

(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.

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(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

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(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: