected in the preceding 12 months;

(2) The type of inspection employed, (i.e., visual, magnetic particle, ultrasonic testing); and

(3) A summary of the inspection indicating what repairs, if any, were needed and the overall structural condition of the facility.

§ 285.825 When must I assess my facilities?

(a) You must perform an assessment of the structure, when needed, based on

the platform assessment initiators listed in sections 17.2.1–17.2.5 of API RP 2A–WSD, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms—Working Stress Design (incorporated by reference, as specified in § 285.115).

(b) You must initiate mitigation actions for structures that do not pass the assessment process of API RP 2A–WSD.

(c) You must perform other assessments as required by MMS.

§§ 285.826–285.829 [Reserved]

Incident Reporting and Investigation

§ 285.830 What are my incident reporting requirements?

(a) You must report all incidents listed in § 285.831 to MMS, according to the reporting requirements for these incidents in §§ 285.832 and 285.833.

(b) These reporting requirements apply to incidents that occur on the area covered by your lease or grant under this part and that are related to activities resulting from the exercise of your rights under your lease or grant under this part.

(c) Nothing in this subpart relieves you from providing notices and reports of incidents that may be required by other regulatory agencies.

(d) You must report all spills of oil or other liquid pollutants in accordance with 30 CFR 254.46.

§ 285.831 What incidents must I report, and when must I report them?

(a) You must report the following incidents to us immediately via oral communication, and provide a written follow-up report (paper copy or electronically transmitted) within 15 business days after the incident:

(1) Fatalities;

(2) Incidents that require the evacuation of person(s) from the facility to shore or to another offshore facility;

(3) Fires and explosions;

(4) Collisions that result in property or equipment damage greater than $25,000 (*Collision* means the act of a moving vessel (including an aircraft) striking another vessel, or striking a stationary vessel or object. *Property or equipment damage* means the cost of labor and material to restore all affected items to their condition before the damage, including, but not limited to, the OCS facility, a vessel, a helicopter, or the equipment. It does not include the cost of salvage, cleaning, dry docking, or demurrage);

(5) Incidents involving structural damage to an OCS facility that is severe enough so that activities on the facility cannot continue until repairs are made;

(6) Incidents involving crane or personnel/material handling activities, if they result in a fatality, injury, structural damage, or significant environmental damage;

(7) Incidents that damage or disable safety systems or equipment (including firefighting systems);

(8) Other incidents resulting in property or equipment damage greater than $25,000; and

(9) Any other incidents involving significant environmental damage, or harm.

(b) You must provide a written report of the following incidents to us within 15 days after the incident:

(1) Any injuries that result in the injured person not being able to return to work or to all of their normal duties the day after the injury occurred; and

(2) All incidents that require personnel on the facility to muster for evacuation for reasons not related to weather or drills.

§ 285.832 How do I report incidents requiring immediate notification?

For an incident requiring immediate notification under § 285.831(a), you must notify MMS verbally after aiding the injured and stabilizing the situation. Your verbal communication must provide the following information:

(a) Date and time of occurrence;

(b) Identification and contact information for the lessee, grant holder, or operator;

(c) Contractor, and contractor representative's name and telephone number (if a contractor is involved in the incident or injury/fatality);

(d) Lease number, OCS area, and block;

(e) Platform/facility name and number, or cable or pipeline segment number;

(f) Type of incident or injury/fatality;

(g) Activity at time of incident; and

(h) Description of the incident, damage, or injury/fatality.

§ 285.833 What are the reporting requirements for incidents requiring written notification?

(a) For any incident covered under § 285.831, you must submit a written report within 15 days after the incident to MMS. The report must contain the following information:

(1) Date and time of occurrence;

(2) Identification and contact information for each lessee, grant holder, or operator;

(3) Name and telephone number of the contractor and the contractor's representative, if a contractor is involved in the incident or injury;

(4) Lease number, OCS area, and block;

(5) Platform/facility name and number, or cable or pipeline segment number;

(6) Type of incident or injury;

(7) Activity at time of incident;

(8) Description of incident, damage, or injury (including days away from work, restricted work, or job transfer), and any corrective action taken; and

(9) Property or equipment damage estimate (in U.S. dollars).

