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Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf; Proposed Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250, 285, and 290

[Docket ID: MMS–2008–OMM–0012]

RIN 1010–AD30

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

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule; notice of availability of the draft environmental assessment.

SUMMARY: The MMS is proposing regulations that would establish a program to grant leases, easements, and rights-of-way (ROW) for alternative energy project activities on the Outer Continental Shelf (OCS) as well as for certain previously unauthorized activities that involve the alternate use of existing facilities located on the OCS; and would establish the methods for sharing revenues generated by this program with nearby coastal States. These regulations are also intended to ensure the orderly, safe, and environmentally responsible development of alternative energy sources on the OCS. The MMS is developing this program and proposed regulations under the authority granted the Secretary of the Interior (Secretary) by the Energy Policy Act of 2005 (EPAct), 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: Produce or support production, transportation, or transmission of energy from sources other than oil and gas; or use, for energy-related or other authorized marine-related purposes, facilities currently or previously used for activities authorized under the OCS Lands Act.

The MMS has prepared a Draft Environmental Assessment (EA) analyzing this proposed rule. The Draft EA incorporates by reference the Programmatic Environmental Impact Statement (EIS) *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 Draft EA was prepared to assess any impacts of this proposed rule. We are furnishing this notification to allow other agencies and the public an opportunity to review and comment on the Draft EA.

All comments received on this proposed rulemaking and the Draft EA will become part of the public record and will be available for review.

DATES: Submit comments on the proposed regulation by September 8, 2008. The MMS may not fully consider comments received after this date. Submit comments to the Office of Management and Budget on the information collection burden in this rule by August 8, 2008. This does not affect the deadline for the public to comment to MMS on the proposed regulations. Submit comments on the Draft Environmental Assessment by September 8, 2008.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD30 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Under the tab ''More Search Options,'' click Advanced Docket Search, then select ''Minerals Management Service'' from the agency drop-down menu, then click ''submit.'' In the Docket ID column, select MMS–2008–OMM–0012 to submit public comments and to view supporting and related materials available for this rulemaking. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. The MMS will post all comments.
- Mail or hand-carry comments to the Department of the Interior, Minerals Management Service, Attention: Regulations and Standards Branch (RSB), 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference ''Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf, 1010–AD30'' in your comments and include your name and return address. The MMS will post all comments on Regulations.gov.
- Send comments on the information collection in this rule to: Interior Desk Officer 1010–AD30, Office of Management and Budget; 202–395–6566 (fax); e-mail *oira_docket@omb.eop.gov*. Please also send a copy to MMS.
- The Draft EA is available on the MMS Web site at: *http://www.mms.gov/offshore/AlternativeEnergy/RegulatoryInformation.htm*. You may submit comments on the Draft Environmental Assessment in one of the following two ways:
  - In written form enclosed in an envelope labeled ''Alternative Energy Program Rulemaking Draft Environmental Assessment'' and mailed (or hand carried) *to the Branch Chief, Environmental Assessment Branch, Minerals Management Service, Mail Stop 4042, 381 Elden Street, Herndon, Virginia 20170*.
  - Electronically to the MMS e-mail address: *alternative@mms.gov*.

MMS is requesting comments on specific items identified throughout the preamble. For your convenience in commenting, we have compiled a list of these items at the end of the preamble.

FOR FURTHER INFORMATION CONTACT: *Proposed rule:* Maureen Bornholdt, Program Manager, Offshore Alternative Energy Programs, at 703–787–1300 or *maureen.bornholdt@mms.gove* or Amy C. White, Regulations and Standards Branch, at (703) 787–1665 or *amy.white@mms.gov*.

Draft Environmental Assessment: James F. Bennett, Chief, Branch of Environmental Assessment, at (703) 787–1660.

SUPPLEMENTARY INFORMATION:

Background

Statement of Purpose

Sufficient domestic sources of energy are vital to expanding the Nation's economy and enhancing Americans' quality of life. However, an imbalance exists between our energy consumption and domestic energy production that makes it vital to find ways to narrow the gap between the amount of energy used and the amount domestically produced. There is no single solution for narrowing this gap, but there are several means available. Increasing the Nation's supply of renewable energy produced from domestic sources will be a key part of any strategy to meet this goal.

According to the Department of Energy's Energy Information Administration (EIA) 2007 Annual Energy Outlook, public and private wind and other renewable energy generating sectors of our economy are the fastest growing energy sources in the United States (US). The EIA estimates that in 2030 renewable energy will account for over 10 percent of domestic energy production and about 7 percent of consumption. The Energy Policy Act of 2005 (EPAct) encourages the development of renewable energy resources as part of an overall strategy to develop a diverse portfolio of domestic energy supplies for the future. Section 388 of the EPAct gave the Department of the Interior new

authority to grant leases, easements, and ROWs for the development of promising new energy sources such as offshore wind, wave, current, and solar energy and for ensuring that alternative energy development on the OCS proceeds in a safe and environmentally responsible manner. The Secretary of the Interior delegated to the MMS the new authority that was conferred by the EPAct.

Enactment of the EPAct recognized the need for an unambiguous outline of authorities pertaining to energy-related activities on the OCS. Before the EPAct, as various agencies of the Federal government received proposals for innovative, non-traditional energy-related projects on the OCS, it became evident that—with limited exceptions—there existed no clear Federal authority for granting rights to use the seabed for such projects. This lack of clearly outlined authority was a significant impediment to the development of renewable energy on the OCS, and dampened efforts by potential energy developers and Federal regulators to seriously develop and consider offshore projects. Congress recognized that management of alternative energy and alternate use activities would require comprehensive authority to permit access in a fair and equitable manner, to ensure environmental and operational compliance, and to achieve a fair return to the Nation. As the Federal government's primary manager of offshore energy development, the Department of the Interior, MMS, was given this comprehensive new authority.

Mandate of Energy Policy Act of 2005 (EPAct)

The EPAct amended the OCS Lands Act to authorize the Secretary to issue leases, easements, or rights-of-way 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.

In addition, the EPAct of 2005 requires the Secretary to share with nearby coastal States a portion of the revenues received by the Federal Government from authorized alternative energy and alternate use projects on certain areas of the OCS. This proposed rule would implement this mandate and describe the methods to be used for identifying what projects are covered by this requirement, for 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—for 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 Notice of Proposed Rulemaking applies to the activities described in (iii) and (iv) above (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) above (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 will have the lead in authorizing OCS alternative energy and alternate use activities, we recognize that other Federal government agencies have regulatory responsibility in such activities and the need to consider them fully. The new authority does not expressly supersede or modify existing Federal laws, and all activities must comply fully with such laws. As directed by the EPAct provision calling for promulgation of regulations, the MMS consulted with other Federal agencies, as appropriate, throughout the rulemaking process, and, to the extent provided by established DOI rulemaking procedures. We also consulted with the governors of affected States and others in the promulgation of this rule.

In addition to providing the authority to issue leases, easements, and rights-of-way, 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.

Summary of Advance Notice of Proposed Rulemaking (ANPR) Comments

Background

On December 30, 2005, the MMS issued an ANPR (70 FR 77345) requesting comments on the program requirements. Comments pertaining to specific subparts of the proposed regulations are summarized in the subpart-by-subpart discussion, as appropriate.

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 received 149 comments from 26 States and the District of Columbia. Comments came from private citizens (60), alternative energy industries and associations (27), environmental organizations (19), State and local governments (19), Federal agencies (8), non-government organizations (6), universities (5), congressional representatives (3), small business (1), and the oil and gas industry (1).

The vast majority of comments addressed OCS alternative energy activities, and we received a few comments on use of existing facilities. No single issue dominated the comments, and responses within a given program area were wide-ranging. The comments generally were supportive of alternative energy development on the OCS and activities that use existing OCS facilities. Many advised the MMS to proceed with caution as we develop the program and supporting regulations and advocated early stakeholder involvement with both the program and the individual project permitting. Those familiar with the OCS oil and gas program often suggested we use that program as a model for consultation and environmental compliance. Some alternative energy industry and environmental organizations suggested that the MMS establish a structured, rigid process, citing the need for predictability and for compliance and timeliness in reviews. Others advocated a flexible approach in view of the fledgling nature of offshore alternative energy technologies and suggested that the MMS address each project on a case-by-case basis. A majority of comments identified preparation of a programmatic environmental impact statement (PEIS) under the National Environmental Policy Act (NEPA) as a necessary and constructive first step.

Comments addressing the major program areas often were interrelated. For example, comments on access and operations were often directly linked with concerns for the environment (e.g., access should not be permitted in areas of environmental sensitivity). Views on payments appeared to be influenced by the perspective of the commenter on access issues (e.g., fee structure suggestions depended on whether MMS used the project's actual footprint or a lease block system). Coordination and consultation suggestions centered on the opportunity to address environmental concerns (e.g., focused on input during the program and individual project NEPA process).

More information on the ANPR, its respondents, and their comments is available at the MMS OCS Public Connect Web site, at *https://ocsconnect.mms.gov/pcs-public/do/ProjectDetailView?objectId=0b011f8080050473.*

Access for OCS Lands

Comments on area identification described the entire spectrum of access: from MMS conducting in-depth studies to select specific areas to lease to MMS opening most of the OCS. While comments recommended MMS fashioning our program after the Bureau of Land Management (BLM), the European, or the Federal Energy Regulatory Commission model, comments were consistent about MMS requiring due diligence from any developer.

Some commenters suggested that we use the PEIS to identify environmentally sensitive areas to be permanently excluded from development, and some expressed concerns that we would lease any area without considering the full range of possible impacts and alternatives. While others opined that if MMS initially excluded areas, those areas may never become available even if technology and uses changed in the future. MMS decided not to propose limiting areas available for possible development. As we begin to better understand the impacts, limitations, and benefits of renewable energy projects, we will be in a better position to select appropriate sites for development. MMS does not want to exclude potential sites, since the future technology may be different from the technology available today, with different impacts.

Other commenters advocated that all U.S. waters should be candidate areas for the development of renewable energy projects and that potential developers, who are in the best position to propose sites, should be given the widest possible latitude to identify potential resources and sites. One commenter pointed out that Congress already identified those OCS areas that should be categorically excluded from renewable energy development: ''any unit of the National Park System, National Wildlife Refuge System, or National Marine Sanctuary System, or any National Monument.''

As some responders expressed the belief that renewable energy production does less damage to the environment than oil and gas production, they suggested that MMS subject the renewable projects to less rigorous environmental review and open more areas to development, regardless of other impacts. Others commented MMS should consider all impacts on existing resources and uses citing fisheries, public safety, shipping lanes, aircraft, migratory routes (bird and mammal), and access to sand and gravel and oil and gas resources. These comments were often coupled with the suggestion that any fees for the renewable energy development should compensate for impacts and possible loss of future uses. The MMS will strictly adhere to the statutory requirements such as NEPA, CZMA, etc. All projects will undergo appropriate review.

Many comments expressed concern that a competitive bidding process would limit access to large energy companies, effectively shutting out small businesses, or add to the considerable economic and financial uncertainties associated with the developing industry, rendering it very difficult to finance projects. Others supported using a competitive basis for awarding permits for resource and site assessment with an ''option to lease'' or other guaranteed development rights provided that site-specific requirements were met. Others felt that given the emerging nature of offshore renewable energy technologies and the public and private benefits that could be derived from energy resources development on the OCS, MMS should make the process as simple and efficient as possible with a clear schedule for processing and decision-making. The proposed rule lays out the steps in the processes for acquiring leases, both competitively and noncompetitively.

Some commenters suggested that competing projects or proposals be evaluated using quantitative factors such as financial strength, experience and operational performance of the developers. However, there was considerable support for using criteria that would allow small and medium size businesses, local communities, and local utility districts the opportunity to initiate projects. It was also suggested that proposals be evaluated on the basis of how each best serves the public interest.

Environmental Information, Management, and Compliance Programs

Comments fell into two broad points of view: (1) Require detailed studies years prior to building a project or (2) waive or reduce environmental requirements and other safeguards that are incorporated into our normal permitting processes.

While most comments suggested that MMS should prepare a PEIS as a first step, comments were divided as to how MMS should use the document. Some suggested that the PEIS identify areas open for renewable development, either advocating that certain areas be excluded from leasing/permitting or matching the type of renewable energy development with a particular area. The thought behind this approach is that by strategically reviewing ''preferred'' locations for renewable development, the PEIS could reduce the residual project risk that project developers face, help to ensure State and community input on identifying more or less desirable locations, and ensure that impacts remain acceptable. Some

commenters disagreed with this approach, recommending that access remain flexible to allow renewable energy developers to select potential areas and citing the concern that any areas deferred at this stage may be permanently excluded from future development. Others stated that the PEIS should identify and analyze programmatic issues leaving specific environmental evaluation to the project stage.

MMS prepared a PEIS for the Alternative Energy and Alternate Use Program. The PEIS provides a basic understanding of the possible impacts of various types of alternative energy and alternate use projects. However, MMS will develop additional, site specific EISs as appropriate.

Some comments raised the issue of responsibility for preliminary site-specific studies. It was suggested that MMS should conduct these studies to maintain objectivity. Other commenters stated that conducting these studies is the responsibility of the applicant working with MMS and potential affected State(s) on study design. Another recommendation advocated using independent third-party contractors selected pursuant to the Council on Environmental Quality procedures to ensure unbiased environmental assessments.

In the ANPR we requested specific comments on types and levels of environmental information that MMS should require for alternative energy and alternate use projects; the types of site-specific studies should MMS require; when these studies should be conducted; and who should be responsible for conducting these studies. We also requested input on identifying design and installation requirements associated with new projects and modification of existing facilities and identifying technology assessment and research needs. Commenters consistently supported the development of a Programmatic EIS, followed by project specific EIS. They also were consistent about requiring compliance with CZMA and developing an approach that respects local and State laws and requirements. The MMS developed a PEIS, as suggested, as was discussed previously. Each individual project will require NEPA compliance. In the near term we anticipate the NEPA compliance for development will be project specific EIS. These regulations would require that the applicant provide the information needed for MMS to develop the NEPA document. In addition, these regulations detail CZMA compliance requirements.

Generally, commenters agreed that MMS should conduct and pay for the PEIS, but the applicant should pay for site-specific NEPA. However, some commenters stated that it should be the agency's responsibility to gather and provide information for the project-specific NEPA and to meet other requirements. Others suggested that MMS can get most of the required data from other Federal government agencies including: Department of Energy (DOE), Bureau of Land Management (BLM), and Army Corps of Engineers (ACOE).

Commenters consistently mentioned that offshore alternative energy engineering issues are similar to those issued faced by the offshore oil and gas industry and the MMS should use its experience with oil and gas when evaluating the engineering aspects of these projects.

Some commenters suggested that MMS use the existing oil and gas regulations (30 CFR part 250) for the plan requirements. We reviewed and considered the oil and gas regulations and patterned many of these roles on those basic requirements if they were appropriate for the alternative energy program.

Commenters reminded us to recognize that specific data requirements will vary by the type of project and the location. We addressed this by not including standards in these regulations. Instead we are requiring applicants to submit the project design and the data and information that were the basis for the design, so we can evaluate each project on a case-by-case basis. As we gain experience with offshore alternative energy, we may set more specific project requirements. A number of commenters suggested that the responsibility for determining engineering requirements for offshore alternative energy projects should fall on project developers. Some commenters stated that these projects should meet the same engineering criteria as oil and gas facilities. However, others felt that the consequences of an incident would likely not be as great as an incident with an oil and gas facility, therefore these structures need not meet the same criteria as do those for oil and gas.

As with environmental impacts, many commenters believed that, at this time, it would be best to address the engineering requirements of these projects on a case-by-case basis, instead of detailing requirements in the regulations. The requirements of these projects would vary based on location (sea conditions, water depth, anticipated weather events) and type of project. Research and development and or demonstration projects are smaller scale activities that take place for a short duration and in a limited, discrete area.

Some commenters included suggestions for the type of data and information MMS should require, both for environment and engineering assessments. However few provided details on the design standards for projects. Those that provided details suggested the use of various standards that have already been developed, such as those used in Europe.

Regulation of Operational Activities

A common message from the commenters was that MMS should recognize that renewable energy is a young industry so our regulatory approach for operations should remain flexible yet predictable. Comments recommended that the OCS oil and gas program should be used as the model for addressing renewable energy operational activities. Comments suggested MMS require operators to submit plans similar to the Deep Water Operations Plan, use Certified Verification Agents, adopt Occupational Safety and Health Administration requirements as a basis for ensuring safety, schedule frequent inspections, and assess penalties for noncompliance. Adaptive management approach and use of pilot projects to study operations were also recommended. There were several suggestions that MMS set production requirements to ensure due diligence of the operators, while others wanted us to be flexible early on or have no production requirements.

Payments, Royalties, Fees and Bonds

Issues with payments and revenues generated a great deal of discussion with most comments against using bonus bids as part of the competitive lease issuance process but supportive of rentals and royalties. Some respondents requested a payment honeymoon or holiday until it is determined that OCS renewable activities are profitable or the industry matures. Commenters requested an orderly, simple, and predictable financial system where potential investors are certain of government fees. Many respondents stated that renewable wind, wave and current resources are not finite like extractable oil and gas hydrocarbons, there is no removal of a public resource and alternative energy operations only use a limited amount of public OCS lands; therefore, we should either not charge a royalty or set a low fee, especially on pilot projects. Supporters of renewable energy expressed concern that if the government's financial regimen were onerous it would discourage development and give large

energy companies an unfair advantage. Citing the benefits of renewable energy, most comments supported a financial system structured in a manner which stimulates growth of offshore renewable generation and provides incentive for developers to invest in OCS projects with the hope that it will achieve cost competitiveness with other energy sources. One Federal agency commenter stated that the perception of fairness and cooperation is important and opponents of offshore alternative energy development may claim that wind power facilities are unfairly using public commons for profit. MMS has considered all comments on an OCS alternative energy financial system and we propose a financial regime that we have determined is fair to the American public, meets Congress' and the Administration's intent with respect to EPAct and will permit development of offshore alternative energy.

Bonus

Even though most respondents wrote against a system of lease bonuses, EPAct requires competition and MMS is proposing the cash bonus as either a bid variable or a fixed element in the alternative energy leasing regulations. In certain cases where multiple expressions of interest are received, MMS is proposing to use the cash bonus bidding system as the basis for determining the winning bidder. Where no competitive interest exists, a marginal acquisition fee is proposed.

Rentals

There was generally strong support for using rentals in any OCS alternative energy leasing financial system. Respondents differed on the rate of rentals that should be charged and the method for calculating rental acreage. A few commenters felt that no rental fee should be collected or rental waived until production commenced. Some commenters proposed rental payments only be collected on the seabed footprint while others suggested following the Federal oil and gas model where rentals are paid on the entire OCS leased acreage. MMS is proposing that a rental fee be collected on the entire leased acreage with rental rates of $3 to $5 per acre for commercial leases, project easements and rights-of-way. This rate is below the current prevailing rates for oil and gas leases. We propose lower rental rates because during the initial lease period and before the approval of the Construction and Operations Plan (COP), there is no permanent disturbance of the OCS. Following approval of the COP, a royalty-based operating fee is proposed. Additionally, unlike oil and gas projects, alternative energy projects do not extract a non-renewable energy source from the leased tract. Thus, the underlying value of the project's acreage is less affected by an alternative energy project than it would be for an oil and gas project, so the rental charge for use of the land can be set appropriately lower for alternative energy projects.

Royalties

Most respondents supported some element of royalties based on gross revenue. Comments about royalties covered the full spectrum from setting no royalties; very low royalties (3% royalty that BLM charges); to a phased royalty system designed so that the financial terms would facilitate the emergence of a viable industry. A three-phased example might include a pilot phase with no royalty and minimal rental fees, followed by an industry ''wildcatter'' development phase with higher rental rates and royalties after 5 years. The third is a commercial phase in which a mature industry is paying yet higher rental and royalty rates. Unless otherwise specified in the Final Sale Notice, MMS is proposing a royalty regime in which an *operating fee rate would apply at a rate of one percent in the first two years* following approval of the Construction and Operations Plan on commercial alternative energy leases, and at two percent thereafter. The *operating fee* would be an annual payment that continues through the duration of the operations term of a commercial lease. Where competition exists for a lease, MMS may offer bidders the opportunity to bid a constant or sliding operating fee rate above 2 percent subject to a fixed cash bonus. The sliding scale operating fee rate could depend on one or more of the variables which compose the operating fee itself, or on some other variables, such as time. In this auction format, MMS would provide a baseline sliding scale function, and the operating fee rate bid variable would be some multiplier of that function. MMS does not expect royalties at this level to deter investment in a meaningful number of otherwise, prospective alternative energy projects.

A limited number of comments were received related to alternative energy research, testing and pilot projects. These comments stated that lease fees should be waived for research facilities and some pilot projects that are limited in scope and intended for testing, development or experimental evaluation of new systems. MMS has proposed a ''limited lease'' with a restricted term of five years and minimal rental for these types of projects.

There were divergent views on what constituted ''fair return.'' Some wanted us to include the benefits of renewable energy as part of fair return, while others supported requiring additional compensation for lost uses and social costs. Most commenters strongly rejected opportunity-cost based valuation because of the complex and burdensome nature of subjective value-based judgments required to determine appropriate payment levels. Some respondents stated that only a small proportion of the sea bottom and surface will be displaced and that current users can adjust to any new structures. Some pointed out that if Congress intended that such costs should be addressed, they would have stated so in the EPAct language. On the other hand, two commenters proposed to base a portion of the financial regimen on interference with other uses by charging for the use of the sea floor in compensation for displacing the pelagic zone and the atmosphere above the water surface. MMS is not aware of precedents in other Federal or State statutes that support an opportunity-cost based approach. Moreover, it is not required by the authorizing legislation. At the same time, MMS does consider selected aspects of opportunity cost in some of its bid adequacy assessments for oil and gas leases. Accordingly, while MMS does not intend to rely heavily on an opportunity cost framework, for either setting payment sizes or for bid adequacy purposes, there may be some circumstances in which consideration of selected aspects of opportunity cost would be appropriate for helping to set the sizes of certain fees, minimum bids, or reservation prices.

A single commenter pointed out that since Congress already subsidizes the development of alternative sources of energy through production tax credits, MMS lacks the prerogative to encourage development offshore through favorable financial terms. This commenter also stated that MMS should not reduce the charge below the true economic value of the resource. If MMS were to encourage development of a resource with financial terms below those that private landowners would be anticipated to charge, development could occur too quickly and early developers might not make the best use of emerging technologies.

MMS has considered this reasoning in our proposal for the authorized financial terms and durations of the lease and grant periods. If future economics of alternative energy technology on the OCS support different or improved

technologies, the flexibility which MMS has built into these regulations will allow for appropriate specification of lease terms and conditions upon subsequent renewals or in new offerings. Moreover, MMS is confident that the actual financial terms and length of lease conditions that it will apply, in conjunction with a myriad of other administrative and regulatory requirements, strike the proper balance between ensuring receipt of a fair return and providing the proper inducement for alternative energy activities to proceed at the proper pace.

There were differing opinions about charging cost recovery fees for processing of applicant initiated actions. Most respondents felt that cost recovery fees for MMS program efforts is appropriate, with some advocating management costs be recovered from permit applicants through fees, royalties, and/or a combination of both. Others expressed concerns that charging cost recovery fees would impact the economics of the projects and discourage development. To clarify, rentals and royalties are designed to compensate the American public for use of the Federal OCS, while cost recovery fees are to be implemented by a Federal agency when a service (or privilege) provides special benefits to an identifiable recipient, beyond those that accrue to the general public. The MMS is proposing case-by-case fees to recover unique processing costs such as the preparation of Environmental Impact Statements. We do not have data for our costs of processing lease applications for this new program, so we are not otherwise proposing processing fees in this rule. As the program matures, and we acquire processing cost data, we expect to propose fees to recover our costs of processing. While we have not included filing fees in this proposed rule, in the final rule, we may add nominal filing fees for competitive and noncompetitive lease applications, and for applications for ROWs and RUEs, to aid in limiting filings to serious applicants.

Comments generally supported MMS using a surety bond or other type of security to cover the costs associated with non-compliance of lease terms; lease default; decommissioning and removing wind turbines and towers at the end of the lease term; and appropriate site remediation at the end of the lease term. Respondents acknowledged that companies operating on the OCS should be able to demonstrate appropriate levels of financial capability. The types of financial securities mentioned included letters of credit, a test of credit-worthiness, assigned interest bearing annuity, funding a trust (comparable to a nuclear decommissioning trust), escrow, insurance policy, or corporate guarantee. MMS is proposing minimum financial assurance requirements of $300,000 for the holder of any lease with actual surety levels to be determined by MMS based on the complexity, number and location of all planned OCS facilities by the lessee. We feel that this financial assurance requirement will protect the taxpayer from any default by a lessee.

The ANPR did not address revenue sharing with States.

Coordination and Consultation

Commenters encouraged MMS to coordinate and consult with affected government agencies and stakeholders, and viewed the ANPR and the MMS webpage on renewable energy as solid first efforts. Most comments suggested consultation early in the process, both in the program development and for individual projects. Other comments suggested: allowing the States to ban renewable projects sited adjacent to state waters that have negative environmental, economic, or public safety impacts; conducting targeted surveys of coastal states and the industry to identify potential concerns and objections; providing an opportunity to identify areas of the OCS to include in the program; working with Federal and State cooperatives; and requiring developers to include outreach programs in their application. Many comments supported the use of existing offshore program coordination mechanisms and suggested expanding the OCS Policy Committee membership to include representatives from the offshore renewable energy industry and affected coastal states. Some comments expressed concern that the coordination and consultation process would create burdensome requirements, slow down the application review process, and/or create artificial conflicts by giving too much visibility to marginal groups/perspectives.

One commenter suggested that MMS establish a Joint Ocean Renewables Office, co-locating representatives from each of the agencies responsible for permitting and authorizing portions of the alternative ocean energy projects, while another suggested that it was too early, given the infancy of the offshore renewable energy industry, to rigidly structure the relationships between regulators and project developers. Other comments called for MMS to create a ''one-stop shop'' for the permitting process, in which MMS would coordinate with other agencies and be the primary point of contact for the industry.

Use of Existing Facilities

A few comments covered issues associated with use of existing facilities, with the majority focusing on liability, environmental impacts, and implementation of a rigs-to-reef program. Comments generally supported leaving facilities in place, at the end of life, for offshore aquaculture or to serve as artificial reefs. Concerns were submitted that removing facilities would destroy essential fish habitats. Some commenters wanted liability to be the responsibility of the original owners (usually oil and gas operations), while others wanted to allow for the shedding of liability by an oil and gas producer if an alternative use of existing infrastructure is approved. MMS is proposing to require an allocation of responsibilities between the existing lessee and facility owner (e.g., the oil and gas lessee and/or operator) and the holder of the Alternate Use RUE.

Programmatic Environmental Impact Statement Summary

The MMS prepared a final PEIS in support of the establishment of a program for authorizing alternative 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, 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 alternative energy and alternate use projects could someday be proposed. Accordingly, this PEIS is focused on alternative 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: *ocsenergy.anl.gov.* A Draft Environmental Assessment of the regulations, which tiers off the PEIS, is being released for review and comment along with the proposed rules.

Overview of the MMS Alternative Energy and Alternate Use Program

To accommodate the regulations to support the Alternative Energy and Alternate Use Program, MMS is proposing to add a new part to subchapter B of title 30 of the CFR. The new part 285 would be titled ''Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf'' and would address the requirements of section 388(a) of the EPAct, which amended the OCS Lands Act to add section 8(p).

Approach to Rulemaking

These regulations were developed to provide a regulatory framework for leasing and managing OCS alternative 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 alternative energy sources on the Outer Continental Shelf. The MMS expects that alternative energy projects in the near term will involve the production of electricity from wind, wave, and ocean current. In the future, other types of alternative 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 alternative energy development, without specific requirements for each type of energy production. However, as we gain experience with alternative energy development on the OCS, we may update our regulations to include energy resource-specific provisions and incorporate by reference appropriate documents.

This proposed 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. We are also proposing to revise 30 CFR part 290.2 to clarify the MMS decisions on bids under this program are exempt from the appeals process at 30 CFR part 290 and covered under § 285.118(c). This section describes the procedures for an unsuccessful bidder to apply for reconsideration by the Director for alternative energy leases, Right-of-way (ROW) grants, rights-of-use and easement (RUE) grants, or alternate use rights-of-use and easements (Alternate Use RUE).

Overview of the Project Development Process

General Overview

Figure 1 depicts the general process that the MMS proposes for managing OCS alternative energy program activities under the proposed rule.

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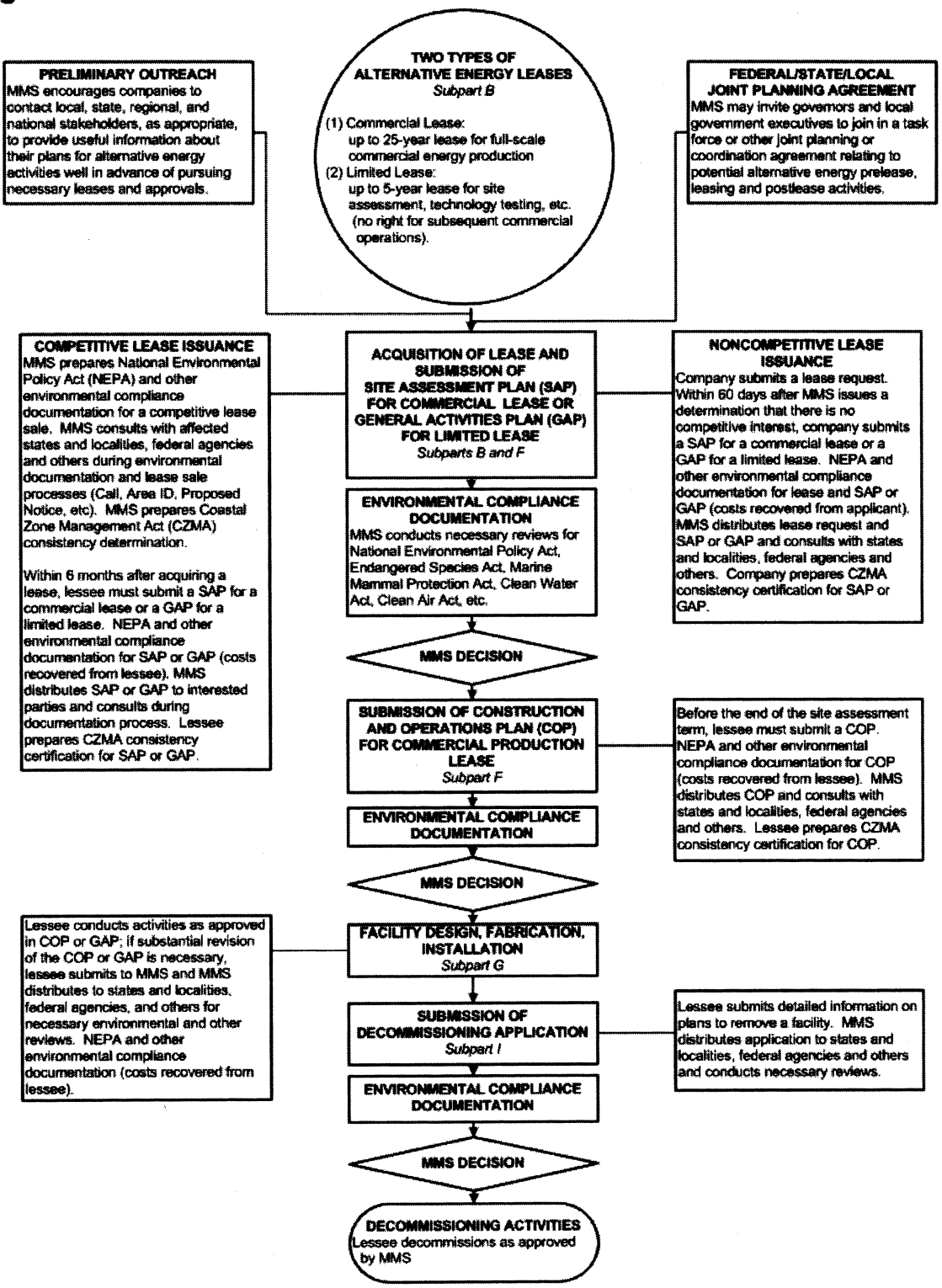
Figure 1. PROPOSED OCS ALTERNATIVE ENERGY PROCESS FOR LEASES



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Types of Access Rights

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

Commercial and Limited Leases

The MMS would 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 on a commercial scale, 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

alternative energy on a commercial scale over the long term (approximately 30 years). A commercial lease would include the right to a project easement, which would 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 would be issued upon approval of the Construction and Operations Plan (for Commercial Leases) or General Activities Plan (for Limited Leases).

A limited lease would 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. This would include leases issued for site assessment or to develop and test new alternative energy technology. Limited leases would be issued for a short term, 5 years. Under the provisions of these regulations limited leases could 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, it would need to obtain a new commercial lease through the leasing process, as defined in these regulations.

RUE Grants and ROW Grants

Right-of-use and Easement (RUE) grants would be issued by MMS to authorize the use of a designated portion of the OCS to support alternative energy activities on a lease or other approval not issued under this part, e.g. on a State issued lease.

Right-of-way (ROW) grants would be issued by MMS 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 alternative energy not generated on a lease issued under this part. A 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. A ROW is not the same as a project easement issued with an alternative energy lease under this part.

Alternate Use RUEs

MMS would issue an alternative 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.

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, MMS would prepare NEPA and other environmental compliance documents. The MMS would 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, MMS determines that there is no competitive interest in that particular OCS area, MMS may proceed in issuing a lease or grant noncompetitively. Whether a company acquires a lease or grant competitively or non-competitively it must comply with all MMS lease stipulations or conditions in the grant. The steps in the competitive leasing process are shown in Figure 2.

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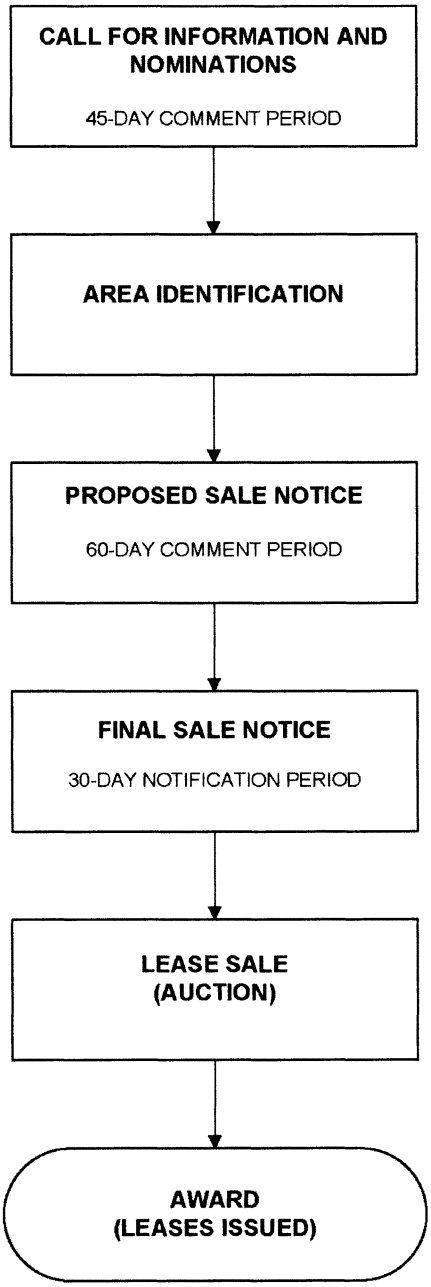
Figure 2: Steps in the Proposed OCS Alternative Energy Competitive Leasing Process



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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:

Responsible Federal agency/agencies	Statute/Executive Order	Summary of pertinent provisions
Council on Environmental Quality (CEQ).	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.

Responsible Federal agency/agencies	Statute/Executive Order	Summary of pertinent provisions
U.S. Fish and Wildlife Service (USFWS); 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 USFWS 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.
USFWS (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 (USEPA); U.S. Army Corps of Engineers (USACE); NOAA.	Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), 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 USEPA. In the case of ocean dumping of dredged material, the USACE is given permitting authority.
NOAA	National Marine Sanctuaries Act (NMSA) (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.
USFWS	Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703–712); Executive Order 13186, ''Responsibilities of Federal Agencies to Protect Migratory Birds'' (January 10, 2001).	Requires that Federal agencies taking actions likely to negatively affect migratory bird populations enter into Memoranda of Understanding with the USFWS, 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).	Coastal Zone Management Act 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.
USEPA; 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 USEPA (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 NAAQS and a Nonattainment Area Permit in areas that do not comply with NAAQS—must control emissions in the manner prescribed by USEPA 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 USEPA.
		In the western portion of the Gulf of Mexico, MMS has authority pursuant to the OCS Lands Act for clean air regulations.
USEPA; U.S. Coast Guard (USCG); MMS.	Clean Water Act (CWA), Section 311, as amended (33 U.S.C. 1321); Executive Order 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 U.S.

Responsible Federal agency/agencies	Statute/Executive Order	Summary of pertinent provisions
	.....	Authorizes USEPA and the USCG to establish programs for preventing and containing discharges of oil and hazardous substances from non-transportation-related facilities and 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.
USEPA	CWA, Sections 402 and 403, as amended (33 U.S.C. 1342 and 1343).	Requires a National Pollutant Discharge Elimination System (NPDES) permit from USEPA (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.
USACE; USEPA	CWA, Section 404, as amended (33 U.S.C. 1344).	Requires a permit from the USACE 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 U.S., 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.
USACE	Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401 *et seq.*).	Section 10 (33 U.S.C. 403) delegates to the USACE the authority to review and regulate certain structures and work that are located in or that affect navigable waters of the U.S. The OCS Lands Act extends the jurisdiction of the USACE, under Section 10 to the seaward limit of Federal jurisdiction.
USEPA	Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (RCRA) (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 USEPA (or an authorized State) will be met.
	.....	Requires hazardous waste TSDFs to obtain permits.
National Park Service (NPS); Advisory Council on Historic Preservation; State or Tribal Historic Preservation Officer.	National Historic Preservation Act of 1966, as amended (16 U.S.C. 470–470t); Archaeological and Historical Preservation Act of 1974 (16 U.S.C. 469–469c–2).	Requires each Federal agency to consult with the Advisory Council on Historic Preservation and 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 Interior Secretary to undertake salvage of archaeological data that may be lost due to a Federal project.
NPS; Advisory Council on Historic Preservation; State or.	American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996); Executive Order 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 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.

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 requiring that each agency make that information an integral part of its decisions. 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 alternative energy and alternate use activities on the OCS. Some of the information MMS requests under this part is in support of other Federal agencies information requirements associated with compliance with the laws and regulations that they enforce.

Coastal Zone Management Act (CZMA) Compliance

Each coastal state has a Federally-approved coastal management plan (CMP). In compliance with CZMA mandates found at section 307(c)(1), when the 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 of natural resource of a State's coastal zone. If such effects are reasonably foreseeable, the MMS must submit a consistency determination 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' 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 the CMP, the States list Federal licenses and permits which are reasonably likely to affect coastal uses or resources and require 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 Ocean and Coastal Resource Management office within the National Oceanic and Atmospheric Administration (NOAA) 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, the MMS would 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.	A Federal agency activity and must comply with 15 CFR part 930 subpart C
Non-competitive lease	Negotiate noncompetitive lease and issue decision on the Site Assessment Plan or General Activities Plan.	Covers identified non-competitive lease area and proposed activities in the Site Assessment Plan or General Activities Plan.	Stipulations, conditions, mitigation, and monitoring established in lease and Site Assessment Plan or General Activities Plan.	Non-Federal 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.	A Federal agency activity and must comply with 15 CFR part 930 subpart C
Non-competitive ROW grants and RUE grants.	Negotiate noncompetitive ROW grants or RUE grants and evaluate General Activities Plan.	Covers identified non-competitive grant site and proposed activities in the General Activities Plan.	Stipulations, conditions, mitigation, and monitoring established in grant award and General Activities Plan.	Non-Federal 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 your lease, grant, and plan. The MMS will not allow development without proper plan submission and approval. Site assessment activities on a commercial lease would require the applicant to submit a Site Assessment Plan (SAP) and receive MMS approval of that plan before beginning those activities. The SAP would undergo the appropriate NEPA reviews and may require either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA). The SAP must demonstrate how you will conduct the proposed activities to comply with relevant Federal statutes such as the Coastal Zone Management Act (CZMA), Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), and Clean Water Act (CWA).

For a commercial lease, after you perform site assessment activities, you would be required to submit and receive MMS approval of a Construction and Operations Plan (COP) before you may begin any development and production activities on your lease. Like the SAP, the COP would 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 would be required to submit a General Activities Plan (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 would 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 section 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 extends eligibility for a share of the revenues to any other State 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 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 operator would be required to monitor activities and demonstrate that its performance satisfies specified standards in its approved plans. In addition, the operator would be required to comply with regulations regarding air quality, safety, maintenance and shutdowns, equipment failure, adverse environmental affects, 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 MMS will approve and regulate such alternate use activities on the OCS. We are proposing to 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 MMS determines 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 proposed provisions in subpart J, MMS has proposed associated revisions to MMS's existing oil and gas decommissioning regulations found in 30 CFR part 250, subpart Q, that clarify the oil and gas platform owner's obligations for decommissioning, in the event MMS approves alternate uses of the platform.

Subpart-by-Subpart Discussion

Part 285—Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf

Subpart A—General Provisions
Subpart B—Issuance of OCS Alternative Energy Leases
Subpart C—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Alternative 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
Subpart I—Decommissioning
Subpart J—Rights of Use and Easement 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.

Other Options and Approaches

Most of the subjects addressed in subpart A are included to provide general information on these regulations to the applicants and operators. Some items are governed by other authorities, such as information collection requirements that are established by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These are not issues that have a direct impact on the development of alternative energy resources or on alternate use of the OCS.

Selected Approaches

The EPAct 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. 1333(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 were based on ensuring that projects under these regulations are designed and conducted in a safe and environmentally sound manner.

Departures from operating requirements 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. Appeal rights are based on 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 section 281.13 of this subchapter, which pertains to task forces for 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 offering or issuing 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 forces may make recommendations and may be requested to conduct or oversee research, studies, or reports.

Comments

The MMS seeks comment on all items in subpart A. In general we wish to know if this subpart is informative, makes it easy to locate needed information, is easy to read and follow, and includes the appropriate topics.

Section by Section Discussion of Subpart A

Section 285.100 Authority

This section establishes MMS's authority to issue regulations and oversee access and development on the OCS for alternative energy and alternate use of existing facilities. The MMS includes the authority statement to inform the affected public and other interested parties of the basis for establishing these regulations. MMS's authority for these regulations comes 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 (Pub. Law 109–58).

Section 285.101 What is the purpose of this part?

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 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.

Section 285.102 What are MMS's responsibilities under this part?

This section describes MMS's responsibilities, which are derived from Subsection 8(p)(4) of the OCS Lands Act, as amended by EPAct. 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. The MMS will also establish practices and procedures to govern the collection of all payments due to the Federal Government, including any cost recovery fees, rentals, operating fees, and other fees or payments. The MMS will coordinate and consult with the Governor of any affected State and executive of any affected local government. As part of coordination and consultation with State and local governments, MMS may invite any affected State Governor and affected local government executive to join a task force or other joint planning or coordination agreement.

Section 285.103 When may MMS prescribe or approve departures from the regulations governing operations?

This section establishes times when MMS may approve departures from the requirements established in the regulations. The MMS 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 Outer Continental Shelf Lands Act and must protect the environment and safety to the same degree as if there was no approved departure from the regulations.

Section 285.104 Do I need an MMS lease or other authorization to produce or support the production of electricity or other energy product from an alternative energy resource on the OCS?

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 generation of electricity or other energy product derived from alternative energy resource on any part of the Outer Continental Shelf except under and in accordance with the terms of a lease, easement or right-of-way issued pursuant to the OCS Lands Act.

Section 285.105 What are my responsibilities under this part?

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 and to minimize adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components to the extent practicable;
- 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 non-procurement debarment regulations; and including the requirement to comply with 43 CFR part 42 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.

Section 285.106 Who can hold a lease or grant under this part?

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 non-procurement 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-calendar days after MMS directed you to comply.

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

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 appropriate reference to statements or records previously submitted to an MMS OCS office. Corporations 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 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 persons signing to bind the corporation.

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

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.

Section 285.109 When must I notify MMS of mergers, name changes, or changes of business form?

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-calendar 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.

Section 285.110 Where do I submit plans, applications, or notifications required by this part?

You must send all plans, application, or notifications to MMS at the address provided in this section.

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

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 Environmental Impact Statement.

In cases where MMS may charge a case-by-case processing fee, we will provide the applicant with a written estimate of the proposed fee for reasonable processing costs. The applicant may comment on the proposed fee or request approval to directly pay a contractor for the document, study, or other activity. We will re-estimate our reasonable processing costs following the procedure established in this section.

Section 285.112 Definitions.

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 previously in regulations (i.e., 30 CFR part 250). The definition for 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 instituted 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.

Proposed § 285.112 would add definitions for the revenue sharing program. The proposed definitions are for coastline, miles, distance, income, project (for the purpose of revenue sharing), project area, qualified project, qualified project area, geographic center of a project, eligible State, and revenues.

The term *coastline* would have the same meaning given to the term ''coast line'' in section 2 of the Submerged Lands Act, 43 U.S.C. 1301(c). Added subsection 8(p)(2) of the OCS Lands Act refers to coastal States that have a coastline ''within 15 miles of the geographic center of the project.'' In this context, and wherever not otherwise specified, *miles* would mean nautical miles. The term *distance* would mean the minimum great circle distance.

Income, unless clearly specified to the contrary, would refer to the money received by the project owner or holder of the lease, easement, or other equivalent agreement (e.g., rights-of-way). As such, use of the term income would not imply that project receipts exceeded project expenses (profitability) but rather would serve to distinguish money received by the project owner from money received by the Federal Government (referred to as revenues, defined below).

The term *project,* for the purposes of revenue sharing, would mean the activities necessary to develop, produce, and transmit energy—or to create some other product or service authorized under 30 CFR part 285—in, or from, the OCS within a specific geographic area; the facilities used to develop and produce that energy or create some other product or service; or both. (As necessary, a different definition of ''project'' may be used for other purposes, such as complying with the provisions of the National Environmental Policy Act.) The term project also could be used to refer to the project area.

While the language of the EPAct refers only to a project, for the purposes of clarity in this regulation, use of the term *project area* would allow specific reference to the geographic area for which project rights have been granted via a lease, group of leases, or equivalent agreement.

If a project area is located wholly or partially within the 8(g) zone, and the project is subject to 30 CFR part 285, the project for which that area has been granted would be a *qualified project* for the purposes of subsection 8(p)(2)(B). A *qualified project area* would be the MMS-determined project area for a qualified project. A project easement issued under this part would not be considered part of the qualified project's area, primarily because to do so would make all OCS alternative energy projects qualified projects, no matter how far the actual alternative energy activity is located offshore. Project easements on the OCS would typically serve to bring power to onshore distribution grids, so they must pass through areas within 3 miles of State submerged lands. A secondary reason is that including project easements in the qualified project's area would both complicate and distort calculation of the geometric center of the project's area. However, we propose to allow any fees paid for project easement acreage to constitute part of the revenues from the qualified project.

The geographic center of a project would be the ''centroid'' of the project area; i.e., the balancing point of the acreage of a regularly shaped project area if plotted in two-dimensional space. For example, in the simple case of a project area comprising a 9-square-mile lease block, 3 miles on each side, the centroid would be the middle point inside that square: 1½ miles inward from the midpoint of each side and equidistant from each corner of the square. For irregularly shaped project areas including those that might involve non-contiguous geometric shapes, MMS would determine the geographic center of such projects as the ''geometric center'' calculated by the Geographical Information System software, in conjunction with the methodology and standard mapping data, employed by MMS for identifying OCS boundaries and locations for other purposes.

An *eligible State* would be a coastal State that has submerged lands within 3 miles of any part of a qualified project area, a coastline within 15 miles of the geographical center of a qualified project, or both.