(b) You may submit a report or form prepared for another agency in lieu of the written report required by paragraph (a) of this section if the report or form contains all required information.

(c) The MMS may require you to submit additional information about an incident on a case-by-case basis.

Subpart I—Decommissioning

Decommissioning Obligations and Requirements

§ 285.900 Who must meet the decommissioning obligations in this subpart?

(a) Lessees are jointly and severally responsible for meeting decommissioning obligations for facilities on their leases, including all obstructions, as the obligations accrue and until each obligation is met.

(b) Grant holders are jointly and severally liable for meeting decommissioning obligations for facilities on their grant, including all obstructions, as the obligations accrue and until each obligation is met.

§ 285.901 When do I accrue decommissioning obligations?

You accrue decommissioning obligations when you are or become a lessee or grant holder, and you either install, construct, or acquire by an MMS-approved assignment a facility, cable, or pipeline, or you create an obstruction to other uses of the OCS.

§ 285.902 What are the general requirements for decommissioning for facilities authorized under my SAP, COP, or GAP?

(a) Except as otherwise authorized by MMS under § 285.909, within 2 years following termination of a lease or grant, you must:

(1) Remove or decommission all facilities, projects, cables, pipelines, and obstructions;

(2) Clear the seafloor of all obstructions created by activities on your lease, including your project easement, or grant, as required by the MMS.

(b) Before decommissioning the facilities under your SAP, COP, or GAP, you must submit a decommissioning

application and receive approval from the MMS.

(c) The approval of the decommissioning concept in the SAP, COP, or GAP is not an approval of a decommissioning application. However, you may submit your complete decommissioning application simultaneously with the SAP, COP, or GAP so that it may undergo appropriate technical and regulatory reviews at that time.

(d) Following approval of your decommissioning application, you must submit a decommissioning notice under § 285.908 to MMS at least 60 days before commencing decommissioning activities.

(e) If you, your subcontractors, or any agent acting on your behalf discover any archaeological resource while conducting decommissioning activities, you must immediately halt bottom-disturbing activities within 1,000 feet of the discovery and report the discovery to us within 72 hours. We will inform you how to conduct investigations to determine if the resource is significant and how to protect it. You, your subcontractors, or any agent acting on your behalf must keep the location of the discovery confidential and must not take any action that may adversely affect the archaeological resource until we have made an evaluation and told you how to proceed.

(f) Provide MMS with documentation of any coordination efforts you have made with the affected States, local, and tribal governments.

§ 285.903 What are the requirements for decommissioning FERC-licensed hydrokinetic facilities?

You must comply with the decommissioning requirements in your MMS-issued lease. If you fail to comply with the decommissioning requirements of your lease then:

(a) The MMS may call for the forfeiture of your bond or other financial assurance;

(b) You remain liable for removal or disposal costs and responsible for accidents or damages that might result from such failure; and

(c) The MMS may take enforcement action under § 285.400 of this part.

§ 285.904 Can I request a departure from the decommissioning requirements?

You may request a departure from the decommissioning requirements under § 285.103.

Decommissioning Applications

§ 285.905 When must I submit my decommissioning application?

You must submit your decommissioning application upon the earliest of the following dates:

(a) 2 years before the expiration of your lease.

(b) 90 days after completion of your commercial activities on a commercial lease.

(c) 90 days after completion of your approved activities under a limited lease on a ROW grant or RUE grant.

(d) 90 days after cancellation, relinquishment, or other termination of your lease or grant.

§ 285.906 What must my decommissioning application include?

You must provide one paper copy and one electronic copy of the application. Include the following information in the application, as applicable.

(a) Identification of the applicant including:

(1) Lease operator, ROW grant holder, or RUE grant holder;

(2) Address;

(3) Contact person and telephone number; and

(4) Shore base.

(b) Identification and description of the facilities, cables, or pipelines you plan to remove or propose to leave in place, as provided in § 285.909.

(c) A proposed decommissioning schedule for your lease, ROW grant, or RUE grant, including the expiration or relinquishment date and proposed month and year of removal.