Revenues, for the purpose of revenue sharing on projects covered by the new subsection 8(p)(2)(B) in the OCS Lands Act, are defined to include bonuses, rents, license fees, operating fees, other

fees, and any similar payments paid in connection with a qualified project or qualified project area. These revenues include receipts collected by the Federal Government from the entire project area, not just from the portion of the project or project area extending into the 8(g) zone. Administrative fees, such as those for cost recovery, are not included under this definition of revenues and would not be subject to the 27-percent share.

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

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 (5 U.S.C.) and protect data and information to the extent allowed by law.

Section 285.114 Paperwork Reduction Act Statements—Information Collection

These provisions cover Paperwork Reduction Act statements and information collection requirements pertaining to this part.

Section 285.115 Documents Incorporated by Reference

This section is a listing of the industry standard documents MMS is proposing to incorporate by reference into the 30 CFR part 285 regulations.

Section 285.116 Requests for Information on the State of the Offshore Alternative Energy Industry

This section would allow the Director to request information from industry and other relevant stakeholders (including state and local agencies) as necessary to evaluate the state of the offshore alternative energy industry, including the identification of potential challenges or obstacles to its continued development and 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 alternative 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 that ensures fair value for use of the Nation's OCS. The MMS would publish these requests for information in the **Federal Register**.

Section 285.117 [Reserved]

Section 285.118 What are my appeal rights?

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. An unsuccessful bidder may apply for reconsideration by the Director of MMS (Director).

Subpart B—Issuance of OCS Alternative Energy Leases

A. Overview for Subpart B

This subpart proposes a process for issuing alternative energy leases, both for commercial production activities and for assessment or technology testing activities. That process will be competitive, unless there is a determination of noncompetitive interest. In addition, this subpart describes how we will determine when to use a competitive process for issuing an alternative 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 alternative energy leases. To establish a framework, we begin with a discussion of various types of leases that a prospective alternative energy developer may consider.

Types of Leases. Leases would be required for any type of alternative energy activity on the OCS. We propose to issue two types: (1) commercial leases; and (2) limited leases. Although we also are proposing to convey access to areas of the OCS to the Department of Energy 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 would issue directly to lessees on a competitive or noncompetitive basis.

A commercial lease would 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 would be issued over the long term (i.e., up to approximately 30 years, with possible renewals) and convey preferential rights to project easements on the OCS for the purpose of installing transmission and distribution systems.

A limited lease would provide the access rights necessary to conduct activities such as site assessment and technology testing that support production of alternative energy but do not themselves result in the commercial sale, use or distribution of electricity or other produced power. A limited lease would be issued for a shorter term (*i.e.*, up to 5 years, with possible renewals), and would not convey any preferential rights to obtain a commercial lease to develop the leased area.

We anticipate that offshore alternative energy companies 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 alternative energy activities without the commitments and expenses entailed by a long-term commercial lease. For example, it is likely that a limited lease would entail less expense for bidding and lease acquisition, because the rights to assess a site or test technology would have less value than full commercial development rights. Also, there likely would be less effort and cost needed in overall project formulation, planning, and authorizations, as NEPA and CZMA reviews and associated coordination and consultation would focus on smaller-scale and shorter-term activities than would be needed for a commercial lease.

With a limited lease, we expect that a company could acquire a lease relatively inexpensively and test an energy generating device or collect data and information for resource assessment for up to five years. At the end of the limited lease term, if the technology proves successful or the data is promising, the company could apply for a commercial lease encompassing the site or apply for multiple leases in various OCS locations where it wishes to pursue commercial production with its now proven technology. The limited lease in this case would have the effect of promoting collection of resource information or the development of new technology that could be commercially applied in the future.

A limited lease would not offer any preferential right or option to future commercial development of the lease site. The competition requirements of subsection 8(p) of the OCS Lands Act would apply if the lessee of a limited lease subsequently requests a commercial lease. We expect that, if pursued, the majority of limited leases would be issued noncompetitively to small businesses in areas of the OCS that are not otherwise in demand for commercial alternative energy activity.

The most important factor for an applicant to consider in deciding

whether to pursue a commercial lease or a limited lease is the right to commercial development of the leased site. Such right is included only in a commercial lease. Thus, if an alternative energy project applicant is interested in demonstrating a particular alternative 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 right to commercially develop the OCS site. Pursuing a commercial lease would 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 OCS 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 lessee of a limited lease would have no right to develop that site without applying for a commercial lease, which is subject to potential competition following public notice. 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.

In developing the proposed rule, we incorporated requirements of the EPAct, considered public comment received in response to the ANPR (70 FR 77345) published in the **Federal Register** on December 30, 2005, and reviewed other existing models for the conveyance of rights for energy and mineral development in the United States and abroad. One model we considered is a two-stage lease that would authorize short-term resource assessment and technology testing in the first phase and then be converted to authorize long-term commercial production activities in the second phase. We believe that such an approach would entail the same level of consultation and review that would be involved in the issuance of the single commercial lease we are proposing to authorize these activities. Also, a lessee may accomplish the same activities under a single commercial lease as under a two-stage lease. In either instance, the lessee would be able to do resource assessment and technology testing and then decide whether to continue the lease in effect for commercial production. Therefore, we do not see the benefit of offering two-stage leases in lieu of a single commercial lease as proposed.

The types of leases proposed and the activities authorized are intended to provide both for long-term, large scale commercial production of alternative energy and for shorter-term, smaller scale activities in support of alternative energy production, such as site assessment and technology testing activities. We invite comments on the proposed types of leases described above and the specific requirements for leases described in the section-by-section analysis below.

Issuing Leases. It is the goal of MMS to issue alternative energy leases through a simple and straightforward process and in a fair and equitable manner. The EPAct requirements mean that both a competitive and noncompetitive system will be employed.

We anticipate that initial leasing of alternative energy sites on the OCS may be driven by unsolicited applications, rather than an MMS-initiated request for interest in an area. A formal request for interest would be part of the process for confirming that there is no competitive interest in the area identified in the unsolicited application. The proposed process for noncompetitive issuance of OCS alternative energy leases is based on the requirements of EPAct and is patterned after the existing MMS process for issuing noncompetitive negotiated agreements for the conveyance of OCS sand and gravel. We invite comments on the proposed process, including the proposed acquisition fee and case-by-case procedures by which applicants would pay for associated NEPA analysis. We also seek comment on the process we would use to obtain public input on unsolicited applications and the considerations for determining whether competitive interest exists.

Any leasing process for OCS alternative energy activity, whether competitive or noncompetitive, would include full analysis as required by NEPA and other applicable laws. Table 1, which is presented in the discussion titled ''*Overview of the process*'' under the Compliance discussion, describes the NEPA requirements for steps in the OCS alternative energy process, including the lease issuance step.

The proposed competitive sale process for alternative energy leases is similar to long-standing Federal and State processes for conveying mineral rights. This process would have multiple steps, beginning with a Call for Information and Nominations (Call) that would solicit information from potential bidders as well as other interested and affected parties concerning areas to be considered for leasing. The Call serves several functions by informing the public of the proposed lease sale, inviting comments from all interested and affected parties—including Federal, State, and local government agencies and interest groups—to identify their issues and concerns about the sale, and requesting potential lessees to describe their bidding interest in certain areas. After considering input received in response to the Call, the next step would be Area Identification, in which MMS would identify the area to be considered for leasing and analyzed under NEPA. Following the NEPA analysis, MMS would issue a Proposed Sale Notice for public comment. Next, the MMS would publish a Final Sale Notice describing the lease sale, including the auction process we will use to award leases on a competitive basis. Participation in a competitive sale would not be limited to those entities that commented or expressed interest in the area unless the sale notice specifies otherwise. We invite comments on all aspects of the proposed sale process, including the proposed criteria for determining competition, proceeding with competitive auctions, and awarding leases.

We want to encourage competition for OCS leases from entities that will diligently develop alternative energy resources and avoid situations where leases are acquired for strategic or purely speculative purposes. Diligence requirements under subparts E and F of this part would require lessees to make payments and meet lease development requirements that ensure efficient and expeditious activities on the lease. Also, subpart D of the proposed rule would allow leases to be sold and assigned to other companies under certain conditions.

A competitive lease sale for alternative energy activities could be held for one type of activity (e.g., wind) or for various activities (e.g., wind, wave, current, etc). We would determine the scope of competing alternative 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 would clearly state that scope (e.g. wind, wave, current, etc.) early in that process and the subsequent Proposed and Final Sale Notices. If we decided to limit competition to one type of activity (e.g., current), then we would not consider bids for any other type of activity and the lease that is issued would be limited to that activity. If we decided to open competition to more than one type of activity (e.g., wind, wave, current, etc.),

then we would consider all bids for one or more of those activities and the lease instrument may authorize one or more of those activities.

We would like to know if the proposed leasing system and lease development requirements are appropriate to foster efficient development of OCS alternative energy resources, or whether there are other conditions or requirements that we should consider to prevent speculative bidding, holding and resale of the lease rights.

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. Depending on the type of lease (commercial or limited) and the acquisition process (competitive or noncompetitive), a lease could have up to three distinct terms: A 6-month preliminary term, a 5-year site assessment term, and a 25-year operations term. Sections 285.415–421 discuss suspensions that extend the term of a lease, and §§ 285.425 through 427 address lease renewal.

In establishing these lease terms and related provisions for OCS alternative energy leases we considered numerous suggestions. Two of the most prominent proposals were (1) provide for open-ended lease terms based on the oil and gas lease model (i.e., continuation of leases by drilling or producing) and (2) provide for automatic extensions and renewals of lease terms. We believe that both of these proposals could perpetuate inefficient or obsolete operations on a lease. We prefer to retain discretion relating to lease terms in order to promote diligent development and ensure use of the most effective and most efficient operating procedures and technologies. For commercial leases, the proposed 25-year operations term coincides with the anticipated term that a lessee and utility would establish in a power purchase agreement. It is possible that technology could improve substantially over such a 25-year term, and we want the ability to ensure that operations on leases keep in step with such technological improvements. The proposed lease term provisions are designed to be flexible enough to allow for operations over the entire design life of facility equipment but also allow for lease relinquishment, contraction, or termination if the seller is unable to market production.

We believe that the proposed lease terms and related provisions would allow necessary flexibility while promoting diligence, thereby allowing OCS alternative energy activities to operate efficiently. We invite comments on whether the length and structure of these terms would inhibit legitimate efforts to develop alternative energy projects on the OCS and whether there would be better alternatives.

Section by Section Discussion for Subpart B

The discussion in part A of this section of the preamble summarized principal concepts in the proposed procedures for conveying rights to develop alternative energy resources on the OCS. This section-by-section analysis will describe and provide more details on each of the proposed provisions and discuss the rationale for proposing that provision.

General Lease Information

Section 285.200 What rights are granted with a lease issued under this part?

We may issue OCS leases for any alternative energy source. Paragraph (a) of this section identifies the types of alternative energy leases that we propose to make available and describes 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 alternative energy sources. All rights are subject to compliance with requirements to secure approvals of, and then comply with, applicable plans, i.e., Site Assessment Plan (SAP), Construction and Operations Plan (COP), and General Activities Plan (GAP), that are set forth in proposed subpart F.

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 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. This could include the cables, pipelines and other structures necessary to transmit electricity or transport other energy product produced from the OCS to shore. The lessee would 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. Ancillary activities that are not associated with an OCS alternative 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) would be permitted and managed as a separate ROW grant or RUE grant under proposed subpart C.

The proposed lease right to a project easement is necessitated by the nature of power generation activities as well as the competition requirement set forth in EPAct [subsection 8(p)(3) of the OCS Lands Act]. Each alternative energy project located offshore will need to transmit produced electricity or transport other energy product (i.e. hydrogen) to shore by cable or pipeline. If access to the corridor needed for transmission or transportation is not granted with the lease, the lessee would be required to compete for that right in accordance with subsection 8(p)(3). The uncertainty associated with acquiring a lease for a generation project in the absence of a guaranteed right to the path needed to transmit or transport the produced energy to market could be a significant disincentive to investment. Therefore, we propose to award the transmission or transportation right along with the lease. We invite comments on the proposed project easement provision.

Paragraph (c) of this section provides for phased lease development. The proposed commercial lease framework would be capable of accommodating multi-phase project development as is commonly used for onshore utility-scale wind projects (see §§ 285.200 and 285.629). The lease applicant would need to 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 full build-out envisioned. If the applicant for a commercial lease phases in operations, the applicant must pay rentals on the portion of the lease that is not producing and operating fees on the portion of the lease that is producing or on which construction is underway. We may waive rental 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 would relinquish that acreage, or MMS could contract the lease, as provided in §§ 285.435 and 285.436. Multi-phased project

development would have to comply with NEPA, CZMA, and other applicable laws.

Section 285.201 How will MMS issue leases?

As required by subsection 8(p) of the OCS Lands Act, MMS must issue leases, easements, or ROWs for OCS alternative 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 request. 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 leases. If two or more project proponents express interest in leasing the same area of the OCS (overlapping partially or completely), we would conclude that competitive interest exists and conduct a competitive lease sale. We may offer areas for leasing that do not conform exactly with the areas nominated for leasing, after analysis of requirements given in subsection 8(p)(4) of the OCS Lands Act. We invite comments on considerations other than interest by more than one party in leasing the same area of the OCS to determine whether or not there is a need to conduct a competitive lease sale in an area.

We are aware that instances of partially overlapping interests may occur. Even if the overlap is a relatively small portion of the respective areas of interest, a process for deciding what to offer and how to choose the winning bid needs to be established. For example, if proposed Project A entails 10,000 acres for generation of 500 megawatts and Project B entails 2,000 acres for 100 MW, and there is an overlap of 1,000 acres, we would have to determine how to resolve the conflict. Six alternative approaches for addressing such a situation are discussed below. The actual set of approaches that we could consider for issuing leases is not necessarily limited to these options.

(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 ¼¼ legal subdivisions to obtain possible synergies.

(4) Offer the combined 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. 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.

We invite comments on any of these approaches. In particular, what do you think is the capability of package bidding to ensure a fair return and to induce an efficient allocation of leases?

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 proposed auction formats described below (see §§ 285.220 through 285.223), but the number of approved bids would be limited. Accordingly, MMS proposes to use its discretion and, based on consultation—notably with the affected States and local communities, as well as the applicants—identify the appropriate tract or set of tracts to be offered for sale, thereby forgoing the need for intertract competition. We offer this approach in an effort to encourage a level of OCS alternative energy development commensurate with regional and local needs. We invite comments on our proposed approach, as well as other possible approaches such as intertract competitive auctions, to address this issue.

Generally, we believe that priority should be given to leasing tracts for commercial operations so that in instances where there is competition between proponents of commercial leasing and limited leasing, commercial leasing would prevail (assuming that the proposed activities are not compatible). Thus, competitive leasing of areas for limited leases might be much less likely than for commercial leases, and limited leases might be confined to areas in which there is no interest in commercial leasing. Also, given such a priority, commercial leasing of an area would proceed noncompetitively even if interest in limited leasing in the same area is expressed. We invite comments on this proposed priority.

Once we make the determination about competitive interest, we will proceed with issuing leases under the appropriate process as described in this subpart. The competitive process is set forth in §§ 285.210 through 285.225, and the noncompetitive process is set forth in §§ 285.230 through 285.231. MMS will prepare an OCS alternative energy lease form and provide or reference such a lease form in a public notice. The approved lease form (or forms) for OCS alternative 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 alternative energy activities and adapt forms as necessary. We invite comments on this approach for developing appropriate lease documents.

Section 285.202 What types of leases will MMS issue?

This section states that MMS may issue leases for one or more types of activity relating to assessment and production of alternative energy and may issue commercial or limited leases as discussed above in the overview of this subpart. A single purpose lease would authorize one type of activity (e.g., wind power generation), whereas a multi-purpose lease would authorize multiple types of activity (e.g., both wind and wave power generation). A lease issued for one type of alternative energy activity would not necessarily result in prohibition of other types of

activities in that same area, which could be authorized by separate leases issued subsequently. For example, we may conduct a lease sale for wind and then conduct a lease sale for wave activities in that same area. While the initial lessee in such a case would be restricted to wind development, we could authorize multiple types of OCS alternative energy activities in an OCS area to the extent that these activities are compatible and do not unreasonably impede the ability of the existing lessee to reasonably conduct its operations in the area. We will not issue access rights for oil, gas, or any other minerals under this part.

Section 285.203 With whom will MMS consult before issuance of a lease?

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 Magnuson-Stevens Fishery Conservation and Management Act (MSA)), MMS will coordinate and consult with relevant Federal agencies, with the Governor of any State, and the executive of any local government that may be affected by an alternative energy lease. As provided in § 285.102 of subpart A, 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.

Further, we recommend that companies that plan to pursue alternative energy activities on the OCS conduct preliminary outreach early in the process by contacting interested and affected parties to provide information and receive feedback concerning their proposals. A provision in subpart A of the proposed regulations encourages this type of early contact and coordination (see § 285.103(f)). This approach is consistent with the many suggestions we have received concerning timely and thorough coordination and consultation, notably a recommendation from the U.S. Coast Guard calling for early outreach from OCS alternative energy project applicants.

We believe that it is particularly important for companies 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 among potential developers and the States and localities that would be most affected by any development that ensues and that regulate associated onshore facilities helps assure that authorized OCS alternative energy activity 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.

We invite comments on issues relevant to coordination and consultation with Federal agencies and State and local governments.

Section 285.204 What areas are available for leasing consideration?

We intend to consider offering for lease any area of the OCS that is appropriately platted, except areas prohibited from leasing by EPAct. Subsection 8(p)(10) of the OCS Lands Act prohibits alternative 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 withdraw portions of the OCS from leasing under this part and restrict operations on leases for national defense purposes.

The areas we actually make available for alternative energy leasing are likely to be determined through a process that assesses different types of alternative energy resources and potential environmental impacts and other relevant information on a national, regional, or more specific basis. The assessment process will include coordination and consultation with Federal, State, and local governments and other interested and affected parties and may entail the establishment of task forces as discussed above. Based on such assessments, we would have the discretion to offer or not offer to lease areas as appropriate. 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 invite comments on the proposed process for choosing areas to make available for leasing and the proposed means for mapping and describing those areas.

Section 285.205 How will leases be mapped?

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

Section 285.206 What is the lease size?

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 processes leading to both competitive and noncompetitive issuance of leases will provide public notice of the lease size. Since there is no size limit in the EPAct amendment to the OCS Lands Act, and because it would not be prudent to prescribe such a limit for an unknown range of future activities with varying areal requirements, we favor the flexibility of this proposed approach.

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 alternative energy project would result in the issuance of one lease encompassing several contiguous OCS blocks. We invite comments on the proposed provisions governing lease size.

Section 285.207 Through 285.209 [Reserved]

Competitive Lease Process

Section 285.210 How does MMS initiate the competitive leasing process?

This section establishes a process for us to solicit proposals to develop the alternative energy potential on the OCS. We may use a general Request for Interest to gauge interest in alternative 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 competitive lease, we would initiate an alternative energy lease sale process.

Section 285.211 What is the process for competitive issuance of leases?

This section lays out the discrete steps we propose to follow in preparing for and holding a lease auction and issuing leases competitively. These steps include a Call for Information and Nominations (Call), an Area Identification, a Proposed Sale Notice, and a Final Sale Notice.

An Area Identification step would follow the Call. In it we would use responses to the Call and other information to delineate a geographical area or areas to be considered for leasing and analysis under NEPA and other applicable laws. This process includes identifying potential impacts on the environment, consulting with other agencies and State and local officials on mitigating stipulations and conditions, and perhaps public hearings. We would provide public notice of the area identified for leasing, which could encompass the OCS blocks, portions of blocks, or aggregations of blocks requested for leasing.

The product of these evaluations and consultations would then be reflected in the Sale Notices that implement a competitive lease sale. We invite comments on the most useful way to describe areas we decide to make available for alternative energy leasing.

Section 285.212 What must I submit in response to a Request for Interest or a Call for Information and Nominations?

This section describes the type of information we seek from potential lessees, in a 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 alternative 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 would 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 would require prospective lessees to submit the same types of information. That information would 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 alternative energy resources and environmental conditions in the area of interest, including energy and resource data and information used to evaluate the area of interest; certification 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 alternative 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 would not require it to be submitted subsequently. For example, if a company responded to a broad or specific Request for Interest for an area that MMS subsequently decided to offer in a lease sale, that company would not have to resubmit information in response to the Call for that sale. Only companies that had not previously expressed interest and submitted information would 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 markets that could be served and processes that could be used to serve those markets is important. Also, information on similar projects elsewhere in the world and on issues associated with proceeding in your proposed area(s) may be necessary for our deliberations, especially those entailed in developing a broad leasing program or schedule. We invite comments on information that we should request to identify alternative energy interest in general or specific OCS areas.

Subpart A discusses how we would handle such data and information, including procedures for withholding material from public disclosure to the extent allowed by law. We invite comments on the handling of data and information.

Section 285.213 What will MMS do with information from the Requests for Information or Calls for Information and Nominations?

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, the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), and the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

For purposes of Federal consistency, we will treat alternative energy competitive lease offerings as Federal agency activities and follow the requirements of subsection 307(c)(1) of the CZMA procedures. 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 regulatory path found in 15 CFR part 930 subpart C. We invite comments on how this process could be expedited.

Section 285.214 What areas will MMS offer in a lease sale?

This section states that the areas we will offer for lease will be identified as provided in § 285.211(b). However, it should be noted that the leasing area could be reduced subsequently through the lease sale process. This section also states that no further nominations for a lease sale will be accepted following the completion of the Call for Information and Nominations step.

Section 285.215 What information will MMS publish in the Proposed Sale Notice and Final Sale Notice?

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 bond 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 unsuccessful bids or applications;

• Procedures for appealing the lease issuance decision; and

• Execution of the lease instrument.

The Proposed Sale Notice would 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 alternative energy sources would provide a valuable opportunity for us to consult on the selection of appropriate competitive leasing procedures and the formulation of the details of the lease instruments to be issued. After considering comments on the Proposed Sale Notice, we would revise and publish a Final Sale Notice that adjusts as appropriate and confirms the same information. The final steps in the leasing process would be conducting the actual auction and awarding the leases. Figure 2 shows the steps in the proposed competitive leasing process.

We invite comments on whether this process provides sufficient information and notice to encourage competition for prospective alternative energy sites.

Section 285.216 through 285.219 [Reserved]

Competitive Lease Award Process

Section 285.220 What auction format may MMS use in a lease sale?

This and the next two sections describe how we propose to structure a competitive process for granting alternative energy leases. We will hold auctions to award leases using either sealed bidding, ascending bidding, or two-stage bidding. 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 specified for alternative energy lease sales conducted under subsection 8(p) of the OCS Lands Act and there may be advantages to using other approaches with emerging OCS industries.

For each auction, we would 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 criteria for bid acceptance. We would include specific details of the selected auction format in appropriate **Federal Register** notices including the Proposed Sale Notice and the Final Sale Notice. The sale notices would include details on the bidding process, such as the auction format, bidder eligibility, bidder deposits, the bid variable, the object of the bidding, 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 three auction formats from which we propose to choose follows.

Sealed Bidding would consist of a single round and provide for each lease sale participant to submit a single bid by post or e-mail, after which we would 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 traditional format works best in cases where there are limited areas of overlapping interest and one bidder is much better informed than others about the underlying technical and economic prospects of leasing the area for use in an alternative energy project.

This auction format is administratively compatible with application of a ranking and filtering procedure which would 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 predefined 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 right up to the deadline, the time period may be continuously extended as warranted by additional bidding activity. This type of auction format works best in the presence of common high interest and strong competition among bidders who are equally informed about the quality and value of the lease area.

Two-stage Bidding would combine the two formats previously discussed, sealed and ascending bidding. Generally, we would require interested bidders to offer a minimum cash bonus to join the auction. Then, in the most likely process formulation, participants would 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 would then move to the second stage, where the remaining participants typically would offer a sealed bid on a bidding 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. This type of auction works well when competition for specific acreage is weak, or when potential lessees are better informed than the lessor.

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, would win the lease. When there are multiple leases, intertract competition could be used to decide which of the high bids to accept under the rubric of bid adequacy.

We invite comments on the relative merits of these alternative auction formats for leasing OCS acreage for alternative energy projects and on other alternatives. Also, we request comments on whether allowing bidders to define a set of tracts on which they wish to submit a package bid would increase interest in a sale, generate higher aggregate bonus bids, and help ensure that bidders acquire their primary tracts of interest.

Section 285.221 What bidding systems may MMS use for commercial leases and limited leases?

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 might consider acceptable. Usually the same minimum bid level would 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 would not be needed to ensure that a fair return is obtained in the auction for the individual tract. For an alternative energy lease, we propose to choose from five different bid variables:

(1) A cash bonus with a constant or sliding operating fee rate;

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

(3) an initial operating fee rate for use in a sliding operating fee calculation with a fixed cash bonus;

(4) a constant operating fee rate followed by a cash bonus; or

(5) the starting value for a fee rate to be used in calculating a sliding operating fee followed by a cash bonus.

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 would be based on the formula in subpart E. If the fee rate is the bid variable, the cash bonus would be fixed, and the operating fee would 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, would be used only in a two-stage auction.

The resulting annual operating fee in these two-stage bidding auctions would 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 of a non-competitive lease.

For limited leases we propose the cash bonus as the only permissible bid variable. The MMS imposed no operating fee for limited leases because such leases are not authorized to engage in commercial operations. This also means we will not be using a two-stage auction format for issuing limited leases.

The proposed bidding systems and parameters have been developed based on a consideration of the EPAct requirements, domestic and foreign alternative energy programs, and the long-standing OCS oil and gas leasing program, as well as comments received in response to the ANPR. The proposed alternatives for a competitive lease sale bidding system are used in other domestic mineral leasing programs such as offshore oil and gas. Also, the BLM, which manages ROWs for wind energy development on U.S. Federal onshore lands, has held one competitive auction to date. In that auction BLM used a cash bonus as the bid variable and established a minimum initial bid of $17.00 per acre.

One alternative bidding system suggested by commenters that we considered but rejected is a multiple-factor system. Such a system would consist 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.). We concluded that our AEAU program requires a bidding system based on clear objective standards, simple to administer and transparent to the public.

We invite comments on which of the proposed bidding systems is most appropriate for alternative energy leases and why.

Section 285.222 What does MMS do with my bid?

We will 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. 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 prospective, 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 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 interested party. 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 alternative energy project and which are under consideration for leasing.

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 could 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 alternative energy situations, 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 discussed 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 only the most valuable sources of energy needed to meet the expected demand.

Our goal is to accept or reject all sealed bids within 90-calendar 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.

We invite comments on the appropriate bid acceptance considerations and the potential use of intertract competition.

Section 285.223 What does MMS do if there is a tie for the highest bid?

This section does not apply to bids at the end of stage one of a two-stage bidding format. If the highest bids are tied, we will notify the tied bidders. Within 15-calendar days after notification, unless otherwise specified in the Final Sale Notice, we will determine the winning bidder from among the tied bidders by lot.

The proposed provisions governing bidding procedures and results are largely patterned after the way other mineral leases are handled by the Federal Government. However, the procedures proposed to govern tied high bids are slightly different from other existing systems in that they are designed to always result in the award of a lease rather than returning it to the government inventory for future offering. We invite comments on the likelihood of receiving tied bids and on the proposed provisions for selecting a winner in that case. In particular, would holding an additional round of bidding be more appropriate than resolving a tie by lot or, perhaps, by offering a joint lease?

Section 285.224 What happens if MMS accepts my bid?

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 first 6 months' rental, the balance of the winning or fixed bonus, and required financial assurance will be due within 10-business days. We may extend this deadline upon request if we find that the delay is due to events beyond the control of the successful bidder. After the three executed copies 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 OCS area which would be subject 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 invite comments on any difficulties these procedures for formally issuing of a lease might cause potential lessees.

Section 285.225 What happens if my bid is rejected and what are my appeal rights?

This section explains what options a bidder has if we reject the apparent high bid. In that case, 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 invite comments on the fairness of this bid appeal process.

Section 285.226 through 285.229 [Reserved]

Noncompetitive Lease Award Process

Section 285.230 May I request a lease if there is no call?

Anyone qualified to hold an OCS lease under § 285.106 may request an alternative 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 the 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 alternative energy resources and environmental conditions in the area of interest; certification 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 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 proposed 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 invite comments on whether and how any requested information may inhibit requests and on whether this fee will serve its intended purpose.

Section 285.231 How will MMS process my unsolicited request for a noncompetitive lease?

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.

If we determine that there is a competitive interest, we will proceed with a competitive process, we 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, because your original request indicated that your interest was serious and that you intended to pursue development if we carried out the steps needed to issue you a lease. If you submit a qualified bid that does not win, we will refund your deposit, including the amount of the acquisition fee. We invite comment on whether our proposal not to return your acquisition fee if you choose not to bid is appropriate.

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 noncompetitive lease or grant and approving the SAP or the GAP.

Our process for conveying OCS sand and gravel by negotiated noncompetitive lease under Public Law 103–421 is a relevant model for the proposed process for issuing alternative energy leases on a noncompetitive basis. 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 (environmental impact statement or environmental assessment). We inform the requestor of the type of environmental analysis required and provide an estimated schedule for completing the analysis and making the decision whether or not to issue a lease. As part of the NEPA analysis, we undertake or participate in endangered species consultations with the National Oceanic and Atmospheric

Administration and the U.S. Fish and Wildlife Service. 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 to convey OCS sand and gravel resources. 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 instrument) that we offer. The requestor must sign that agreement to complete acquisition of the lease.

We would treat alternative energy noncompetitive lease issuance and SAP or GAP approval as Federal licenses or permits (as defined by 15 CFR 930.51), and follow the requirements of subsection 307(c)(3)(A) of the CZMA and 15 CFR Part 930, Subpart D, as shown in Table 1. 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 Department of the Interior which describes in detail Federal license or permit activities. Since, for leases issued noncompetitively, the lease and SAP or GAP 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 SAP or GAP will 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), and follow the requirements of subsection 307(c)(3)(B) of the CZMA and 15 CFR part 930, subpart E.

We invite comments on the proposed SAP or GAP deadlines and the proposed NEPA and CZMA compliance procedures.

Section 285.232 through 285.234 [Reserved]

Commercial and Limited Lease Terms

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

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 would be the initial 6 months during which the lessee must submit a SAP in accordance with subpart F. If the commercial lease is issued noncompetitively, there is no preliminary term, because lease issuance and SAP approval occur simultaneously. The site assessment term for all commercial leases would begin on the date that we approve the lessee's SAP for a term of 5 years to allow conduct of the approved activities proposed in the SAP. 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 us to review and approve plans.

The operations term would follow, beginning on the date that we approve the lessee's COP, and would last 25 years to allow development, construction, and ultimately commercial production activities. 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).

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

Limited leases issued competitively would have two phases: preliminary term and operations term. For limited leases issued competitively the preliminary term would be the initial 6 months during which the lessee must submit a GAP in accordance with subpart F. If the commercial lease is issued noncompetitively, there is no preliminary term, because lease issuance and GAP approval occur simultaneously. The operations term for all limited leases would 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.

Section 285.237 What is the effective date of a lease?

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 as of 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 as of the first day of the month within which it is signed on behalf of the lessor.

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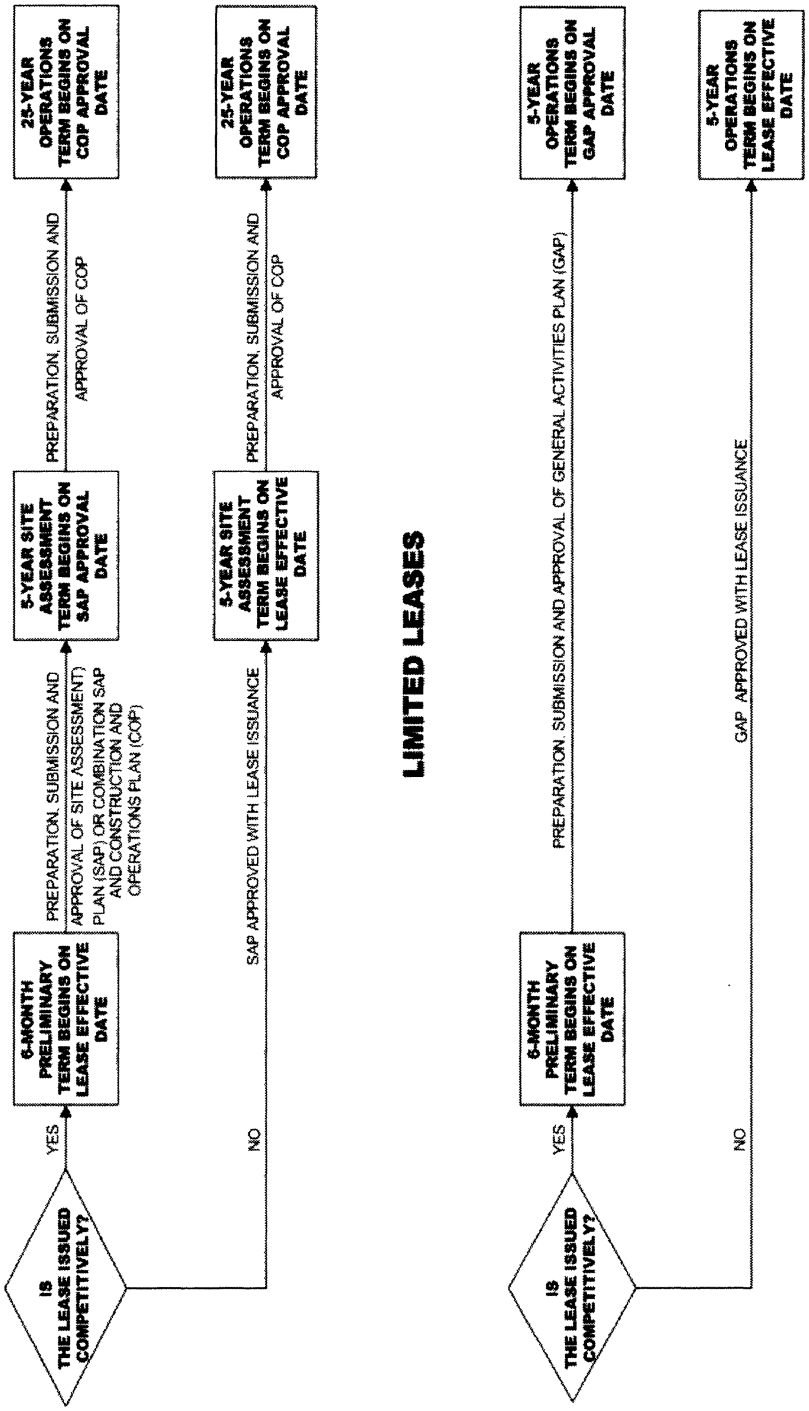
Figure 3. Proposed Alternative Energy Lease Terms*



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Section 285.238 How can I conduct alternative energy research activities on the OCS?

This section describes how alternative energy research activities might be conducted on the OCS. We may set aside areas of the OCS for testing and research activities managed by the U.S. Department of Energy (DOE). This provision was developed following discussions with 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. The proposed rule would allow us to establish one or more such sites for testing all types of offshore alternative energy technology after giving public notice, coordinating and consulting with relevant Federal agencies and State and local governments, and determining that there is no competitive interest in the area, and comply with all relevant Federal statutes (e.g. ESA, NEPA, MSA).

We believe that such research areas should not preempt potential commercial development and should be administered by DOE under some sort of lease-like agreement rather than directly by MMS. The purposes, issue process, and terms of this kind of lease will be established on a case-by-case basis in negotiations between MMS and DOE. This kind of lease would not be bound by the other provisions of this rule

pertaining to leases. These would not be conventional alternative energy leases, authorizing private developers to conduct commercial or non-commercial activities. These would be a negotiated agreement between DOI and DOE to convey to DOE the access right to conduct alternative energy-related research and development. The leasing arrangements made under this provision should not be confused with the limited lease issued directly through a competitive or noncompetitive process we conduct without DOE involvement. We invite comments on this concept for making areas of the OCS available for alternative energy research.

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

Overview

Applicability. This subpart addresses issuing ROW grants and RUE grants for OCS alternative energy activities that are not associated with an MMS-issued alternative energy lease. Alternative 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. 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 two examples below are helpful to illustrate the types of activities on the OCS that MMS would authorize with a ROW grant or RUE grant issued under this subpart C.

Example 1: The MMS would 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 alternative energy resources onshore or in state waters. The proposed Juan de Fuca Cable Project—which would 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 would issue an RUE under this part for activities involving the placement and operation of a facility on the OCS that supports an alternative energy project located on state submerged lands.

The proposed 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 proposed for issuing OCS alternative energy leases.

The MMS would 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.

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 would not be mutually exclusive. It is therefore unlikely that MMS would conduct an auction of ROW grants or RUE grants. The noncompetitive process for granting ROWs and RUEs would 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 that there is competition for a ROW or RUE, we would 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. It is more likely that we would receive unsolicited proposals that would be processed after public notice and determination that no competitive interest exists.

As explained above in the discussion of subpart B, because of the competition requirement set forth in subsection 8(p) of the OCS Lands Act, MMS decided to authorize transportation and other ancillary activities associated with an OCS alternative energy lease through the issuance of a project easement as part of the lease rather than providing for separate grants of ROWs and RUEs. We invite comments on the proposed provisions for ROWs and RUEs, as well as project easements.

Plans. As with limited leases, before operations may commence on a ROW grant or RUE grant, the grant holder must submit a GAP to MMS in accordance with subpart F and receive necessary approvals.

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 would handle such data and information, including procedures for withholding material from public disclosure to the extent allowed by law. We invite comments on the handling of data and information.

Coordination and Consultation. The MMS must coordinate and consult with other Federal agencies and State and local governments 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). 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. We invite comments on these provisions.

CZMA Compliance. For purposes of Federal consistency, MMS would treat ROW grant or 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 would 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 regulatory path found in 15 CFR part 930 subpart C.

The MMS would treat ROW grants and RUE grants issued noncompetitively as Federal licenses or permits, which would 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 that the applicant submit simultaneously its proposed GAP. The GAP is properly characterized as 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 cannot qualify as an OCS Plan (as defined by 15 CFR 930.73).

We invite comments on the proposed CZMA compliance procedures.

Areas Available for ROW Grants and RUE Grants. As with OCS alternative energy leases, ROWs and RUEs may be granted on any appropriately platted area that is 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. We invite comments on the areas available for ROW grants and RUE grants.

ROW and RUE Size. The proposed size of a ROW would 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 would be determined by MMS on a case-by-case basis to include the site of proposed facilities, associated structures, and the areal extent of anchors, chains or other equipment. The proposed ROW and RUE size provisions are patterned after comparable provisions governing mineral activities. We invite comments on the proposed ROW and RUE size provisions.

ROW and RUE Term. A ROW grant or RUE grant is proposed to be 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, the proposed provisions do preserve discretion for MMS to set specific terms when called for. We invite comments on the provisions for ROW and RUE terms.

Other ROW and RUE Provisions. ROW grants and RUE grants will be issued on forms approved by MMS and will become effective on the date granted by MMS or as stated 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. We invite comments on these ROW and RUE provisions.

Section by Section Discussion for Subpart C

ROW Grants and RUE Grants

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

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 alternative energy resource that is not produced or generated on an OCS alternative energy lease issued under this part. It further clarifies that you do not need an ROW grant or RUE grant for a project easement authorized under subpart B of this part.

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, as well as taking into consideration environmental and safety concerns. This does not cover RUE grants issued for the alternate use of existing facilities; those are covered in subpart J of this part.

Section 285.302 What are the general requirements for ROW grant and RUE grant holders?

This section cites the proposed regulation pertaining to lease and grant holder qualifications in subpart A. It then lists the express conditions you must meet to be granted a ROW or a RUE so as not to prevent or interfere in any way with the management, administration, or the granting of other rights by the United States. Further, these conditions allow for other users to use or occupy any part of the ROW grant or RUE grant not actually occupied or required for any necessary operations.

Section 285.303 How long will my ROW grant or RUE grant remain in effect?

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

Section 285.304 [Reserved]

Obtaining ROW Grant and RUE Grants

Section 285.305 How do I request a ROW grant or RUE grant?

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, environmental conditions in the area of interest.

Section 285.306 What action will MMS take on my request?

This section explains how MMS will process requests for ROW grant 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 simultaneous approval of a GAP.

Section 285.307 How will MMS determine whether competitive interest exists for ROW grants and RUE grants?

This section outlines how MMS will determine whether or not there is competitive interest by publishing a public notice (Request for Interest). The public notice would 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.

Section 285.308 How will MMS conduct an auction for ROW grants and RUE grants?

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

Section 285.309 When will MMS issue a noncompetitive ROW grant or RUE grant?

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.

Section 285.310 What is the effective date of a ROW grant or RUE grant?

The effective date of a ROW grant or RUE grant is established by MMS on the ROW grant or RUE grant instrument.

Section 285.311 Through 285.314 [Reserved]

Financial Requirements for ROW Grants and RUE Grants

Section 285.315 What deposits are required for a competitive ROW grant or RUE grant?

This section cites the deposit requirements of § 285.501 pertaining to ROW grant and RUE grant auctions and provides for the return of a rejected high bid.

Section 285.316 What payments are required for ROW grants or RUE grants?

This section lists the payments required in order for MMS to issue the ROW grant or RUE grant. It states that the balance on an accepted high bid and the first year annual rental as specified in § 285.507 (the greater $5.00 per acre per year or $450 per year) must be paid before MMS will issue the ROW or RUE.

Subpart D—Lease and Grant Administration

Overview

This subpart 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.

Noncompliance. The requirements that the lessee or grantee must meet to maintain a lease or grant in effect would 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 specifically citing failure to comply and prescribing 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 proposed noncompliance provisions, in conjunction with the proposed regulatory requirements, are essential to ensure prompt, efficient, and responsible alternative energy activities on a lease or grant. We invite comments on the proposed provisions.

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 146.

Assignment. The provisions governing assignment of leases or grants would generally follow 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 alternative energy leases and grants. We invite comments on these provisions.

Suspension. The proposed rule provides for lease or grant suspensions that would 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 would be automatic. The lessee or grant holder could request suspensions for other purposes and these would be subject to Director approval.

Renewal. The proposed rule provides that a lessee or grantee may request a renewal to conduct substantially similar activities as 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 above in the discussion of lease term provisions in Subpart B, MMS is purposely proposing to retain discretion relating to lease terms and renewals as a tool to promote diligence. We invite comments on the proposed provisions as well as alternatives such as:

(1) Open-ended lease terms;

(2) Shorter lease terms (i.e. 10 years); or

(3) Automatic renewals.

Termination, Relinquishment, and Cancellation. The MMS would be able to 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 proposed.

Section by Section Discussion for Subpart D

Noncompliance and Cessation Orders

Section 285.400 What happens if I fail to comply with this part?

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 to you a notice of noncompliance if it determines that 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, assess civil penalties, and in addition you may be subject to criminal penalties.

Section 285.401 When may MMS issue a cessation order?

This section specifies that a cessation order can 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.

Section 285.402 What is the effect of a cessation order?

This section gives the 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. Once again, 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.

Section 285.403 [Reserved]

Section 285.404 [Reserved]

Designation of Operator

Section 285.405 How do I designate an operator?

Under this section if you intend to designate an operator who is not the lessee or grant holder, you must identify the proposed operator in your specific plan (SAP, COP, or GAP). 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. And if you are the designated operator you must comply with all regulations governing those activities and may be held liable or penalized for any noncompliance. Designation of an operator does not relieve the lessee or grant holder of its obligations.

Section 285.406 Who is responsible for fulfilling lease and grant obligations?

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.

Section 285.407 [Reserved]

Lease or Grant Assignment

Section 285.408 May I assign my lease or grant interest?

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.

Section 285.409 How do I request approval of a lease or grant assignment?

This section contains additional details of the assignment requirements.

Section 285.410 How does an assignment affect the assignor's liability?

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.

Section 285.411 How does an assignment affect the assignee's liability?

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.

Section 285.412 through 285.414 [Reserved]

Lease or Grant Suspension

Section 285.415 What is a lease or grant suspension?

A suspension is an interruption of the term of your lease or grant. You can request or MMS can 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.

Section 285.416 How do I request a lease or grant suspension?

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

Section 285.417 When may MMS order a suspension?

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.

Section 285.418 How will MMS issue a suspension?

MMS can issue a suspension order orally, but ultimately it will be written. 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.

Section 285.419 What are my immediate responsibilities if I receive a suspension order?

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

Section 285.420 What effect does a suspension order have on my payments?

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.

Section 285.421 How long will a suspension be in effect?

The time frame for a suspension will mostly be outlined by MMS. However, if you request a suspension, MMS will not approve a suspension request longer than 2 years.

Section 285.422 through 285.424 [Reserved]

Lease or Grant Renewal

Section 285.425 May I obtain a renewal of my lease or grant before it terminates?

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 alternative energy not originally authorized in the lease or grant. We invite comments on establishing standard criteria for consideration in lease renewal decisions. For example such criteria could include:

(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.

Section 285.426 When must I submit my request for renewal?

This section provides a timeframe for when you must request a renewal. You must submit no later than 180 calendar 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.

Section 285.427 How long is a renewal?

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.

Section 285.428 What effect does applying for a renewal have on my activities and payments?

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.

Section 285.429 through 285.431 [Reserved]

Lease or Grant Termination

Section 285.432 When does my lease or grant terminate?

Your lease or grant terminates upon the expiration of the applicable term, upon cancellation by the Secretary, or upon approval of your relinquishment.

Section 285.433 What must I do after my lease or grant terminates?

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).

Section 285.434 [Reserved]

Lease or Grant Relinquishment

Section 285.435 How can I relinquish a lease or a grant or parts of a lease or a grant?

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.

Lease or Grant Contraction

Section 285.436 Can MMS require lease or grant contraction?

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. MMS will notify you of its 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.

Lease or Grant Cancellation

Section 285.437 When can my lease or grant be canceled?

The Secretary may cancel your lease or grant if you obtained it fraudulently, failed to comply with laws and regulations, for national security, or if your activities cause serious harm or damage to natural resources, life, property, etc. In certain circumstances, the Federal government may provide compensation if your lease is cancelled.

Subpart E—Payments and Financial Assurance Requirements

Overview

This subpart proposes a payment structure for alternative energy leases that complies with subsection 8(p)(2) of the OCS Lands Act. In part, that subsection added by the EPAct directs the Secretary to establish royalties, fees, rentals, bonuses, or other payments to ensure a fair return to the United States for any lease, easement, or ROW granted for alternative energy activity on the OCS. As with other OCS programs, we intend to collect this fair return through a combination of payments. In addition to up-front acquisition fees or bonus payments for alternative energy leases, we propose to charge acreage-based rentals for technology assessment activities on limited leases. On commercial leases we propose to charge acreage-based rentals for the pre-development phases of alternative energy production ventures and their ancillary facilities, and a share of revenues from the alternative energy production phase in the form of an operating fee. After reviewing guidance available from other alternative energy leasing systems, we summarize internal analysis that guided our initial proposed payment amounts. Then we describe how we chose to structure the components of those payments in the section-by-section discussion.

Payments to other landowners. While developing the initial financial terms proposed in this rule, we examined comparable domestic and foreign alternative or renewable energy programs. For renewable energy projects like wind farms on private lands onshore, leasing the land or obtaining easements is a common arrangement. Payments on such leases are structured in numerous ways that can include a single up-front payment, a fixed annual payment, a share of the revenues from the project, or a combination of such payments. In some cases, a minimum annual payment per acre or per turbine may be assessed, especially during periods prior to development or during non-activity. Often, lease terms will include a royalty payment or operating fee based on power generation or revenues.

Our research indicates that for projects commissioned in the 1998–2005 period, payments to landowners on privately leased lands for wind power generation tend to be fixed annual payments in the range of $1,500 to $6,000 per turbine, or minimum rents of $1,500 to $5,000 for each megawatt of nameplate capacity. This is equivalent to royalty payments on private leases generally ranging from 1 percent to 4 percent or more of gross revenues on an annual basis, with lower rates seen in more remote areas and higher rates in areas nearer to markets or areas with other competing land uses. Sometimes the lease payments will be set lower in the initial years of operation, and escalate in later years after capital costs have been recovered. Onshore wind energy development projects may also be subject to annual property taxes assessed by local governments on the value of improvements made to the property. These rentals and fees compensate the landowner for the lessee's use of the land. Such factor payments are an essential element in achieving efficient allocation of the available factors of production for any good. They also confirm that alternative energy projects, notwithstanding their prospective social benefits, can be expected to support payments for use of public land.