(d) A description of the removal methods and procedures, including the types of equipment, vessels, and moorings (i.e., anchors, chains, lines, etc.) you will use.

(e) A description of your site clearance activities.

(f) Your plans for transportation and disposal (including as an artificial reef) or salvage of the removed facilities, cables, or pipelines and any required approvals.

(g) A description of those resources, conditions, and activities that could be affected by or could affect your proposed decommissioning activities. The description must be as detailed as necessary to assist MMS in complying with the NEPA and other relevant Federal laws.

(h) The results of any recent biological surveys conducted in the vicinity of the structure and recent observations of turtles or marine mammals at the structure site.

(i) Mitigation measures you will use to protect archaeological and sensitive biological features during removal activities.

(j) A description of measures you will take to prevent unauthorized discharge of pollutants, including marine trash and debris, into the offshore waters.

(k) A statement of whether or not you will use divers to survey the area after removal to determine any effects on marine life.

§ 285.907 How will MMS process my decommissioning application?

(a) Based upon your inclusion of all the information required by § 285.906, MMS will compare your decommissioning application with the decommissioning general concept in your approved SAP, COP, or GAP to determine what technical and environmental reviews are needed.

(b) You will likely have to revise your SAP, COP, or GAP, and MMS will begin the appropriate NEPA analysis and other regulatory reviews as required, if MMS determines that your decommissioning application would:

(1) Result in a significant change in the impacts previously identified and evaluated in your SAP, COP, or GAP;

(2) Require any additional Federal permits; or

(3) Propose activities not previously identified and evaluated in your SAP, COP, or GAP.

(c) During the review process, we may request additional information if we determine that the information provided is not sufficient to complete the review and approval process.

(d) Upon completion of the technical and environmental reviews, we may approve, approve with conditions, or disapprove your decommissioning application.

(e) If MMS disapproves your decommissioning application, you must resubmit your application to address the concerns identified by MMS.

§ 285.908 What must I include in my decommissioning notice?

(a) The decommissioning notice is distinct from your decommissioning application and may only be submitted following approval of your decommissioning application, as described in §§ 285.905 through 285.907. You must submit a decommissioning notice at least 60 days before you plan to begin decommissioning activities.

(b) Your decommissioning notice must include:

(1) A description of any changes to the approved removal methods and procedures in your approved decommissioning application, including changes to the types of vessels and equipment you will use; and

(2) An updated decommissioning schedule.

(c) We will review your decommissioning notice and may require you to resubmit a decommissioning application if MMS determines that your decommissioning activities would:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional Federal permits; or

(3) Propose activities not previously identified and evaluated.

Facility Removal

§ 285.909 When may MMS authorize facilities to remain in place following termination of a lease or grant?

(a) In your decommissioning application, you may request that certain facilities authorized in your lease or grant remain in place for other activities authorized in this part, elsewhere in this subchapter, or by other applicable Federal laws.

(b) The MMS may approve such requests on a case-by-case basis considering the following:

(1) Potential impacts to the marine environment;

(2) Competing uses of the OCS;

(3) Impacts on marine safety and national defense;

(4) Maintenance of adequate financial assurance; and

(5) Other factors determined by the Director.

(c) Except as provided in paragraph (d) of this section, if MMS authorizes facilities to remain in place, the former lessee or grantee under this part remains jointly and severally liable for decommissioning the facility unless satisfactory evidence is provided to MMS showing that another party has assumed that responsibility and has secured adequate financial assurances.

(d) In your decommissioning application, you may request that certain facilities authorized in your lease or grant be converted to an artificial reef or otherwise toppled in place. The MMS will evaluate all such requests, as provided in § 250.1730 of this subchapter.

§ 285.910 What must I do when I remove my facility?

(a) You must remove all facilities to a depth of 15 feet below the mudline, unless otherwise authorized by MMS.

(b) Within 60 days after you remove a facility, you must verify to MMS that you have cleared the site.

§ 285.911 [Reserved]

Decommissioning Report

§ 285.912 After I remove a facility, cable, or pipeline, what information must I submit?