There is a limited amount of legislative history that would give insight on the type of alternative energy payment structure intended by the Congress. For this reason, we reviewed alternative energy regulatory regimes implemented by other governmental agencies in the United States and overseas.

We found that the programs employed overseas, in countries with the most mature offshore wind industries, such as Denmark, Germany, and the United Kingdom, were fundamentally different from the program authorized by the EPAct. Hence, they generally do not offer the best comparisons for determining appropriate financial terms for our domestic offshore program. In Denmark, for example, which has the most extensive offshore wind program in the world, operators are not charged rentals or operating fees. On the other hand, annual rent provisions based on production are used by the United Kingdom and are part of the required lease terms for wind leases issued offshore Texas in state submerged lands. The United Kingdom requires an annual rent payment based on two percent of revenue. Between 2005 and 2007, the State of Texas issued the nation's first offshore wind energy leases on both a competitive and non-competitive basis that included annual fees per tract paid until production and then production royalty schedules that would increase payment rates from 3.5 percent to 6.5 percent of revenue over the productive life of the lease.

For commercial onshore wind facilities sited on Federal lands managed by the Bureau of Land Management (BLM), the operator pays a fixed annual payment. That payment is derived from a formula that effectively captures a share of expected revenues based on capacity using fixed parameters; i.e., a 3 percent royalty, a capacity factor (30 percent), and an assumed average electricity price of $0.03 per kilowatt hour. This formula generates a fixed fee for all lessees of $2,365 per 1000 kilowatts (kW) (or 1 megawatt, MW) of anticipated installed capacity. The BLM minimum rent is phased in over the first three years at 25 percent for year 1, 50 percent for year 2, and 100 percent for year 3 and thereafter. The full minimum rental fee is required after the start of commercial operations and is due annually in

advance on a calendar year basis. In summary, we found that most financial requirements for wind energy leases are designed with relatively modest lease terms, which provide a market-based and fair return to the owners of the leased lands, but which are not so high as to discourage development of alternative energy projects. The proposed rates in this rule are in line with financial terms used elsewhere and would constitute a small fraction of the expected offshore alternative energy project costs. We request your comments on whether or not information from other sources supports this conclusion. If not, please provide such alternative information.

Potential OCS Feasibility. We supplemented this guidance with a detailed economic analysis of potential alternative energy projects on the OCS. See Final Summary Report, ''MMS Offshore Renewable Energy Program—Cost-Benefit Analysis to Support the Rulemaking Process for 30 CFR 285,'' Industrial Economics, Incorporated, October 18, 2007. This report is available from MMS upon request. Part of the rationale for the payment levels proposed herein was drawn from the cost-benefit analysis carried out for this rule. This analysis considered an alternative energy development forecast of 73 wind, wave and subsurface water current projects that could enter the operations term within the 20-year period, from 2007 through 2026, assuming that development would be economically viable.

The economic analysis evaluated four different payment scenarios that utilize a range of rental and operating fee magnitudes and forms from which we are likely to choose. These scenarios consisted of a baseline payment scenario in which no payments would be required and 3 additional scenarios reflecting progressively higher rental and royalty terms, some phased in over time. The high payment scenario incorporates a step scale for rental that may be useful if we found it necessary to encourage diligence during the site assessment phase or to help ensure a fair return. A step scale formulation for the operating fee also may be used for a different reason. During production, the step scale allows lessees to keep more of the revenues in early years to help recover project capital costs and for the repayment of debt, in comparison to a fixed operating fee set around the mid-point of the step scale levels. This step scale formulation tends to increase short-term cash flow, thereby raising the project's rate of return and hence profitability.

Results from the economic analysis show that the same number of projects (55) would be viable (i.e., we estimated a nominal internal rate of return of at least 11 percent) under the baseline (no payments), low and intermediate payment scenarios. Three of those projects (approximately five percent) became nonviable under the high payment scenario. Therefore, a lessee's decision to develop a wind, wave or subsurface water current project would only be slightly sensitive to our imposition of anticipated payments in the high payment scenario, and even then only in a small proportion of all cases. A detailed technical report documenting this forecast as well as the results of the cost-benefit analysis may be viewed at *www.mms.gov.*

In addition to the economic analysis, we carried out an ancillary and more focused income analysis to estimate how the allocation of profits between lessee interests and the government would vary under the low, intermediate and high payment scenarios. We evaluated 3 hypothetical wind energy projects; one with an installed capacity of 150 MW assumed to start power generation in 2020 and two with an installed capacity of 500 MW, one assumed to start power generation in 2010 and the other in 2020. Using cost estimates from trade periodicals and Internet sites and choosing revenue levels (from power sales, renewable energy credits, capacity payments, and credits for providing ancillary services) that yield minimally profitable project economics (internal rate of return of 10 percent), we compared project owner and government shares of net revenue. We found that the payments assumed in the intermediate payment scenario allocated approximately 40 percent of the net revenue to the government for the 2010 project. For the two 2020 projects, the government share fell to about 15 percent (with internal rates of return above 12 percent) in the intermediate payment scenario and rose to 40 percent only in the high payment scenario. This exercise supports the view that the government receipts, with the payment schedules we considered, should not discourage truly feasible alternative energy projects. Further, while the initial offshore alternative energy developments could be comprised of a significant proportion of marginal projects, the long term profit outlook is brighter, because future lease owners will have the opportunity to install newer and more efficient equipment. We base this optimistic outlook on an expectation that most of these future leases should be able to utilize newer technology in shallow water locations near major metropolitan areas and sell power for generally higher electricity prices than will be the case for the initial alternative energy leases issued on the OCS.

External Benefits. In choosing initial acquisition, rental, and operating fee amounts, we considered that the cost to society for generating electricity has two components, the internal cost to the generator and the external cost in terms of pollution. External costs attributed to environmental degradation are less for electricity generated with renewable energy resources than from conventional fuels.

A report issued by the European Wind Energy Association in May 2005, titled *Support Schemes for Renewable Energy—A Comparative Analysis of Payment Mechanisms in the European Union*, discusses the issue of external costs and presents findings applicable to this discussion. Page 11 of the report states that:

> The European Commission's ExternE project on external costs estimated that the cost of producing electricity from coal or oil in the European Union would double, and the cost of electricity production from gas would increase by 30 percent, if external costs, in the form of damage to the environment and health, were taken into account.

In contrast, the external cost of generating electricity from renewable energy sources is much less significant, accruing from the emissions of vessels and equipment used during the construction, operation and decommissioning of the generation facilities. Clearly, external costs to society may be reduced by substituting renewable energy for fossil fuels.

However, avoided damages are not easily assessed for individual projects, and the exact terms of a payment structure that would properly credit the benefits to renewable energy developers is not known. In the U.S. there are already important categorical incentives which would apply to all onshore and offshore wind energy production projects. According to Title 26—Internal Revenue Code, Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart D, Sec. 45(a) and 45(d)(1), wind energy generators may claim a production tax credit (PTC) for a qualified facility during the 10-year period beginning on the date the facility was originally placed in service. The credit amount for 2007 was $0.02 per kilowatt-hour, according to the Internal Revenue Service's Internal Revenue Bulletin 2007–21, Notice 2007–40, published on May 21, 2007. Wave and subsurface water current projects are not eligible to

claim the credit. Aside from the PTC, renewable portfolio standards established by many states encourage offshore alternative energy activities by requiring that part of the electricity sold by a retail electricity supplier be generated from renewable sources. This raises the demand for alternative energy and serves to make the related projects more profitable.

We view the existence of such provisions as the principal compensation to project owners for the social benefits of their alternative energy projects, and want to ensure that our payment proposals do not seriously undermine the purpose of that compensation. To understand the financial implications of both our payment proposals and the PTC, we quantified the economic significance of both elements as part of the feasibility analysis mentioned above. Recall that we found that the forecasted number of profitable projects, 55 out of 73,would be the same under both the baseline no payments case (i.e., rentals or operating fees) and the case where the rental and operating fee levels proposed here would apply to initial OCS alternative energy projects (for the high case payments scenario, 3 of the 55 projects became unprofitable). In contrast, we estimate that only 31 of those 73 projects would be economically viable without the PTC. That is, introducing payments at the levels proposed in this rule has no apparent effect on economic viability over the range of project types and sizes considered in our analysis, while eliminating the PTC would convert 24 of these 55 otherwise profitable projects from economically viable to nonviable.

These findings lead to the expectation that the size of the proposed fee payments would be a small portion of the value of the PTC. To confirm this expectation, we focused on a set of these projects already identified as being most sensitive to added costs: a representative sample of 12 of the 24 projects in our analysis that could be made unprofitable if the PTC were eliminated. For each project, we calculated both the current and discounted values of the fee payments and the PTC, for both the 10-year period that the PTC would be in effect as well as over the entire life of the project. For these four sets of cases, we found that the ratio of the value of the fee payments to that of the PTC varied across projects from a low of about 5 percent to a high of about 15 percent. So, our analysis of the data confirmed our expectation that the fee payments we propose would not be a significant portion of the value of the PTC, that is, it would not reduce the PTC by more than 15 percent in any case and, in most cases, a 5 to 10 percent reduction in the effective net value of the PTC could be expected. Thus, we conclude that the proposed size of our payments would not adversely affect the rate of offshore alternative energy development. We request comments on whether the results of this analysis accurately characterize the basic economics of anticipated OCS alternative energy projects.

Another part of the rationale for the payment scheme we propose for alternative energy lessees relates to the societal benefits of these projects compared to traditional OCS oil and gas projects. By requiring lower payments for alternative energy leases, we help electricity generators reduce internal costs, thereby improving the economics of electricity generation from alternative energy sources. At the same time, based on the analysis discussed previously, we do not expect these payments to materially affect the economics of alternative energy projects. It should be a rare occurrence that the decision to develop an alternative energy project depends on the level of the modest rent and operating fees under consideration. Yet, these relatively lower payment terms should still ensure a fair return to the public, when benefits resulting from reduced external costs to society are taken into account. Additional discussion of the proposed payment terms and their effect on project economics continues under § 285.505 of the preamble.

An important goal of the first phase of our proposed alternative energy program is to provide financial terms that do not discourage the alternative energy industry from demonstrating the practicality of alternative energy production on the OCS. Thus, we propose to collect payments of relatively small size initially from a nascent OCS alternative energy industry. After successful demonstration of the commercial viability of that activity, we may decide to adjust financial terms. To provide for that adjustment, these proposed regulations would authorize us to consider revisions to financial terms for established projects based on their operating experience and for new projects based on prevailing and anticipated conditions in the energy market.

Financial Assurance Requirements

This portion of the subpart 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 proposed rule would fulfill that purpose in two ways: through the prequalification of lessees, operators, and grant holders, and providing sufficient financial collateral to assure 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 proposed rule is divided into four general areas:

(5) Basic financial assurance requirements for commercial leases;

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

(7) Requirements for financial assurance instruments; and

(8) Changes in financial assurance.

Basic Financial Assurance Requirements for Commercial Leases

The financial assurance requirements for commercial leases are set forth first in the proposed rule. Generally, the financial assurance required by MMS will be used to ensure the performance of the following lease obligations:

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

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

(c) Other monetary obligations; and

(d) The costs, as estimated by MMS, of lease abandonment and 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 the MMS will approve a Site Assessment Plan (SAP) or a Construction and Operations Plan (COP). The amount of this additional bond/financial assurance will be determined by MMS and 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 proposed rule provides 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 Site Assessment Plan and the General Activities Plan. 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 proposed rule lays out the provisions that must be included in any financial instrument you use for financial assurance. 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 proposed rule also provides guidance on the types of financial instruments that MMS will accept.

Changes in Financial Assurance

This portion of the proposed rule discusses topics such as termination or reduction of financial assurance instruments and reduction of required bond amounts. Also covered are topics such as forfeiture of bonds and MMS requirements for supplemental bonds.

Revenue Sharing

This proposed rulemaking also addresses the requirements related to the new subsection 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 alternative energy projects or alternate uses of existing facilities would be shared, in some cases, with affected States. Proposed §§ 285.540 through 285.541 set out a process for implementing revenue sharing from alternative energy projects. We invite your comments on the following issues associated with that implementation process.

1. The law does not specifically address the eligibility of a State with submerged lands within 3 miles of the edge of a project but with a coastline more than 15 miles from the geographic center of that project.

The Secretary shall provide for the payment of 27 percent of the revenues received by the Federal Government as a result of payments under this section from projects that are located wholly or partially within the area extending three nautical miles seaward of State submerged lands. Payments shall be made based on a formula established by the Secretary by rulemaking * * * that provides for equitable distribution, based on proximity to the project, among coastal states that have a coastline that is located within 15 miles of the geographic center of the project.

Has MMS interpreted the pertinent language of EPAct in a manner that is reasonable and provides the most equitable share of revenue to adjoining states?

2. Using the proposed methodology for determining project area and the geographic center of the project, the share of each eligible State would be independent of the location of any concentration of project activities. Should the formula for distributing revenues allow the flexibility to compensate for a situation in which a qualified project area lies off more than one State but in which the vast majority of facilities and activity are concentrated off a single State? For example, a project area might be 9 miles long and straddle the administrative boundary between two States, with the first phase of the project constructed at one end or, alternately, the completed project might leave perhaps 90 percent of the facilities at one end. The proposed methodology would assign the same State shares, regardless of where the project activities were concentrated. One way to compensate for this would be to identify one or more ''special project areas,'' which could include only the geographic focus of generation activities, would have their own geographic centers, and would be used only for determining shares of operating revenues. (Creation of such special project areas would not affect eligibility but would alter revenue shares.) Is this a reasonable approach for MMS to take? Is there another approach permitted by law that would achieve the same purpose?

3. Should the rule restrict MMS's authority to redefine project areas with regard to time or other factors? For example, should such redefinitions be limited to a period at the end of each fiscal or calendar year? Or should the original project area remain fixed, irrespective of changes in the acreage used for project activities?

4. Is the inverse distance formula proposed for this rule a reasonable method for achieving an equitable distribution of revenues? If not, are there alternative formulas that would be superior? If so, what makes them superior?

5. What other issues should MMS consider in this rulemaking?

Section by Section Discussion for Subpart E

Payments

Section 285.500 How do I make payments under this part?

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 would 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. Until that occurs, we propose that payment procedures for this program follow the model of the oil and gas program cited at 30 CFR 218.51.

We request suggestions concerning how the payment procedures should be structured and what the content of alternative energy payment procedures should include.

Depending on the method of award we select for issuing a lease or grant, persons that seek access to the OCS for alternative 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. We then propose that lessees pay rental during the preliminary and site assessment terms. During the operations term, commercial lease holders would be obligated to pay operating fees or a rental. We propose no operating payments for limited leases, easements and ROW grants because they do not produce. Only rental would be paid by limited lease holders for each year of a specified lease term, and be paid by grantees for as long as an easement or right-of-way is in effect.

Section 285.501 What deposits will MMS collect for a competitively issued lease, ROW grant, or RUE grant?

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 specified otherwise 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 traditionally require a 20 percent deposit on sealed bids submitted in oil and gas sales to assure bids are genuine, but will consider proposals for setting a different deposit requirement for alternative energy lease sales. Historically, a small number of bidders have failed to execute an oil and gas lease within the allotted time period. In those situations the bidders forfeit their deposits. MMS is considering implementation of a similar requirement for alternative energy competitive auctions.

We request your comments on setting the deposit amount and deposit forfeiture requirements, including the extent to which these amounts and requirements should be related to the type of auction format employed.

Section 285.502 What initial payment will MMS require to obtain a noncompetitively issued lease, ROW grant, or RUE grant?

Developers are allowed to submit unsolicited applications for alternative energy leases. We are required by law to give the public notice of such applications, and determine if other parties are interested in competing for the lease rights. In cases where there is no competitive interest, we may issue a lease to the applicant. We propose an acquisition fee of $0.25 per acre for noncompetitive leases. 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. However, a fee that small will not necessary provide a fair return to the United States for use of the seabed. If we decide to issue a noncompetitive lease, we are considering whether to require an additional payment equal to the difference between the minimum bid we would have set for a competitive sale offering in the same area and the acquisition fee. In this way, the sum of the payments made to acquire the lease noncompetitively will provide a similar return to the government regardless of whether the lease is issued competitively or noncompetitively. We seek comments on the adoption of this alternative approach.

Following our 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. Otherwise, we would not refund the acquisition fee.

We are not proposing to require an acquisition fee payment when applying for a noncompetitive ROW grant or RUE grant. We invite comments on whether such a payment should be included in the final rule. We request comments concerning whether the size and treatment of acquisition fees proposed in this section is appropriate and whether or not it would discourage expression of any legitimate interest in a possible alternative energy lease.

Section 285.503 What rentals will MMS collect on a commercial lease?

This section would provide a rental 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 rental and any adjustments to it would be given in the lease instrument. Rental for the first 6 months, or preliminary term, would be due when we issue the lease. Rental 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 approval of the COP, which begins the operations term and when the obligation to pay operating fees would begin. We propose to apply the same interest charge to late rentals from alternative energy leases as we do to late payments from oil and gas leases under 30 CFR 218.54.

We may specify the payment of rental 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 we propose in § 285.505.

For example, a situation could arise where a lease is developed in phases, and both rental and operating fees could be due on different parts of the commercial lease during the same time period. In this case, rental 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 proposed baseline $3.00 per acre rental value, subject to any change in the Final Sale Notice for competitively issued leases. In general, a rental payment serves several purposes. It compensates the Federal government 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 activity on the area. Under some circumstances, we may determine that charging progressively higher rental rates over time would be desirable to obtain a fair return and perhaps be necessary to induce diligent operations. In those cases, we may adopt a rental rate schedule instead of a constant rental rate.

The proposed baseline commercial alternative energy lease rental rate of $3 per acre would be less than one-half of the lowest oil and gas rental rate of $6.25 per acre for oil and gas leases in shallow waters of the Gulf of Mexico issued in 2007. Rentals, as well as operating fees, proposed in these regulations for commercial alternative energy leases would be lower than those for other uses of the OCS such as oil and gas development, in part to encourage industry to invest in offshore alternative energy technology. Another reason for setting lower payment rates for commercial alternative energy leases than for oil and gas leases 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 propose to provide for relatively lower payments by alternative energy developers to encourage investment.

We request comments concerning whether the baseline rental fee proposed in this section would be appropriate for lessees and fair to the public.

Section 285.504 What rentals will MMS collect on a limited lease?

This section would provide a $3 per acre per year rental 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 rental and any adjustments to it would be established in the lease instrument. Rental for the first 6 months would be due when MMS issues the lease. Rental for the next 12 months and for each subsequent year would be due at the beginning of the year for the entire lease area through the end of the lease term. We propose to apply the same interest charge to late rentals from alternative energy leases as we do to late payments from oil and gas leases under 30 CFR 218.54. These rental requirements are equivalent to those on a commercial alternative energy lease during the preliminary and site assessment terms, before activity begins for constructing and producing energy.

We request comment on whether there is any valid reason to charge a different rental for limited leases than for commercial leases.

Section 285.505 What operating fees will MMS collect from a commercial lease?

This section provides that the annual operating fee payments for commercial alternative energy leases would be determined by a formula related to the anticipated, rather than actual, gross value of the electricity generated on the lease. Upon approval of a COP for a commercial lease and commencement of operations for commercial projects, rental payments typically would cease. We propose to then invoke the production charge in the form of a capacity-based operating fee payment. This operating fee would not apply to limited leases as those leases do not allow commercial production of energy. These payments would be due on a schedule established in the Final Sale Notice and lease instrument. We also propose to apply the same interest charge to late operating fees from alternative energy leases as we do to late payments from oil and gas leases under 30 CFR 218.54. We propose the following formula for determining the annual operating fee:

F		M		H		c		P		r
(annual operating fee)	=	(installed capacity in units of production)	*	(hours per year)	*	(capacity factor)	*	(power price per unit of production)	*	(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. We propose that the fee rate be set equal to 1 percent during the first two years of the operations term, and would be set equal to 2 percent for the third and remaining years of the operations term, unless we specify otherwise in the Final Sale Notice for competitively issued leases. We would establish initial values for other elements in the formula, such as the power price and capacity factor, and provide for periodically revising the initially selected values based on new information. When we issue a commercial lease noncompetitively, the elements of the operating fee and any adjustments to it would be given in the lease instrument.

Using the proposed payment terms, government 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 Region. The proposed lease rental and operating fee payments can be illustrated with an example for wind energy. An offshore wind lease, issued non-competitively, on 12,000 acres of the OCS would be required to pay $36,000 to the Government annually based on a charge of $3.00 per acre in rent during the site assessment term under § 285.503. Once we approve the COP, the operations term begins, and operating fees typically are payable. For a lease with an installed capacity of 200 megawatts and an operating capacity factor of 0.38, i.e., 38 percent, the operating fee payable to the Government would be about $333,000 during the first two years of the operations term and about $666,000 annually thereafter if the applicable electricity price was $50 per megawatt hour. Additionally, if the approved project plan has easements covering 2,000 acres, an additional $10,000 in rentals ($5.00 per acre) would be collected per year under § 285.506.

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 mitigates subsequent disagreements and possible legal actions which entail a significant expense to both lessees and the government. However, applying it as well during the pre-production construction phase that begins with approval of the COP appears both inappropriate and unnecessary, since imposition of a simple rental fee can better serve the objective in that period of encouraging diligent efforts to begin production.

In either the pre-production construction or production phase, at least two reasons can be cited for employing a rental rate or operating fee higher than the rental rate charged during the preliminary and site assessment period rental rate. First, we would only approve a COP for a project that has the potential for commercial operations. Hence, a lease with proven resource potential is likely more valuable, and should command a higher payment. Second, you will be using more intensively the leased area when the project moves from the site assessment phase to construction work phase. Hence, while you are not depleting a public asset such as oil or gas, you are causing increased disturbances on public property which makes a higher payment appropriate. The operating fee rate in the first 2 years of the operating term, even at the reduced level proposed, serves as that increased payment while avoiding confusion with the rental applied before the COP. Also, phasing in the operating fee is similar to the BLM fee for onshore wind ROWs for projects, with the minor difference being that a BLM grantee is charged 25 percent of the full operating fee in the first year and 50 percent in the second after approval of a project, instead of 50 percent in both years as we propose.

Prior to holding a lease sale, a high level of uncertainty exists in the estimation of the amount of energy a given facility could generate and in the evaluation of the economic viability of a project planned for an area to be leased. Although we have included a baseline 2 percent fee rate in the proposed regulation, subject to revisions in the Final Sale Notice, this rate is not necessarily the appropriate fee rate for every wind, wave, subsurface water current or other renewable energy project that might be developed on the OCS. However, in the interests of reducing uncertainty, where possible, for pioneering OCS alternative energy projects and stimulating investment in such projects, we intend to use a 2 percent fee rate for the first commercial alternative energy leases issued on the OCS after the first 2 years of the operations term.

For leases issued competitively, we propose that an alternative energy lease on the OCS may be issued, depending of the bidding system, with constant or sliding operating fee rates. With a sliding fee rate, the operating fees could automatically change over the life of a lease according to a sliding scale schedule specified in the Final Sale Notice and/or lease instrument. 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 could provide for future adjustments based on the analysis of either market data or actual project data. Another example would be a case where 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.

If the operating fee rate is constant, it could only vary from one period to the next following approval of a request for reduction or waiver. In addition to a predetermined sliding fee process, we reserve the right to review relevant electricity price information and capacity factor information as they relate to the formula, established in subpart E, and adjust the values 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 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). Thereafter, MMS may adjust the capacity factor (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) no earlier than the completion of the sixth year of operation, or any five year period thereafter. We request comments on the frequency of the review and adjustment of the capacity factor.

In either the case of a competitively or noncompetitively issued lease, we may reduce or waive fee rates under the process given in 30 CFR 285.509. 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 proposed regulations.

In addition to the capacity-based fee approach being proposed, MMS also considered other methods for computing the operating fee. They included fees based on the actual amount or value of production either in the current year or in prior years, fees that varied depending on the characteristics of the project (e.g., water depth, distance from shore, output efficiency, etc.), fees that involved a combination of rentals and output-based charges, or some combination of these options. We are requesting comments on whether the proposed capacity-based operating fees are always in the best interests of the alternative energy program from the perspective of both lessees and the Government, or whether there are circumstances where a different type of fee would be more appropriate. In the latter case, we would like you to identify what those cases are, and how lessees or the Government would benefit from an operating fee based on other than anticipated capacity utilization as a proxy measure for production quantity. To the extent practical, please include detailed examples and explanations for any alternatives suggested.

Section 285.506 What rental payments will MMS collect on a project easement?

This section would provide an annual rental rate of $5 per acre for project easements, or a minimum of $450 per year, which would be due initially upon approval of the COP or GAP. Subsequent payments would 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 proposed alternative energy program. Rental 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 proposed program. Accordingly, we propose to charge project easement holders a constant rental rate equal to $5 per acre, commencing with our approval of your COP or GAP and continuing until lease termination.

We request comment on whether this is the most appropriate way to set rentals for easements and whether the size of the rental is appropriate.

Section 285.507 What rental payments will MMS collect on ROW grants or RUE grants associated with alternative energy projects?

This section would provide the rental rates for ROW grant and RUE grants. Proposed rental rates for alternative energy ROWs parallel rentals considered fair and reasonable for oil and gas ROWs, and would be due in the amount of $70 per statute mile that a ROW crosses. For sites outside the main corridor, an additional rental of $5 per acre, or a minimum of $450 per year, would be charged. Likewise, proposed rental rates for an alternative energy RUE would parallel those for oil and gas RUEs and be charged at an annual rental rate of $5 per acre, or a minimum of $450 per year. The first rental payment would be due when the ROW or RUE request is filed. Subsequent payments could be made on an annual basis, for a 5 year period or for multiples of 5 years. We propose to apply the same interest charge to late rentals due on ROW grants or RUE grants for alternative 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 would also be approved under the proposed alternative energy program. The value of compensation due to the government for ROW grants issued under the oil and gas program forms a useful precedent, which also appears to be an appropriate analog for alternative energy activities. As discussed in the last paragraph of the preceding section on project easements, the rental requirements for an alternative energy RUE are related to the payment requirements for oil and gas RUEs.

Proposed rental rates for oil and gas pipeline ROW grants were published on October 3, 2007, in the **Federal Register**, Vol. 72, No. 191, in 30 CFR 250.1130 of the rulemaking for 30 CFR parts 250, 253, 254, 256, RIN 1010-AD11, titled *Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Pipelines and Pipeline Rights-of-Way*. If we determine that the proposed oil and gas ROW rental payment regulations should be revised as a result of new information received through comments, we would also consider this information as it might apply to alternative energy ROW rental rates.

We request comment on whether this is the most appropriate way to set rentals for easements, and whether the size of the rental is appropriate.

Section 285.508 Who is responsible for submitting lease or grant payments to MMS?

For each lease, easement, ROW or RUE, one person, designated as payor, would be responsible for making all payments. All payors and the lessee shall maintain auditable records in accordance with regulations in Subpart

A. We may also issue guidance related to recordkeeping.

Section 285.509 May MMS reduce or waive lease or grant payments?

This section provides that the MMS Director has the authority to reduce or waive a rental 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 six 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, in §§ 285.505(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.

Section 285.510 Through 285.514 [Reserved]

Basic Financial Assurance Requirements for Commercial Leases

Section 285.515 What financial assurance must I provide when I obtain my commercial lease?

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.

Section 285.516 What are the financial assurance requirements for each stage of my commercial lease?

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 financial instrument, in an amount determined by MMS, is due before the MMS will approve your Site Assessment Plan (SAP). And a third bond or financial instrument, in an amount determined by MMS, is due before the MMS will approve your Construction and Operations Plan (COP).

Section 285.517 How will MMS determine the amounts of the SAP and COP financial assurance requirements associated with commercial leases?

The MMS will determine the amount required by considering projected amounts of rentals and other payments due the government over the next 12 months; any past due rentals 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 financial assurances to satisfy your requirements.

Section 285.518 [Reserved]

Section 285.519 [Reserved]

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

Section 285.520 What financial assurance amount must I provide when I obtain my limited lease, ROW grant or RUE grant?

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.

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

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

Section 285.522 through 285.524 [Reserved]

Requirements for Financial Assurance Instruments

Section 285.525 What general requirements must a financial assurance instrument meet?

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 guidance 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.

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

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 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.

Section 285.527 Can I use a lease or grant-specific decommissioning account to meet the financial assurance requirements?

MMS may authorize you to establish a decommissioning account in a federally insured institution with certain limitations. 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.

Section 285.528 [Reserved]

Section 285.529 [Reserved]

Changes in Financial Assurance

Section 285.530 What must I do if my financial assurance lapses?

This section discusses the steps you must take if your surety loses Treasury certification, becomes insolvent, has its

charter suspended, or if your approved security expires. You must promptly notify MMS and provide new financial assurance.

Section 285.531 What happens if the value of my financial assurance is reduced?

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

Section 285.532 What happens if my surety wants to terminate the period of liability of my bond?

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.

Section 285.533 How does my surety obtain cancellation of my bond?

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. 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.

Section 285.534 When may MMS cancel my bond?

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.

Section 285.535 Why might MMS call for forfeiture of my bond?

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.

Section 285.536 How will I be notified of a call for forfeiture?

This section specifies that you and your surety will be notified in writing of the call for forfeiture and 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 ten days to avoid forfeiture.

Section 285.537 How will MMS proceed once my bond or other security is forfeited?

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, regardless of the amount collected under your bond. MMS may take or direct action to recover all costs in excess of the forfeited bonds.

Section 285.538 [Reserved]

Section 285.539 [Reserved]

Revenue Sharing With States

Section 285.540 How will MMS equitably distribute revenues to States?

Proposed § 285.540 of this rule describes the factors MMS would consider in determining how to equitably distribute revenues among eligible States. This section also provides the procedure for calculating the State revenue shares.

The location of a State's submerged lands relative to the nearest part of a qualified project area (i.e., whether all or part of the project area falls within the State's 8(g) zone) or the proximity of the State's coastline to the geographic center of the qualified project would determine State eligibility, such that a State becomes eligible by meeting either criterion. However, only proximity of a State's coastline's to the geographic center of the qualified project would be a factor in allocating revenues among eligible States, should more than one State be eligible. If a qualified project changes significantly in size, scope, or some other way that may affect the equitable distribution of revenues, MMS may re-evaluate the project area to ensure that an equitable distribution of revenues is maintained when any such change becomes apparent.

To determine each eligible State's share of the 27 percent of the revenues received by the Federal Government for a qualified project, MMS is proposing to use the inverse distance formula, based on the proximity of the States' coastline to the geographic center of the qualified project. This is the formula used for the same purpose under the Coastal Impact Assistance Program administered by MMS. Under this methodology, eligible States with coastlines that are closer to a qualified project's center would receive proportionally more revenues than eligible States with coastlines that are farther away. In particular, if eligible State A is twice as far as eligible State B from the qualified project's center, then State A would receive half as much of the revenues as would State B. If Si is equal to the nearest distance from the geographic center of the qualified project to the i = 1, 2, * * * nth eligible State's coastline, then State i would be entitled to the fraction F_i of the 27-percent aggregate revenue share due all the States according to this formula:

$$F_i = [(1/S_i) \div (\Sigma_{i=1...n} (1/S_i))].$$

For example, if the nearest point of the coastline of State A is 21 miles from the qualified project's center, and the nearest point of the coastline of State B is 7 miles away (and there are no other eligible States), the ratio of A's distance to B's distance is 21:7, or 3:1. (Put another way, there are 28 total miles of distance from the nearest coastline points of eligible States to the qualified project's center; 21 of the 28 miles represent the distance from State A, and the remaining 7 miles represent the distance from State B.) In the calculations, this gets inverted (giving the formula its name) such that the ratio of A's share to B's share becomes 1:3 This results in the 27 percent being divided such that A gets one-fourth and B gets three-fourths of the 27-percent revenue share provided to the eligible States. These proportionate shares reflect the relative distances from the center of the qualified project to the nearest points of their coastlines in an inverse manner.

Section 285.541 How will a qualified project's location affect an eligible State's share of revenues?

Proposed § 285.541 includes a table that describes how a State's eligibility for revenue sharing would be determined, using 3 different situations. The examples are intended to provide interpretations of the rule for both typical cases and unusual situations. As such, the table provides 3 program principles from which proper application of the proposed rule can be inferred for other cases. These are those program principles:

- There must be at least one eligible State for every qualified project.
- A State becomes eligible for revenue sharing from a qualified project if either or both of two distance criteria are satisfied, i.e., at least a part of the project lies within the State's 8(g) zone or the geographic center of the project is within 15 miles of the nearest point of the State's coastline.
- The proportion of revenues to be shared by an eligible State depends only on the distance from the geographical center of the qualified project to the nearest point of the State's coastline.

To illustrate this further, here are expanded versions and discussions of the cases in the section and table.

Example (a). A qualified project area is located partially within the zone

extending 3 miles seaward of State A's submerged lands. The qualified project area does not extend into any other State's 8(g) zone, and the geographic center of the qualified project is more than 15 miles from the coastline of any other State. In this scenario, State A would receive the entire 27 percent share of the Federal revenues from the qualified project, regardless of the distance from the center of the qualified project to the nearest point on State A's coastline. This is the case because of the program principle that there must be at least one eligible State for every qualified project.

Example (b). A qualified project area is located partially within the zone extending 3 miles seaward of State A's submerged lands. The project area does not extend into any other State's 8(g) zone. The geographic center of the project is within 15 miles of State B's coastline, but is farther than 15 miles from State A's coastline. In this scenario, State A and State B would each receive a portion of the 27 percent of revenues to be shared from the project. This is the case because of the program principle that a State becomes eligible for sharing in the revenues from a qualified project by meeting either one of the two distance criteria, regardless how or when another State might become eligible. The sharing between the two States would be in accordance with their proximity to the geographic center of the qualified project. To elaborate, assume that the geographic center of the qualified project lies 20 miles from the closest point to State A's coastline and 10 miles from the closest point to State B's coastline. Pursuant to the inverse distance formula, States with coastlines that are farther from the geographic center of a project would get proportionally lower revenue shares from the project.

State A's proportion = [(1/20) ÷ (1/20 + 1/10)] = 1/3.

State B's proportion = [(1/10) ÷ (1/20 + 1/10)] = 2/3.

Therefore, State B, being twice as close as State A to the qualified project's center, would receive a share that is twice as large as State A's share.

The sharing rate of the total revenues is mandated to be 27 percent 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 share as follows, rounded to the nearest whole dollar:

State A's share = $270,000 × 1/3 = $90,000.

State B's share = $270,000 × 2/3 = $180,000.

Example (c). A qualified project area is located partially within the zone extending 3 miles seaward of State A's and State B's submerged lands. The project area does not extend into any other State's 8(g) zone. The geographic center of the qualified project is within 15 miles only of State B's and State C's coastlines. In this example, all 3 States would receive portions of the 27 percent of revenues to be shared from the qualified project based on the inverse distance formula. This is the case because of the program principle that the proportion to be shared by an eligible State depends only on the shortest distance from its coastline to the geographical center of the project, not the number or type of criteria that were the basis for its eligibility.

To illustrate how the inverse distance formula would be applied in the case of 3 eligible States, assume that the qualified project center lies 20 miles from the closest coastline point in State A, 10 miles from the closest coastline point in State B, and 14 miles from the closest coastline point in State C. The proportion of the 27 percent revenue share due each State would be calculated as follows:

State A's proportion = [(1/20) ÷ (1/20 + 1/10 + 1/14)] = 7/31.

State B's proportion = [(1/10) ÷ (1/20 + 1/10 + 1/14)] = 14/31.

State C's proportion = [(1/14) ÷ (1/20 + 1/10 + 1/14)] = 10/31.

If the qualified project generates $1,000,000 of revenues in a given year, the Federal Government would distribute the States' 27 percent share as follows:

State A's share = $270,000 × 7/31 = $60,968.

State B's share = $270,000 × 14/31 = $121,935.

State C's share = $270,000 × 10/31 = $87,097.

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 alternative energy activities. The subpart outlines the timing of submission, content requirements, and necessary MMS approvals for each of the plans. The MMS will not allow a lease or grant holder to conduct any activities on the OCS without proper plan submittal and MMS approval. The types of required plans are described below. 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. The MMS is proposing three types of plans that would be 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 would be used for commercial leases, while the GAP would be used for limited leases and grants.

Prior to conducting site assessment activities on a commercial lease, a lessee would be required to submit a SAP. The SAP describes the surveys that a lessee plans to conduct to characterize a commercial lease, including a project easement. These surveys would include: (1) Physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys), (2) resources assessment surveys (e.g., meteorological and oceanographic data collection), and (3) baseline environmental surveys (e.g., biological, archaeological, or socioeconomic surveys).

A COP would be required before a lessee could 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 would be required before a lessee or grantee could 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. These activities include: (1) Physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys, (2) resources assessment surveys (e.g., meteorological and oceanographic data collection), (3) baseline environmental surveys (e.g., biological, archaeological, or socioeconomic surveys), and (4) construction activities, operations, and conceptual decommissioning plans for all planned facilities.

Considered Approaches

In developing an approach for the types of plans to require for alternative energy projects, MMS considered a number of options. One option we considered was a single comprehensive project plan. This plan would cover the entire project, including site assessment, construction, operations, production, and decommissioning. However, we were concerned that the one plan approach would make compliance with NEPA, CZMA, and other Federal laws

more difficult, since the single plan would need to be modified at each stage of the project and would possibly require additional compliance reviews. Another option was multiple plans, with a different plan for each stage in the project. For example, the applicant would submit one plan for site assessment, one for construction, another for production, and a final plan for decommissioning. This option was not selected because it was considered overly burdensome and would require the preparation of multiple NEPA documents, reviews and other compliance documents.

The selected approach would require two plans for a commercial lease (SAP and COP) and one plan (GAP) for limited leases and ROW grant or RUE grants. We chose this approach for commercial lease because there are two distinct phases for commercial development for alternative energy projects: A site assessment phase, where a lessee may install a meteorological or marine data collection facility to assess alternative energy resources, and a generation of power phase, which includes construction, operations, and decommissioning. 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 grant and RUE grants—these instruments do not involve commercial power generation activities on the OCS. We wanted to distinguish between generating and non-generating types of projects.

Overview of Required Plans

The two plans for commercial development are a site assessment plan (SAP) and a construction and operations plan (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 determinations. These plans must include all the information needed to conduct appropriate NEPA analysis and for compliance with other relevant laws. In addition, the applicant must submit one copy of their CZMA consistency certification with each plan. This approach includes a predictable schedule for development and milestones for plan submittals.

The SAP covers site assessment and other data gathering activities that would be conducted to gather information needed to develop the project. The data gathered under the SAP would be used to develop the COP for the project. The site assessment activities may include physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys), resources assessment surveys (e.g., meteorological and oceanographic data collection), and baseline environmental surveys (e.g., biological, archaeological, or socioeconomic surveys). Additionally, a SAP may include the construction of simple facilities for data collection, such as meteorological towers. If MMS approves the SAP, the operator may begin conducting any approved activities except those that involve the construction of facilities proposed in the SAP. The operator would gather the data needed to confirm the location of any facilities proposed in the SAP or for the COP. The operator would submit the findings and data to MMS before constructing any facilities. Most of the data and findings of SAP activities would be submitted as part of the COP. 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, CZMA, 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 will require revision. Furthermore, MMS may need to conduct additional reviews, including NEPA, on any new information.

The COP would describe 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 would also describe the actual activities related to the project including construction, commercial operations, maintenance, and decommissioning. The COP would include the results of the survey 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 would require approval of a general activities plan (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 could 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 operator's initial assessment and survey activities needed to characterize the alternative energy project site for a commercial lease, including a project easement. 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 vessel-based surveys and 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. The MMS expects that the applicant would conduct physical characterization surveys, resource assessment surveys, and baseline environmental surveys under 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 that do not involve the installation of facilities. The operator would gather data to confirm the placement of the facilities. Before constructing any facilities, the operator would submit to MMS the findings of the data gathering and appropriate data, along with additional information on the facilities. After MMS receives the additional data and information and after we notify you that we have no objections, the applicant may begin construction activities proposed in the SAP. If MMS has objections, the applicant may not begin construction until all MMS objections are resolved to MMS's satisfaction.

When MMS receives the applicant's COP for technical and environmental review, MMS may extend the lease 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 receive MMS approval of the COP before conducting the activities.

Subpart F outlines what the applicant must demonstrate 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 of the facilities would be relatively simple and temporary. If an operator proposes to install a facility that the MMS determines is significant, or complex, additional information would be required. If MMS makes this determination, you would be required to complete the survey activities in the SAP and submit an initial survey report of the results of those activities to the MMS. You must also 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 could 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. MMS will review these reports prior to each stage of these operations.

For commercial leases acquired noncompetitively, you must submit the SAP within 60 calendar 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. We will conduct technical and environmental reviews, including NEPA analysis, and forward the plan and required information to affected States for CZMA review. After the reviews are complete, MMS would approve, disapprove, or approve with modifications the SAP. 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 and MMS would 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.

If you want to conduct activities not directly addressed in the approved SAP, you would need to 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 would 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 would include:

- Nominations of certified verification agents (CVA) for MMS approval;
- 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 proposed rule outlines the process for preparing, submitting, processing, and implementing a COP. The COP should include any anticipated site assessment activities that may be conducted during the life of your plan. The MMS must approve the COP before you can construct any facilities for commercial operation.

As with the SAP, the proposed provisions 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.

For commercial leases acquired noncompetitively and competitively, you must submit a COP within 5 years after MMS approves your SAP. 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 forward the plan and required information to affected States for CZMA review. After the reviews are complete, MMS would approve, disapprove, or approve with modifications the COP. MMS will specify the terms and conditions of the approval and these terms and conditions 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 MMS would require the applicant to certify compliance with certain of the terms and conditions as 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 may include off-lease areas that contain areas for cable, pipeline or associated facilities. These areas cannot 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 what portions of the lease 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. 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 calendar days after the CVA has submitted the final fabrication and installation report to MMS. The activities described in these 2 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 future 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. MMS will determine whether the proposed activities may be conducted under your existing COP or require a revision to the COP. We may request that you provide additional information for 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. MMS may cancel your lease and you must start the decommissioning process if you cease commercial operations for an indefinite period which extends 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 would include 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 calendar 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 or multiple facilities. 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: 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 each phase of the project (i.e. one EIS for the SAP and one EIS for the COP). Also, we anticipate that limited leases and RUE and ROW grants will require an EIS. After the impacts and related mitigation of alternative energy activities on the OCS are better understood, it is possible that projects may require an environmental assessment. The applicant must provide MMS with the data necessary to complete the required NEPA documentation. This would include a description of those resources, conditions, and activities that could be affected by your proposed site assessment activities, including associated construction and decommissioning activities. This 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, 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 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.
- Other resources, conditions, and activities as identified by the Director.

The MMS may decide to use a third party to prepare the NEPA document.

CZMA Compliance for Plans: For purposes of Federal consistency, MMS will treat SAPs, COPs, and GAPs 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 CZMA 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.

Subsequent consistency reviews for revisions to the plan 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 Instrument Held: The number of NEPA and CZMA reviews that would be conducted on your lease or grant is determined by the type of instrument that you hold (Table 2). For a competitive, commercial lease there would be three NEPA and three CZMA reviews—one each for the Lease Sale action, the SAP, and the COP. For a non-competitive 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 calendar days after the Director issues a determination that there was no competitive interest for your lease or grant, the SAP would be reviewed under the same review as the lease issuance action. An efficiency is gained in this example because MMS can conduct reviews on the SAP and lease issuance at the same time. It would be unreasonable to require this for competitive commercial leases since MMS would have to request all bidders to submit a SAP before they actually knew whether they would be awarded a lease.

For limited leases, two NEPA and two CZMA reviews would be required for a competitive limited lease and one review for a non-competitive lease. The reviews for the competitive limited lease would be conducted on the lease sale action and the GAP, while the non-competitive limited lease would have a simultaneous review of the lease issuance action and the GAP.

We envision that all ROW grants and RUE grants would likely be non-competitive. 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 EIS. 2. SAP. 3. COP.
Non-Competitive 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.
Non-competitive 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.
Non-competitive ROW, RUE Grant	Negotiate and issue ROW, RUE grant	1. ROW, RUE issuance and GAP.

Section by Section Discussion for Subpart F

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

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: (1) Site Assessment Plan (SAP), (2) Construction and Operations Plan (COP), and (3) General Activities Plan (GAP). The SAP and the COP would be used for commercial leases, while the GAP would be used for limited leases and grants. Prior to conducting site assessment activities on a commercial lease, a lessee would be 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 could 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 could begin activities on a limited lease or ROW grant or RUE grant including, if applicable, a project easement.

Section 285.601 When am I required to submit my plans to MMS?

The timing for the submission of your plans depends on whether your lease or grant was 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.
- *Non-competitive lease or grant:* You must submit your SAP or your GAP within 60 calendar days after the Director issues a determination that there was no competitive interest for your lease or grant.
- *Operations for commercial lease:* You must submit a COP at least 6 months before the end of your site assessment term if you plan to request an operations term for your commercial lease.

MMS will allow 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. Furthermore, you may need to make revisions to your

COP, followed by additional MMS reviews, including those required under NEPA, if new information becomes available after you complete your site assessment activities. For example, following a geophysical survey, you may determine the presence of hard bottom habitat that was previously not identified. Based on this information, MMS may require you to conduct a biological survey to describe the communities present in that habitat. The results from those surveys may require you to revise your COP in order to propose the relocation of some of part or all of your proposed facilities to another part of your lease.

Section 285.602 What records must I maintain?

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.

Section 285.603 [Reserved]

Section 285.604 [Reserved]

Site Assessment Plan and Information Requirements for Commercial Leases

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

This section generally describes a SAP. A SAP contains the plans for conducting surveys, data gathering, and operations to characterize a commercial lease, including the project easement. A SAP must include a description of how surveys such as physical characterization surveys, resource assessment surveys, and baseline surveys would be conducted. It includes additional requirements for both simple and complex facilities.

Section 285.606 What must I demonstrate in my SAP?

This section provides details on the requirements for a SAP. The SAP must demonstrate how a lessee would 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 to sites, structures, or objects of historical or archaeological significance;
- Use best available and safest technology;
- Use best management practices; and
- Use properly trained personnel.

The SAP must demonstrate that the planned site assessment activities include all surveys and other activities to gather information and data required for the COP.

Section 285.607 How do I submit my SAP?

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

Section 285.608 [Reserved]

Section 285.609 [Reserved]

Contents of the Site Assessment Plan

Section 285.610 What must I include in my SAP?

This section contains further detailed requirements on what must be submitted for SAP applications. This includes: identifying information, a discussion of the objectives, 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, financial assurance information, and additional information as requested by MMS. For site assessment activities that include the installation of any facilities (*e.g.*, a single monopole meteorological tower), additional requirements are listed. They include:

- A location plat,
- Geotechnical survey,
- General structural and project installation information,
- A description of the deployment activities,
- Construction schedule,
- A list of solid and liquid wastes generated,
- Shallow hazards,
- Archaeological resource surveys,
- Relevant geological surveys,
- Biological surveys,
- Socio-economic surveys,
- A description of any vessels and aircraft,
- Proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts,
- CVA nominations (if required),
- Decommissioning and site clearance procedures,
- References, and
- Additional information as requested by MMS.

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

This section requires the applicant to submit information needed to assist MMS in preparing compliance documents related to NEPA (Environmental Impact Statement or Environmental Assessment) and other relevant laws, including MSA, ESA, and CZMA, that are required for SAP approval. This includes information on resources, conditions, and activities listed in this section that could be affected by or could affect activities proposed and approved in your SAP.

This section also requires the applicant 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 coastal management program and that the applicant will conduct these activities in a manner consistent with such a program. The consistency certification must also include ''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).

Section 285.612 How will MMS process my SAP?