Within 60 days after you remove a facility, cable, or pipeline, you must submit a written report to MMS that includes the following:

(a) A summary of the removal activities, including the date they were completed;

(b) A description of any mitigation measures you took; and

(c) If you used explosives, a statement signed by your authorized representative that certifies that the types and amount of explosives you used in removing the facility were consistent with those in the approved decommissioning application.

Compliance with an Approved Decommissioning Application

§ 285.913 What happens if I fail to comply with my approved decommissioning application?

If you fail to comply with your approved decommissioning plan or application:

(a) The MMS may call for the forfeiture of your bond or other financial assurance;

(b) You remain liable for removal or disposal costs and responsible for accidents or damages that might result from such failure; and

(c) The MMS may take enforcement action under § 285.400.

Subpart J—Rights of Use and Easement for Energy- and Marine-Related Activities Using Existing OCS Facilities

Regulated Activities

§ 285.1000 What activities does this subpart regulate?

(a) This subpart provides the general provisions for authorizing and regulating activities that use (or propose to use) an existing OCS facility for energy- or marine-related purposes, that are not otherwise authorized under any other part of this subchapter or any other applicable Federal statute. Activities authorized under any other part of this subchapter or under any other Federal law that use (or propose to use) an existing OCS facility are not subject to this subpart.

(b) The MMS will issue an Alternate Use RUE for activities authorized under this subpart.

(c) At the discretion of the Director, an Alternate Use RUE may:

(1) Permit alternate use activities to occur at an existing facility that is currently in use under an approved OCS lease; or

(2) Limit alternate use activities at the existing facility until after previously authorized activities at the facility have ceased and the OCS lease terminates.

§§ 285.1001—285.1003 [Reserved]

Requesting an Alternate Use RUE

§ 285.1004 What must I do before I request an Alternate Use RUE?

If you are not the owner of the existing facility on the OCS and the lessee of the area in which the facility is located, you must contact the lessee and owner of the facility and reach a preliminary agreement as to the proposed activity for the use of the existing facility.

§ 285.1005 How do I request an Alternate Use RUE?

To request an Alternate Use RUE, you must submit to MMS all of the following:

(a) The name, address, e-mail address, and phone number of an authorized representative.

(b) A summary of the proposed activities for the use of an existing OCS facility, including:

(1) The type of activities that would involve the use of the existing OCS facility;

(2) A description of the existing OCS facility, including a map providing its location on the lease block;

(3) The names of the owner of the existing OCS facility, the operator, the lessee, and any owner of operating rights on the lease at which the facility is located;

(4) A description of additional structures or equipment that will be required to be located on or in the vicinity of the existing OCS facility in connection with the proposed activities;

(5) A statement indicating whether any of the proposed activities are intended to occur before existing activities on the OCS facility have ceased; and

(6) A statement describing how existing activities at the OCS facility will be affected if proposed activities are to occur at the same time as existing activities at the OCS facility.

(c) A statement affirming that the proposed activities sought to be approved under this subpart are not otherwise authorized by other provisions in this subchapter or any other Federal law.

(d) Evidence that you meet the requirements of § 285.106, as required by § 285.107.

(e) The signatures of the applicant, the owner of the existing OCS facility, and

the lessee of the area in which the existing facility is located.

§ 285.1006 How will MMS decide whether to issue an Alternate Use RUE?

(a) We will consider requests for an Alternate Use RUE on a case-by-case basis. In considering such requests, we will consult with relevant Federal agencies and evaluate whether the proposed activities involving the use of an existing OCS facility can be conducted in a manner that:

(1) Ensures safety and minimizes adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components, to the extent practicable;

(2) Does not inhibit or restrain orderly development of OCS mineral or energy resources; and

(3) Avoids serious harm or damage to, or waste of, any natural resource (including OCS mineral deposits and oil, gas, and sulphur resources in areas leased or not leased), any life (including fish and other aquatic life), or property (including sites, structures, or objects of historical or archaeological significance);

(4) Is otherwise consistent with subsection 8(p) of the OCS Lands Act; and

(5) MMS can effectively regulate.

(b) Based on the evaluation that we perform under paragraph (a) of this section, the MMS may authorize or reject, or authorize with modifications or stipulations, the proposed activity.

§ 285.1007 What process will MMS use for competitively offering an Alternate Use RUE?