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

The MMS will forward a copy of your SAP and consistency certification to the State's CZM Agency after all information requirements for the SAP are met. We will consult with relevant Federal, State, and local agencies and provide to other Federal, State, and local agencies relevant non-proprietary 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. 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 and ESA incidental take statement, conservation recommendations resulting from EFH consultations, and 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.

Activities Under an Approved SAP

Section 285.613 When may I begin conducting activities under my approved SAP?

After MMS approves the SAP, the applicant may begin to conduct any approved activities that do not involve the construction of facilities or any other seabed disturbing activities on the OCS.

Section 285.614 When may I construct OCS facilities proposed under my SAP?

This section discusses the timing of constructing simple and complex facilities and various reports that must be submitted at each stage for MMS approval before proceeding to the next step. Also required are CVA nominations for plans and the Safety Management System.

Before you begin construction of any OCS facility described in the SAP, you must complete the initial survey activities that relate to the construction and installation of the facility or facilities, and a report of the findings of those activities must be submitted to MMS. This report must also identify the specific location on the lease area where facilities will be installed. If MMS determines that the facilities are complex or significant, additional information, described in the last paragraph of this section, is required. The applicant may begin to construct and install a facility or facilities after MMS receives the initial survey report and has no objections. If MMS does not respond to the applicant with objections within 60 calendar days after receiving the report, MMS is deemed not to have objections to the report.

However, if MMS has objections to the initial survey report, we will notify the applicant in writing within 60 calendar days of receipt. The MMS may follow-up with written correspondence outlining its specific objections to the initial survey report and request that certain actions be performed to resolve the agency's objections. The applicant cannot begin construction until the objections are resolved.

If you are constructing multiple facilities or a complex or significant facility you must complete the required survey activities, and submit an initial survey report of the findings of those activities to MMS. The applicant must also submit a Facility Design Report; a Facility Fabrication and Installation Report; CVA nomination; and a Safety Management System.

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

This section identifies the various reports and notifications that must be submitted to MMS and their timing. This includes 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.

Section 285.616 [Reserved]

Section 285.617 What activities require a revision to my SAP and when will MMS approve the revision?

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 required compliance 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 the revision is otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

Section 285.618 What must I do upon completion of approved site assessment activities?

After completing activities under the approved SAP, the applicant must initiate the decommissioning process for any facilities built for conducting SAP activities. However, if you submit a COP to MMS, the applicant 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.

Section 285.619 [Reserved]

Construction and Operations Plan for Commercial Leases

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

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 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.

Section 285.621 What must I demonstrate in my COP?

This section describes what the applicant must demonstrate in the COP. The COP must demonstrate how proposed activities conform with 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.

Section 285.622 How do I submit my COP?

This section provides the requirements for submitting the COP and future revisions, the applicant must submit one hard copy and one electronic version of the COP to MMS. The applicant 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.

Section 285.623 [Reserved]

Section 285.624 [Reserved]

Contents of the Construction and Operations Plan

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

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

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

You would conduct these surveys and activities under the SAP. You must describe in your COP any other surveys that you may need to conduct during your COP phase.

Section 285.626 What must I include in my COP?

This section lists the project-specific information that must be included in the COP. The 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
- 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 use 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 consulted, or will be consulting, regarding potential impacts associated with the proposed activities;
- Reference information;
- Financial assurance statements;
- CVA nominations;
- Construction schedule; and
- Any other information required by MMS.

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

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. The applicant must include one copy of the consistency certification for the project to verify compliance with each State's approved coastal management program, including required ''information'' and ''analysis'' per § 285.611. Also, the applicant must submit an oil spill response plan and the Safety Management System for the project.

Section 285.628 How will MMS process my COP?

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, non-proprietary data and information to, relevant State, Federal and local 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). 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 COP. If we disapprove your COP, we will provide the reasons for the disapproval and you will have an opportunity to revise and resubmit your COP. If we approve your COP, it will be subject to terms and conditions set forth by MMS. The applicant must certify compliance with certain of those terms and conditions as required under § 285.615(c). If MMS disapproves your COP, we will inform you of the reasons and you will have an opportunity to resubmit a revised plan addressing the concerns identified. The MMS may suspend the term of your lease, as appropriate, to allow this to occur. If the project easement is approved, MMS will issue an addendum to the lease specifying the terms of the project easement.

Section 285.629 May I develop my lease in phases?

In the COP, the applicant may request to develop the commercial lease in phases. To support this request, the applicant 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.

Section 285.630 [Reserved]

Activities Under an Approved COP

Section 285.631 When must I initiate activities under an approved COP?

After MMS approves the COP the applicant 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.

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

This section describes documents that must be submitted to MMS for review, before construction and installation of facilities 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 applicant will be required to submit a revision to the COP for MMS approval, before commencing the activity.

Section 285.633 How do I comply with my COP?

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. We will specify these terms and conditions and they will be incorporated into your COP. Examples of the types of terms and conditions we may require include, but are not limited to terms and conditions from and ESA incidental take statement, conservation recommendations resulting from EFH consultations, and 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.

Section 285.634 What activities require a revision to my COP and when will MMS approve the revision?

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 applicant 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); or
- Make changes to any other activity specified by MMS.

A revision to the COP may require NEPA, CZMA, and other required compliance 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.

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

The applicant 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.

Section 285.636 What notices must I provide MMS following approval of my COP? The applicant must notify MMS in writing of the following events, within the time periods provided:

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

Section 285.637 When may I commence commercial operations on my commercial lease?

The applicant may commence commercial operations 30 calendar days after the CVA has submitted to MMS the final report for the fabrication and installation review.

Section 285.638 What must I do upon completion of my commercial operations as approved in my COP?

After completing operations on your lease, you must initiate the decommissioning process as set forth in subpart I of this part.

Section 285.639 [Reserved]

General Activities Plan Requirements for Limited Leases, ROW Grants, and RUE Grants

Section 285.640 What is a General Activities Plan (GAP)?

The GAP describes proposed activities and operations for the assessment and development of the limited lease or grant including, if applicable, a project easement. A GAP contains the plans for conducting surveys, data gathering, and operations to characterize a limited lease or grant. A GAP must include a description of how surveys such as physical characterization surveys, resource assessment surveys, and baseline surveys would be conducted. 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 calendar days of the determination of no competitive interest. The MMS will evaluate your request for a noncompetitive grant and GAP simultaneously.

Section 285.641 What must I demonstrate in my GAP?

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 (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, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance;
- Uses best available and safest technology;
- Uses best management practices; and
- Uses properly trained personnel.

Section 285.642 How do I submit my GAP?

This section provides the requirements for submitting the GAP. The applicant must submit one hard copy and one electronic version of the GAP to MMS. The applicant 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.

Section 285.643 [Reserved]

Section 285.644 [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. The required information includes:

- Identifying information;
- The site assessment concept;
- Designation of operator;
- ROW, RUE or limited lease stipulation;
- A listing of all Federal, State, and local authorizations, approvals, or permits required;
- Financial assurance information; and
- Other information requested by MMS.

If activities include the installation of any facilities (e.g., single monopile meteorological tower, anchored vessels, transmission substations) the applicant must also submit the following information or a description of how this information will be acquired:

- A location plat;
- Geotechnical survey;
- General structural and project design, fabrication, and installation information;
- A description of deployment activities;
- A list of solid and liquid wastes generated;
- A listing of chemical products used;
- Shallow hazards;
- Socio-economic surveys;
- Archaeological resources;
- Geological survey relevant to the design and siting of the facility
- Biological survey;
- Proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts;
- Description of any vessels, offshore vehicles, and aircraft used to support activities;
- Decommissioning and site clearance procedures;
- References cited in the plan; and
- Any additional information required by MMS.

The applicant may reference information and data discussed in other plans or documents previously submitted or that are otherwise readily available to MMS. If the project will require a project easement, multiple facilities, of the facility is complex or significant, the following additional information must be included in the GAP:

- The construction and operation concept;
- All cables and pipelines, including cables on project easements;
- A description of the deployment activities;
- A general description of the operating procedures and systems;
- A list of agencies and persons with whom you consulted, or with whom you will be consulting, regarding potential impacts associated with your proposed activities;
- CVA nominations for reports required in subpart G of this part;
- Construction schedule;
- Other information.

Section 285.646 What information and certifications must I submit with my GAP to assist MMS in complying with NEPA and other relevant laws?

This section discusses the detailed 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 § 285.611.

Section 285.647 How will MMS process my GAP?

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 and forward one copy of the GAP and supporting documents to the State(s) CZM Agency. 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. 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 terms and conditions from an ESA incidental take statement, conservation recommendations resulting from EFH consultations, and 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 the project easement is approved, MMS will issue an addendum to the lease specifying the terms of the project easement.

Section 285.648 [Reserved]

Section 285.649 [Reserved]

Activities Under an Approved GAP

Section 285.650 When may I begin conducting activities under my GAP?

After MMS approves the GAP the applicant may begin conducting activities that do not involve the construction of facilities on the OCS.

Section 285.651 When may I construct OCS facilities proposed under my GAP?

Before beginning construction of any OCS facility or any related seabed disturbing activities proposed in the approved GAP, the lessee or grantee must complete the initial survey activities described in the approved GAP that relate to any of these activities and submit a report of the findings of those activities to MMS. The initial survey report must also identify the specific location on the limited lease or grant area that you intend to install the facility. If MMS determines that the proposed facilities are complex or significant, the lessee or grantee must submit the additional information required in this section.

The lessee or grantee may begin to construct and install the facility or facilities after MMS notifies the lessee or grantee that it has received the initial survey report and MMS has no objections. If MMS receives the initial survey report, but does not respond with objections within 60 calendar days of receipt, MMS is deemed not to have objections to the report and the lessee or grantee may commence construction and installation of the facility or facilities.

If MMS has any objections to your initial survey report, we will notify the lessee or grantee within 60 calendar days of receipt. We may follow-up with written correspondence outlining specific objections to the initial survey report and request certain actions be taken to resolve MMS's objections. You may not begin construction until all objections have been resolved to MMS's satisfaction.

For a project easement, multiple facilities, or a facility deemed by MMS to be complex or significant, the applicant must submit a Facility Design Report; a Facility Fabrication and Installation Report; and a Safety Management System.

Section 285.652 How long do I have to conduct activities under an approved GAP?

For a limited lease, after MMS approves the GAP, then you 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.

Section 285.653 What other reports or notices must I submit to MMS, under my approved GAP?

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 any of 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.

Section 285.654 [Reserved]

Section 285.655 What activities require a revision to my GAP and when will MMS approve the revision?

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; or
- Change the location of bottom disturbances by 500 feet (152 meters).

The GAP requires revision if MMS specifies any changes to any other activity.

Revisions to the GAP will require NEPA and other required compliance 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 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.

Section 285.656 What must I do if I cease activities approved in my GAP before the end of my term?

The lessee or grantee applicant 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 applicant must initiate the decommissioning process, as set forth in subpart I of this part.

Section 285.657 What must I do upon completion of approved activities under my GAP?

After completing the activities approved under the GAP, the applicant must initiate the decommissioning process, as required in subpart I of this part.

Cable and Pipeline Deviations

Section 285.658 Can my cable or pipeline construction deviate from my approved COP or GAP?

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 a deviation occurred, 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. MMS may delay the start of construction until MMS modifies the lease or grant.

Subpart G—Facility Design, Fabrication, and Installation

Overview

As indicated in the discussion of subpart F, your plan would include general descriptions for project design and facility fabrication and installation. Subpart G describes the various detailed technical reports that the MMS would

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 would be submitted after MMS approves the SAP, COP, or GAP, as applicable.

Subpart G also describes a third party verification process that would require lessees, operators, and grant holders to use a certified verification agent (CVA), to verify and certify that projects are designed, fabricated, and installed in conformance with accepted engineering practices and with the submitted reports.

Certified Verification Agents: 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 is aware of companies overseas that are capable of acting as certification bodies; we do not know the extent of the capabilities of domestic firms to provide CVA services. All of the major verification organizations (ABS, Lloyds, GL, DNV, etc.) operate worldwide. Their U.S. offices have access to expertise from around the world, so they could draw from their European affiliates as necessary. Also, the main areas of concern will involve structural issues related to project facilities. Current U.S. verifiers have years of offshore experience and could address structural issues for these facilities. They could hire outside or contract expertise as necessary to address turbine design and other aspects of the proposal. However, we request comments regarding both the domestic and international availability of CVAs that will be necessary to implement the OCS alternative energy program as described in the proposed rule.

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 loads 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 proposed rule, fabrication and installation reports would be combined. The Fabrication and Installation Report describes the lessee/operator's or grant holder's plans for both the facility's fabrication (including the manufacture, assembly, and construction) and installation process. The report would include a schedule for fabrication and installation as well as detailed engineering and environmental information. The CVA, nominated in the SAP, COP or GAP, will conduct an independent assessment of the fabrication and installation phases. The CVA 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 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, a company representative must submit a certification statement certifying that the fabrication and installation were conducted in accordance with accepted engineering practices and certified by an MMS approved CVA.

Other Options and Approaches: MMS considered incorporating design standards in these regulations. We are in the process of reviewing international standards and guidance documents for Alternative Energy systems including those developed by the British Wind Energy Association, Det Norske Veritas, Germanischer Lloyds, IEC, and Energistyrelsen (Denmark). We are also assessing the applicability of certain American Petroleum Institute (API) and International Standards Organization (ISO) standards for offshore alternative energy structures, operating systems, and management practices. As part of this assessment, we are participating in a project that compares the performance of Atlantic wind structures under IEC and API standards. This project is scheduled for completion in July 2008. The application of domestic and international standards will depend on the type of project, and regional and site-specific environmental conditions. The MMS may elect to incorporate into the regulations those standards that are expected to have widespread applicability to Alternative Energy projects. Other standards may be proposed by operators (or determined to be necessary by MMS) on a case-by-case basis.

Section by Section Discussion for Subpart G

Reports

Section 285.700 What reports must I submit to MMS before installing facilities described in my approved SAP, COP, or GAP?

This section lists the two reports required prior to installing facilities: (1) Facility Design Report; and (2) Fabrication and Installation Report. The MMS has 60 calendar 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 calendar days of receipt. After notification of objections, MMS may follow-up with written correspondence outlining its specific objections to the report and requesting certain actions necessary to resolve the agency's objections. You cannot commence activities addressed in such report until any objections are resolved to MMS's satisfaction.

Section 285.701 What must I include in my Facility Design Report?

The 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. 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.

Section 285.702 What must I include in my Fabrication and Installation Report?

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 your 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, USACE);
- Environmental information; and
- Project easement design.

Section 285.703 [Reserved]

Section 285.704 [Reserved]

Certified Verification Agent

Section 285.705 What is the function of a Certified Verification Agent (CVA)?

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 and the Facility Design Report and 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.

Section 285.706 How do I nominate a CVA for MMS approval?

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 conflict of interest by CVAs.

Section 285.707 What are the CVA's primary duties for facility design review?

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 the requirements of the U.S. Coast Guard for structural integrity and stability, e.g., verification of center of gravity, etc., are met.

Section 285.708 What are the CVA's primary duties for fabrication and installation review?

The CVA 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 during this phase of the project. It also requires the CVA to inform the lessee when procedures or design specifications are changed.

For the fabrication and installation review, the CVA 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 calendar days after MMS receives the certification report, unless MMS notifies the applicant within that time period of objections to the certification report.

The CVA 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 finds that fabrication and installation procedures are changed or design specifications are modified, the CVA must inform the applicant.

Section 285.709 When conducting on-site fabrication inspections, what must the CVA verify?

The CVA must make periodic on-site inspections while fabrication of the facility is in progress. The CVA 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 must ensure that the 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 must also consider foundations, foundation pilings and templates, and anchoring systems and mooring or tethering systems.

Section 285.710 When conducting on-site installation inspections, what must the CVA do?

The CVA must make periodic on-site inspections while installation is in progress. The CVA must verify, survey, witness, survey or check the following items during facility installation:

- Loadout and initial flotation activities;
- Towing operations 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 must witness the loadout of the jacket, decks, piles, or structures from each fabrication site and the actual installation of the facility or major modification and the related installation activities.

For a floating facility, the CVA must witness 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 must conduct an onsite survey of the facility after transportation to the approved location. The CVA 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.

Section 285.711 What reports must the CVA submit for project modifications and repairs?

This section requires a report from a CVA 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.

Section 285.712 What are the CVA's reporting requirements?

This section details when the CVA must submit reports to MMS and the lessee or grantee. This includes interim reports, as requested by the MMS. For each report the CVA must submit one electronic copy and one hard copy to MMS. In each report, the CVA must:

- Give details of how, by whom, and when the CVA activities were conducted;
- Describe the CVA's activities during the verification process;
- Summarize the CVA's findings; and
- Provide any additional comments that the CVA deems necessary.

Section 285.713 What must I do after the CVA confirms compliance with the Fabrication and Installation Report on my commercial lease?

After receiving confirmation of compliance with the Fabrication and Installation Report from the CVA, the lessee or grantee must notify MMS within 10 business days after commencing commercial operations.

Section 285.714 What records must I keep?

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.

Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments

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 regulate alternative energy activities using a system whereby the operating industries would demonstrate and validate their performance. The MMS then will require adjustments to mitigation and monitoring activities on a case-by-case basis based on operating experiences. MMS will specify terms and conditions to be incorporated into the SAP, COP, or GAP. You must certify compliance with certain of those terms and conditions.

Environmental Management: While the proposed subpart H would not require use of an Environmental Management System (EMS), the MMS generally endorses the EMS concept and the general concepts of the International Organization for Standards standard 14001 (ISO 14001). We encourage companies operating under this Part to develop and implement EMS systems under ISO 14001 or other accepted industry standards. We believe that lessee and grantee development and implementation of an EMS would facilitate compliance with the certification requirements proposed by the MMS. However, an EMS would not be a substitute for and would not excuse the operator from complying with any requirements in this subpart. The environmental management provisions include specific requirements relating to threatened, endangered, and protected species, air quality, and archaeological and cultural resources.

Air Quality: Those equipment, facilities, and activities associated with alternative energy leases and grants (e.g., survey, construction, and maintenance activities) that emit air pollutants will be treated as ''OCS sources'' under section 328 of the Clean Air Act. When those OCS sources are located within the Gulf of Mexico West of 87.5°W longitude, the applicant would be required to comply with air quality provisions of this regulation. Any OCS sources located outside of that area will be regulated under the U.S. Environmental Protection Agency's air quality regulations at 40 CFR 55.

Section 328 of the Clean Air Act divided the control over air pollution from OCS sources between the Environmental Protection Agency (EPA) and the MMS. The MMS regulates air pollution from OCS sources located within the Gulf of Mexico west of 87.5° west longitude, this includes areas offshore of Texas, Louisiana, Mississippi and Alabama. Air pollution from OCS sources anywhere else (Pacific, Artic, and Atlantic coasts and the Gulf of Mexico east of 87.5° west longitude, offshore Florida) on the OCS is regulated by the EPA. The EPA may delegate this authority, refer to 40 CFR 55. Under the proposed regulations

MMS may request data and information regarding:

- Emission triggers and controls;
- Screening formulas and thresholds;
- Pollutant significance levels;
- Controls for emissions that exceed significance levels;
- Emission offsets;
- Prevention of Significant Deterioration areas;
- Modeling;
- Monitoring; and
- Meteorological data.

The applicant would be required to submit emissions information that is adequate for MMS to determine which air quality requirements apply to the project, if any. This information would be summarized in the NEPA document prepared for the proposed project.

Safety Management System: As proposed in this subpart, the safety management system would include, as applicable:

- Remote monitoring, control, and shut down 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 would be required to notify MMS of shutdowns. Notification would be 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 calendar days, the operator must submit a written confirmation 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 affects of environmental or other conditions. Operators would be 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. 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 action taken.

Inspections: Under the proposed rule, the MMS would conduct periodic scheduled and unscheduled inspections of OCS alternative 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 would be required to develop a self-inspection program for all facilities that covers all structures 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.

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 alternative energy facilities and this standard has proven to be an effective assessment tool for other OCS structures in U.S. waters. The MMS would like comments on the use of this document for assessments and suggestions for other standards MMS should consider. This relates to the structure only and does not include production or transmission equipment.

Incident reporting: This proposed rule would require that operators report certain significant incidents associated with activities regulated under this part immediately to the Director. The initial report would be followed by a written report, within 15 calendar days. 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 calendar days following certain types of incidents, including those involving injuries that resulted in days absent from work, restricted work, or job transfer.

Other Options and Approaches

The MMS considered several approaches to the requirements in this subpart. With respect to safety management, we considered including detailed requirements. However, this would require separate requirements for each type of project. Given that offshore alternative energy is a new and developing industry, we determined that the best course is to address safety on a project-by-project basis. This approach requires operators to address certain safety issues in their plans.

For inspections and assessments we considered an approach that would require operators to conduct their own inspections, to hire 3rd party contractors, or to permit only MMS to conduct inspections. This joint approach puts the burden on both the operator and MMS to conduct inspections.

Facility assessment and incident reporting requirements mirror those that work for OCS oil and gas operations.

Section by Section Discussion for Subpart H

Section 285.800 How must I conduct my activities to comply with environmental requirements?

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.

Section 285.801 How must I protect threatened, endangered, and protected species?

Threatened and endangered and protected species are protected under the ESA as amended. This section describes the actions you must take if there is reason to believe that protected species may be affected by your operations. These actions include submitting mitigating measures designed to avoid or minimize adverse effects and incidental take of the species and habitat; and monitoring for the incidental take of the species and habitat. Protected species is defined in this section as, threatened and endangered species listed and designated critical habitat under the Endangered Species Act (16 U.S.C. 1531 *et seq.*); and all marine mammals, if the applicant has not already received authorization for incidental take of marine mammals as may be necessary under the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*).

Section 285.802 How must I protect archaeological resources?

This section describes the process for determining if archaeological resources

are present, and the measures you must take to avoid disturbing those resources. As part of preparing the SAP, COP, GAP, or decommissioning application, the applicant, lessee, or grantee would be required to consult with MMS about archaeological resources. The applicant, lessee, or grantee would be required to include an archaeological report with the SAP, COP, GAP, or decommissioning application, if an archaeological resource is known to exist or if MMS has reason to believe that an archaeological resource may exist in the area of a proposed lease or grant. The MMS will specify the survey methods and instrumentation for conducting the archaeological survey and specify the contents of the archaeological report.

If an archaeological resource may be present, MMS will specify a minimum distance which the applicant, lessee, or grantee must maintain to avoid the potential resource, and where the applicant must locate the site of all proposed seafloor-disturbing activities to avoid the potential archaeological resource or establish that an archaeological resource either does not exist or will not be adversely affected by the proposed seafloor-disturbing activities.

The MMS may require the applicant, lessee, or grantee to conduct further archaeological investigations, using appropriate personnel, equipment, and techniques and submit the investigation report for review. We will notify the applicant, lessee, or grantee after determining that an archaeological resource exists and may be adversely affected by the proposed seafloor-disturbing activities. The applicant, lessee, or grantee (and all subcontractors or agents acting on behalf of the applicant, lessee, or grantee) would be required to keep the location of the discovery confidential and not take any action that may adversely affect the archaeological resource until MMS makes an evaluation and tells the applicant, lessee, or grantee how to proceed.

Section 285.803 What must I do if I discover a potential archaeological resource?

This section describes the procedures 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 on 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 impacts to the site or to the area of potential effect cannot be avoided. If these investigations indicate that the resource is potentially eligible for 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.

Section 285.804 How must I protect essential fish habitats identified and described under MSA?

This section describes what you must do if there may be a sensitive benthic habitat (e.g., essential fish habitat, topographic features) that may be adversely affected by the approved activities. You would be required to submit mitigation measures designed to avoid or minimize the adverse effects. MMS may require additional surveys to define boundaries and avoidance distances. If MMS required additional surveys, we will specify the requirements, at that time.

Section 285.805 [Reserved]

Section 285.806 [Reserved]

Air Quality

Section 285.807 What requirements must I meet regarding air quality?