(a) An Alternate Use RUE must be issued on a competitive basis unless MMS determines, after public notice of the proposed Alternate Use RUE, that there is no competitive interest.

(b) We will issue a public notice in the **Federal Register** to determine if there is competitive interest in using the proposed facility for alternate use activities. The MMS will specify a time period for members of the public to express competitive interest.

(c) If we receive indications of competitive interest within the published timeframe, we will proceed with a competitive offering. As part of such competitive offering, each competing applicant must submit a description of the types of activities proposed for the existing facility, as well as satisfactory evidence that the competing applicant qualifies to hold a lease or grant on the OCS, as required in §§ 285.106 and 285.107, by a date we specify. We may request additional information from competing applicants, as necessary, to adequately evaluate the competing proposals.

(d) We will evaluate all competing proposals to determine whether:

(1) The proposed activities are compatible with existing activities at the facility; and

(2) We have the expertise and resources available to regulate the activities effectively.

(e) We will evaluate all proposals under the requirements of NEPA, CZMA, and other applicable laws.

(f) Following our evaluation, we will select one or more acceptable proposals for activities involving the alternate use of an existing OCS facility, notify the competing applicants, and submit each acceptable proposal to the lessee and owner of the existing OCS facility. If the lessee and owner of the facility agree to accept a proposal, we will proceed to issue an Alternate Use RUE. If the lessee and owner of the facility are unwilling to accept any of the proposals that we deem acceptable, we will not issue an Alternate Use RUE.

§§ 285.1008—285.1009 [Reserved]

Alternate Use RUE Administration

§ 285.1010 How long may I conduct activities under an Alternate Use RUE?

(a) We will establish on a case-by-case basis, and set forth in the Alternate Use RUE, the length of time for which you are authorized to conduct activities approved in your Alternate Use RUE instrument.

(b) In establishing this term, MMS will consider the size and scale of the proposed alternate use activities, the type of alternate use activities, and any other relevant considerations.

(c) The MMS may authorize renewal of Alternate Use RUEs at its discretion.

§ 285.1011 What payments are required for an Alternate Use RUE?

We will establish rental or other payments for an Alternate Use RUE on a case-by-case basis, as set forth in the Alternate Use RUE grant, depending on our assessment of the following factors:

(a) The effect on the original OCS Lands Act approved activity;

(b) The size and scale of the proposed alternate use activities;

(c) The income, if any, expected to be generated from the proposed alternate use activities; and

(d) The type of alternate use activities.

§ 285.1012 What financial assurance is required for an Alternate Use RUE?

(a) The holder of an Alternate Use RUE will be required to secure financial assurances in an amount determined by MMS that is sufficient to cover all obligations under the Alternate Use RUE, including decommissioning obligations, and must retain such financial assurance amounts until all obligations have been fulfilled, as determined by MMS.

(b) We may revise financial assurance amounts, as necessary, to ensure that there is sufficient financial assurance to secure all obligations under the Alternate Use RUE.

(c) We may reduce the amount of the financial assurance that you must retain if it is not necessary to cover existing obligations under the Alternate Use RUE.

§ 285.1013 Is an Alternate Use RUE assignable?

(a) The MMS may authorize assignment of an Alternate Use RUE.

(b) To request assignment of an Alternate Use RUE, you must submit a written request for assignment that includes the following information:

(1) The MMS-assigned Alternate Use RUE number;

(2) The names of both the assignor and the assignee, if applicable;

(3) The names and telephone numbers of the contacts for both the assignor and the assignee;

(4) The names, titles, and signatures of the authorizing officials for both the assignor and the assignee;

(5) A statement affirming that the owner of the existing OCS facility and lessee of the lease in which the facility is located approve of the proposed assignment and assignee;

(6) A statement that the assignee agrees to comply with and to be bound by the terms and conditions of the Alternate Use RUE;

(7) Evidence required by § 285.107 that the assignee satisfies the requirements of § 285.106; and

(8) A statement on how the assignee will comply with the financial assurance requirements set forth in the Alternate Use RUE.

(c) The assignment takes effect on the date we approve your request.

(d) The assignor is liable for all obligations that accrue under an Alternate Use RUE before the date we approve your assignment request. An assignment approval by MMS does not relieve the assignor of liability for accrued obligations that the assignee, or a subsequent assignee, fail to perform.

(e) The assignee and each subsequent assignee are liable for all obligations that accrue under an Alternate Use RUE after the date we approve the assignment request.

§ 285.1014 When will MMS suspend an Alternate Use RUE?

(a) The MMS may suspend an Alternate Use RUE if:

(1) Necessary to comply with judicial decrees;

(2) Continued activities pursuant to the Alternate Use RUE pose an imminent threat of serious or irreparable harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(3) The suspension is necessary for reasons of national security or defense; or

(4) We have suspended or temporarily prohibited operation of the existing OCS facility that is subject to the Alternate Use RUE, and have determined that continued activities under the Alternate Use RUE are unsafe or cause undue interference with the operation of the original OCS Lands Act approved activity.

(b) A suspension will extend the term of your Alternate Use RUE grant for the period of the suspension.

§ 285.1015 How do I relinquish an Alternate Use RUE?

(a) You may voluntarily surrender an Alternate Use RUE by submitting a written request to us that includes the following:

(1) The name, address, e-mail address, and phone number of an authorized representative;

(2) The reason you are requesting relinquishment of the Alternate Use RUE;

(3) The MMS-assigned Alternate Use RUE number;

(4) The name of the associated OCS facility, its owner, and the lessee for the lease in which the OCS facility is located;

(5) The name, title, and signature of your authorizing official (which must match exactly the name, title, and signature in the MMS qualification records); and

(6) A statement that you will adhere to the decommissioning requirements in the Alternate Use RUE.

(b) We will not approve your relinquishment request until you have paid all outstanding rentals (or other payments) and fines.

(c) The relinquishment takes effect on the date we approve your request.

§ 285.1016 When will an Alternate Use RUE be cancelled?

The Secretary may cancel an Alternate Use RUE if it is determined, after notice and opportunity to be heard:

(a) You no longer qualify to hold an Alternate Use RUE;

(b) You failed to provide any additional financial assurance required by MMS, replace or provide additional coverage for a de-valued bond, or replace a lapsed or forfeited bond within the prescribed time period;

(c) Continued activity under the Alternate Use RUE is likely to cause serious harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(d) Continued activity under the Alternate Use RUE is determined to be adversely impacting the original OCS Lands Act approved activities on the existing OCS facility;

(e) You failed to comply with any of the terms and conditions of your approved Alternate Use RUE or your approved plan; or

(f) You otherwise failed to comply with applicable laws or regulations.

§ 285.1017 [Reserved]

Decommissioning an Alternate Use RUE

§ 285.1018 Who is responsible for decommissioning an OCS facility subject to an Alternate Use RUE?

(a) The holder of an Alternate Use RUE is responsible for all decommissioning obligations that accrue following the issuance of the Alternate Use RUE and which pertain to the Alternate Use RUE.

(b) The lessee under the lease originally issued under part 250 of this chapter will remain responsible for decommissioning obligations that accrued before issuance of the Alternate Use RUE, as well as for decommissioning obligations that accrue following issuance of the Alternate Use RUE to the extent associated with continued activities authorized under other parts of this subchapter.

§ 285.1019 What are the decommissioning requirements for an Alternate Use RUE?

(a) Decommissioning requirements will be determined by MMS on a case-by-case basis, and will be included in the terms of each Alternate Use RUE.

(b) Decommissioning activities must be completed within 1 year of termination of the Alternate Use RUE.

(c) If you fail to satisfy all decommissioning requirements within the prescribed time period, we will call for the forfeiture of your bond or other financial guarantee, and you will remain liable for all accidents or damages that might result from such failure.

PART 290—APPEAL PROCEDURES

■ 7. Revise the authority citation for part 290 to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 43 U.S.C. 1331

■ 8. Revise the last sentence in § 290.2 to read as follows:

§ 290.2 Who may appeal?

* * * A request for reconsideration of an MMS decision concerning a lease bid, authorized in 30 CFR 256.47(e)(3), 281.21(a)(1), or 285.118(c), is not subject to the procedures found in this part.

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