This section identifies the regulatory requirements for the different areas of the OCS. It also provides basic information on air quality modeling requirements. Projects authorized under this part must comply with the Clean Air Act and its implementing regulations. For a project located within the Gulf of Mexico west of 87.5° west longitude (western Gulf of Mexico), the applicant must follow MMS implementing regulations under this part. For a project that is located anywhere else on the OCS, you must follow the appropriate implementing regulations promulgated by the U.S. Environmental Protection Agency under 40 CFR 55 and, appropriate sections under this part.

For air quality modeling performed in support of the activities proposed in plans under this part, you should contact the jurisdictional agency to establish a modeling protocol to ensure the agency's requirements are met and that the meteorological files used are acceptable before initiating the modeling work. You must submit three copies of the modeling report and three sets of digital files as supporting information to MMS.

Section 285.808 [Reserved]

Section 285.809 [Reserved]

Safety Management Systems

Section 285.810 What must I include in my Safety Management System?

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.

Section 285.811 [Reserved]

Section 285.812 [Reserved]

Maintenance and Shutdowns

Section 285.813 When do I have to report removing equipment from service?

This section requires you to notify MMS when safety equipment is taken out of service for more than 12 hours and to submit written confirmation of any equipment that is removed from service for greater than 60 calendar days. It also requires that MMS be notified after the repairs are complete, including the nature of the repairs and the date returned to service.

Section 285.814 [Reserved]

Equipment Failure and Adverse Environmental Effects

Section 285.815 What must I do if I have facility damage or an equipment failure?

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. It also requires that you submit a report describing the repairs to MMS, and that MMS may require an analysis of the failure.

Section 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, these regulations require you to submit a plan of corrective action to MMS. In addition, the applicant must take the remedial action described in the plan, and submit a report of the remedial action taken.

Section 285.817 Through 285.819 [Reserved]

Inspections and Assessments

Section 285.820 Will MMS conduct inspections?

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.

Section 285.821 Will MMS conduct scheduled and unscheduled inspections?

The MMS will conduct both scheduled and unscheduled inspections of your facilities.

Section 285.822 What must I do when MMS conducts an inspection?

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.

Section 285.823 Will MMS reimburse me for my expenses related to inspections?

Upon request, MMS will reimburse you reasonable expenses for the expenses related to food, quarters, and transportation provided for MMS representatives while they inspect the project facilities.

Section 285.824 How must I conduct self inspections?

This section requires the applicant 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.

Section 285.825 When must I assess my facilities?

This section requires the applicant 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 applicant 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.

Section 285.826 Through 285.829 [Reserved]

Incident Reporting and Investigation

Section 285.830 What are my incident reporting requirements?

This section requires that all incidents 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.

Section 285.831 What incidents must I report and when must I report them?

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 calendar days. It also requires that any injuries that result in one or more days away from work and incidents that require personnel to muster for evacuation be reported in writing within 15 calendar days.

Section 285.832 How do I report incidents requiring immediate notification?

This section requires for incidents that require immediate notification, you notify the Director orally immediately after aiding the injured and stabilizing the situation. This section also describes the information required in the notification.

Section 285.833 What are the reporting requirements for incidents requiring written notification?

This section describes the specific information 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.

Subpart I—Decommissioning

Overview

This subpart describes requirements for decommissioning OCS alternative 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 one year after the termination of the lease, ROW grant, or RUE grant.

Other Options and Approaches

The MMS considered delaying regulations on decommissioning, because there are no structures in place, and large scale commercial projects will not be developed for several years. It may be 20–25 years before a large scale commercial project would be decommissioned. We know that small scale projects for technology testing and site assessment and ROW grants and RUE grants would involve structures that may be decommissioned after a short time (2–5 years). Also, MMS believes it is important to provide all of the project requirements at this time, so that lessees and grantees will know what would be expected at the end of the project's life. Decommissioning information is required for any plans that involved a structure (SAP, COP, or GAP), in order to meet NEPA

requirements. MMS also needs information on decommissioning to assess financial assurance amounts.

Section by Section Discussion for Subpart I

Decommissioning Obligations and Requirements

Section 285.900 Who must meet the decommissioning obligations in this subpart?

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.

Section 285.901 When do I accrue decommissioning obligations?

Decommissioning obligations accrue when the lessee or grant holder installs, constructs, or acquires a facility, cable, or pipeline; or creates an obstruction.

Section 285.902 What are the general requirements for decommissioning?

This section is a general overview of the decommissioning process:

- After your lease terminates, the lessee or grant holder has 1 year to decommission and clear the seafloor of all obstructions created by activities on the lease or grant.
- To begin 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 grant holder must inform MMS.
- Biologically sensitive features and items of archaeological interest must be avoided and protected during decommissioning and site clearance activities.
- MMS will direct the lessee or grant holder on what action to take.

Section 285.903 [Reserved]

Section 285.904 [Reserved]

Decommissioning Applications

Section 285.905 When must I submit my decommissioning application?

While the conceptual decommissioning plans would 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 calendar days.

Section 285.906 What must my decommissioning application include?

The application would 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 whether or not divers will be used to survey the area after removal to determine any effects on marine life.

Section 285.907 How will MMS process my decommissioning application?

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. 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.

Section 285.908 What must I include in my decommissioning notice?

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. MMS will evaluate your decommissioning notice and may require additional changes to your decommissioning application before you can begin decommissioning activities.

Facility Removal

Section 285.909 When may MMS authorize facilities to remain in place following termination of a lease or grant?

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.

Section 285.910 What must I do when I remove my facility?

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.

Section 285.911 [Reserved]

Decommissioning Report

Section 285.912 After I remove a facility, cable, or pipeline, what information must I submit?

Within 30 calendar 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.

Compliance With an Approved Decommission Application

Section 285.913 What happens if I fail to comply with my approved decommissioning application?

If the lessee, grant holder, 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 grant holders remain liable for removal or disposal costs and responsible for accidents or damages that might result from such failure.

Subpart J—Rights-of-Use and Easement for Energy and Marine-Related Activities That Use Existing Facilities on the OCS

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 propose to 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 proposed provisions in this subpart J, MMS has proposed 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.

Regulatory Options Considered and Selected for Proposal

A threshold issue that MMS considered when framing its proposal for regulating alternate use activities authorized under subsection 8(p) of the OCS Lands Act was the appropriate level of specificity for the proposed rule with respect to setting payments, required financial assurances and the term for which an Alternate Use RUE would remain in effect. MMS considered setting specific values for each of these issues. Ultimately, however, MMS elected not to set such values in these proposed regulations because there are a wide variety of acceptable alternate uses of existing OCS facilities, and MMS has not yet evaluated any specific proposals for alternate use projects. MMS believes it is premature to establish specific payment, financial assurance and other terms. MMS believes that it is important to retain flexibility when considering new alternate use proposals for existing OCS facilities. MMS intends, on a case-by-case basis, to establish payment, financial assurance and term provisions for an individual Alternate Use RUE taking into account the unique aspects of each individual proposal, including the specific types of activities proposed and their associated effects on the OCS and marine environment.

As MMS gains experience considering alternate use proposals and overseeing alternate use activities, we may revise these regulations accordingly. Similarly, if MMS receives a significant number of similar alternate use proposals, it may consider issuing regulations or other guidance that set specific criteria for all alternate use activities of a particular type.

Subsection 8(p) of the OCS Lands Act requires MMS to make a determination of competitive interest for any alternate use proposal. MMS may only proceed in its evaluation of an alternate use proposal noncompetitively after MMS determines, following public notice of a proposed alternate use activity, that there is no competitive interest.

Alternate use of existing OCS facilities requires the allocation of responsibilities between the existing lessee and facility owner (*e.g.*, the oil and gas lessee and/or operator) and the holder of the Alternate Use RUE. This is particularly true with respect to decommissioning responsibilities and required financial assurance. On this issue, three potential options were considered by MMS:

(1) A regulatory framework whereby the existing lessee or operator would assume either primary or joint responsibility for the decommissioning obligations associated with approved alternate use activities, and would increase its required financial assurance as necessary to cover all additional obligations associated with approved alternate use activities.

(2) A regulatory framework whereby the holder of the Alternate Use RUE would assume either primary or joint responsibility for the decommissioning obligations associated with the existing facility (e.g., the oil and gas platform), and would provide financial assurance in an amount sufficient to cover both the proposed alternate use activities as well as obligations associated with the eventual removal or other decommissioning of the existing facility.

(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 Alternate Use RUE.

MMS believes that Option (1) above would place an unfair financial burden on the existing lessee and facility owner. Similarly, MMS did not select the regulatory approach under Option (2) because we believe it would place an unfair financial burden on the alternate use applicant and would likely deter potentially advantageous alternate uses of existing platforms because of the significant financial responsibilities associated with platform removal. MMS selected Option (3) as an appropriate and equitable balance of responsibilities among the relevant parties.

MMS acknowledges that the parties may negotiate among themselves who will be ultimately financially responsible for decommissioning responsibilities associated with an existing platform, and MMS encourages

such negotiations and those that encourage responsible alternate uses of existing platforms. However, MMS will not look to the terms of any private contract when identifying parties responsible for fulfilling decommissioning requirements under these proposed regulations.

Section by Section Discussion for Subpart J

Regulated Activities

Section 285.1000 What activities does this subpart regulate?

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.

A couple of examples are helpful to illustrate the types of activities that would be subject to this subpart. In the first example, an individual seeks to use an existing oil and gas platform in the Gulf of Mexico to conduct certain offshore aquaculture activities. Offshore aquaculture activities on the OCS are not currently authorized by any other statutory authority. Therefore, MMS may authorize the use of an existing facility for offshore aquaculture activities using an Alternate Use RUE. In the second 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 proposed 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'' could 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 alternative energy facilities authorized though this part.

As stated in paragraph (c) of this provision, 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. 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.

Section 285.1001 Through 285.1003 [Reserved]

Requesting an Alternate Use RUE

Section 285.1004 What must I do before I request an Alternate Use RUE?

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.

Section 285.1005 How do I request an Alternate Use RUE?

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.

Section 285.1006 How will MMS decide whether to issue an Alternate Use RUE?

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 would 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.

Section 285.1007 What process will MMS use for competitively offering an Alternate Use RUE?

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 930, subpart C, for competitive RUE offerings and 15 CFR 930, subpart D, for noncompetitive RUE offerings.

Figure 5 shows the process envisioned for granting access to existing OCS facilities for alternate use activities.

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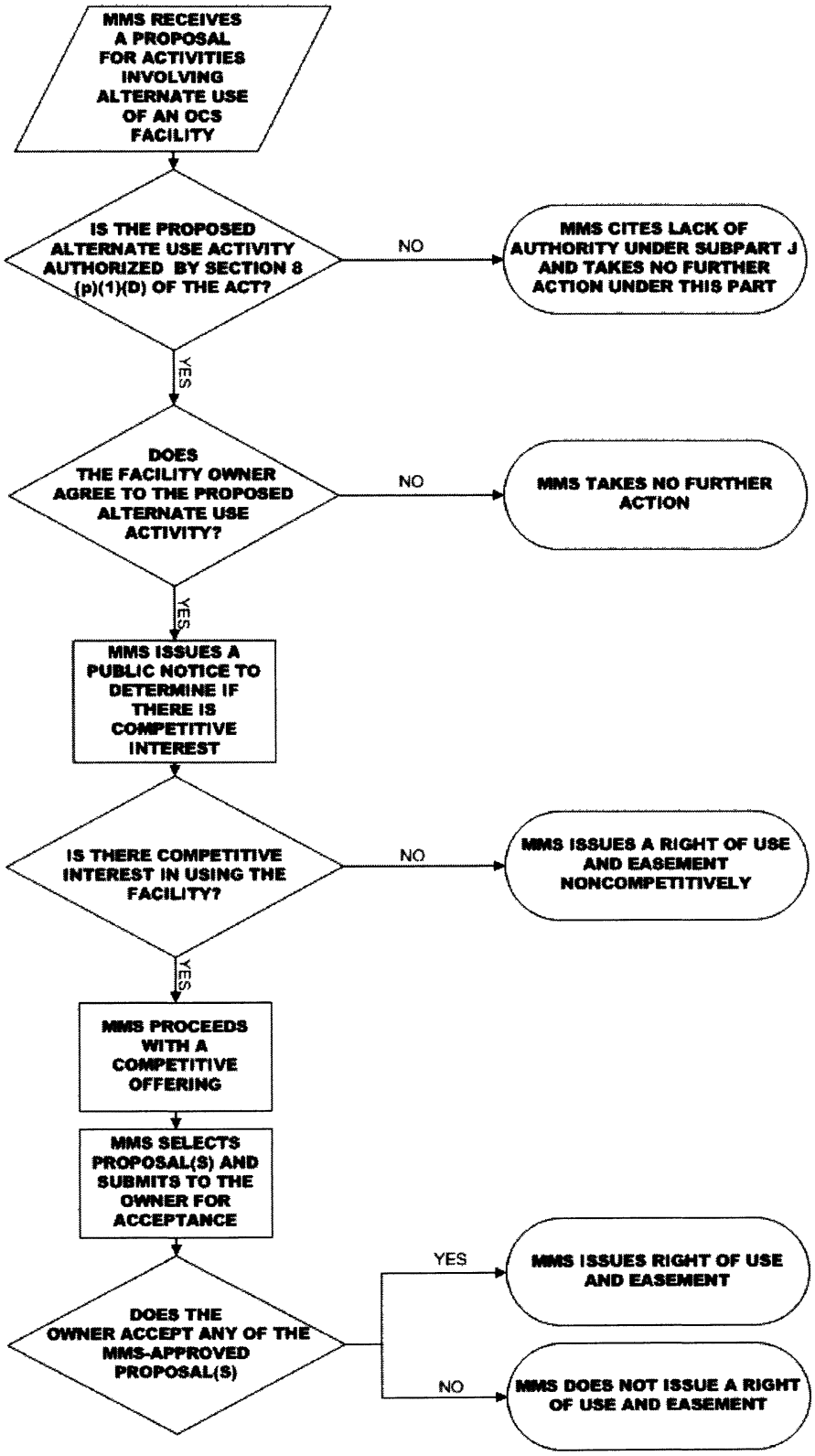
Figure 4. PROPOSED PROCESS FOR USING EXISTING FACILITIES FOR ALTERNATE USE ACTIVITIES



Section 285.1008 [Reserved]

Section 285.1009 [Reserved]

Alternate Use RUE Administration

Section 285.1010 How long may I conduct activities under an Alternate Use RUE?

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.

Section 285.1011 What payments are required for an Alternate Use RUE?

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 paragraph 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., offshore aquaculture, 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 (i.e. a large offshore aquaculture project). MMS would consider such exclusivity requirements for a potential alternate use activity in determining a fair return to the United States. The MMS would calculate the rentals or other charges for Alternate Use RUEs taking into account the areal extent of the alternate use activity, MMS resources needed for regulating such activities, and the exclusion in that area of competing uses.

Section 285.1012 What financial assurance is required for an Alternate Use RUE?

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.

MMS has determined not to define in the regulations what specific forms of financial assurance will be deemed acceptable. 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 what is proposed for alternative 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 would be more appropriate to set required financial assurance levels on a case-by-case basis.

Section 285.1013 Is an Alternate Use RUE assignable?

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.

Paragraphs (d) and (e) of this provision 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.

Section 285.1014 When will MMS suspend an Alternate Use RUE?

This provision explains that MMS may suspend activities authorized under an Alternate Use RUE as provided in this section. 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 grant holder. The holder of an Alternate Use RUE may be in full compliance with the terms and conditions of its authorizing instrument, but other circumstances outside the control of the grant holder 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.

Section 285.1015 How do I relinquish an Alternate Use RUE?

This provision explains that the holder of an Alternate Use RUE may relinquish the authorization at any time provided it complies with the requirements of this section. MMS would 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 would take effect on the date that MMS officially approves the request.

Section 285.1016 When will an Alternate Use RUE be cancelled?

This provision explains under what circumstances MMS may initiate cancellation of an Alternate Use RUE. The provisions of this section are similar to the cancellation provisions under subpart D of this part, but includes 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).

Section 285.1017 [Reserved]

Decommissioning an Alternate Use RUE

Section 285.1018 Who is responsible for decommissioning an OCS facility subject to an Alternate Use RUE?

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 would set forth specific requirements for decommissioning, as determined by the MMS based on the approved alternate use activity.

As set forth in the proposed conforming amendments to Part 250, subpart Q, included in this Notice of Proposed Rulemaking, 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 subsequently terminates following approval of an Alternate Use RUE, the MMS will defer the commencement of decommissioning activities related to that facility for the duration of the Alternate Use RUE. Such deferral would be limited, however, to the facility that is associated with the alternate use activities, and the lessee would 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 associated with an Alternate Use RUE. Similarly, the holder of an Alternate Use RUE is not responsible for decommissioning 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 instrument the specific decommissioning obligations pertaining to the alternate use activities.

Section 285.1019 What are the decommissioning requirements for an Alternate Use RUE?

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 authorizing instrument. This provision also explains that all decommissioning activities would be required to be completed within one year of termination of the Alternate Use RUE.

Accompanying Part 250 and Part 290 Amendments Relating to Part 285 Proposed Rule

To ensure that the regulations proposed under 30 CFR part 285 do not conflict with existing MMS regulations under 30 CFR part 250 or 30 CFR part 290, we are proposing conforming changes to those regulations, as appropriate. Most of these proposed changes are to the regulations at 30 CFR part 250, subpart Q, Decommissioning. These regulations are being revised to address the alternate use of existing facilities on the OCS. We are also proposing a revision to 30 CFR part 290, to clarify that requests for reconsideration of an MMS decision concerning a lease bid authorized pursuant to Part 285 do not follow the procedures outlined in Part 290.

Part 250 Amendments Accompanying Part 285 Proposed Rule

Section 250.1703 What are the general requirements for decommissioning?

The proposed amendment to this provision clarifies that MMS may authorize temporary exceptions to the general requirement to remove all platforms and other facilities, as provided in §§ 250.1725(a) and 250.1730.

Section 250.1725 When do I have to remove platforms and other facilities?

The proposed amendment to this paragraph (a) is intended to elaborate on the types of activities that may be authorized by MMS on an existing platform or other facility that would, in effect, defer or suspend the removal obligation that would otherwise be triggered under § 250.1725. The amended language identifies activities on an existing oil and gas platform or other facility that would support OCS oil and gas production and transportation, or would otherwise support a valuable energy-related or marine-related purpose.

The proposed amendments to this provision are not intended to provide an exhaustive list of all potential alternate use activities that may be deemed acceptable by MMS. MMS will consider all potential alternate use proposals of existing platforms or other facilities on the OCS and determine whether they provide for a valuable use of our Nation's OCS and could be conducted in a fashion that is safe, protective of the environment and otherwise in accordance with MMS's role as steward of the OCS.

The proposed amendments to this provision are not intended to indicate that MMS would approve all such alternate use activities. MMS has discretion to approve or disapprove of any alternate use proposal under the OCS Lands Act and its role as steward of the OCS. In considering whether to approve or disapprove a proposed alternate use activity, MMS would require that the applicant post adequate financial assurances to MMS or another Federal agency that ensure the platform or other existing facility will be properly decommissioned upon completion of the approved alternate use activity.

The proposed amendments to this provision are also intended to clarify that MMS may consider proposals for liquefied natural gas (LNG) facilities (regasification terminals or, potentially, liquefaction facilities) that would make use of existing OCS platforms or other facilities. MMS may not approve the construction or operation of an LNG facility—as responsibility for approval of construction and operation of marine LNG facilities rests with the U.S. Coast Guard and U.S. Maritime Administration—but may authorize the alternate use of an existing OCS facility that was originally approved under the OCS Lands Act. An MMS approval for alternate use or reuse of an existing facility would be required from MMS before making use of such a facility for LNG activities. Approval for an alternate use proposal involving an existing LNG facility is not subject to the proposed provisions in Part 285, subpart J, because subsection 8(p) of the OCS Lands Act does not apply to activities previously authorized under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*).

Section 250.1730 When might MMS approve partial structure removal or toppling in place?

The proposed amendment to this provision is intended to clarify that the scope of § 250.1730 is limited to proposals under the Artificial Reef Program administered by the U.S. Army Corps of Engineers.

Section 250.1731 Who is responsible for decommissioning an OCS facility subject to an Alternate Use RUE?

This proposed provision is intended to define each party's decommissioning responsibilities once MMS has approved an Alternate Use RUE pursuant to the provisions proposed in Part 285, subpart J. MMS has determined that the most equitable approach to allocating decommissioning responsibilities among the platform owner and lessee and the holder of the Alternate Use RUE is to leave each party responsible for the decommissioning activities associated with the structures approved pursuant to each party's authorizing instrument. Therefore, the existing platform owner retains its ultimate responsibility to decommission the platform, but this obligation may be deferred until completion of the activities approved under the Alternate Use RUE. Similarly, the holder of the Alternate Use RUE is responsible to complete all decommissioning obligations associated with the approved alternate use activity once those alternate use activities are completed according to the terms of the Alternate Use RUE.

Part 290 Amendment Accompanying Part 285 Proposed Rule

Section 290.2 Who may appeal?

The proposed amendment to this provision is intended to clarify that requests for reconsideration of an MMS competitive award of a lease, RUE or ROW to a bidder pursuant to Part 285 do not follow the procedures outlined in Part 290.

Commenting Procedures

MMS is seeking comments on all aspects of this proposed rulemaking. However, we have identified areas that are of particular interest to us and we believe of interest to the regulated community and other interested parties. Comments on these items are requested throughout the rulemaking and are summarized here for your convenience in submitting comments. When you submit comments please identify the subpart and section number you are commenting on.

Subpart A—General Provisions

MMS seeks comment on all items in subpart A, specifically we are seeking comments on:

1. Is this subpart informative?
2. Is it easy to locate needed information?
3. Is it easy to read and follow?
4. Does it include the appropriate topics?

Subpart B—Issuance of OCS Alternative Energy Leases

We invite comments on the following items:

1. Proposed types of leases. Do these lease types (commercial, limited) adequately address the possible uses allowed under these regulations?
2. Proposed leasing process, including the proposed acquisition fee and procedures for paying for associated NEPA analysis.
3. Proposed process for obtaining public input on unsolicited applications and the considerations for determining whether competitive interest exists.
4. All aspects of the proposed sale process, including the proposed criteria for determining competition, proceeding with competitive auctions, and awarding leases.
5. Whether the length and structure of the proposed terms would inhibit legitimate efforts to develop alternative energy projects on the OCS and on alternatives that might be better.

Section 285.200 Proposed project easement provision.

Section 285.201 Considerations other than geographic overlap of multiple proposals to determine whether or not there is a need to conduct a competitive lease sale in an area. We invite comments on any of the proposed approaches. In particular, what do you think is the capability of package bidding to ensure a fair return and to induce an efficient allocation of leases?

The proposed approach, as well other possible approaches such as intertract competitive auctions, to address this issue.

We invite comments on the proposed priority of commercial leases over limited leases.

The proposed approach for developing appropriate lease documents.

Section 285.203 Issues relevant to coordination and consultation with Federal agencies and State and local governments.

Section 285.204 The proposed process for choosing areas to make available for leasing and the proposed means for mapping and describing those areas.

Section 285.206 The proposed provisions governing lease size.

Section 285.211 The most useful way to describe areas we decide to make available for alternative energy leasing.

Section 285.212 Information that we should request to identify alternative energy interest in general or specific OCS areas.

The handling of data and information.

Section 285.213 How the CZMA process for competitive leasing could be expedited.

Section 285.215 Whether this process provides sufficient information and notice to encourage competition for prospective alternative energy sites.

Section 285.220 The relative merits of proposed alternative auction formats for leasing OCS acreage for alternative energy projects and on alternatives that might be more effective. Whether allowing bidders to define a set of tracts on which they wish to submit a package bid would increase interest in a sale, generate higher aggregate bonus bids, and help ensure that bidders acquire their primary tracts of interest.

Section 285.221 Which of the proposed bidding systems is most appropriate for alternative energy leases and why.

Section 285.222 The appropriate bid acceptance considerations and the potential use of intertract competition.

Section 285.223 The likelihood of receiving tied bids and on the proposed provisions for selecting a winner in that case.

Section 285.224 Any difficulties the procedures for formally issuing a lease might cause potential lessees. Would holding an additional round of bidding be more appropriate than resolving a tie by lot or, perhaps, by offering a joint lease?

Section 285.225 The fairness of the proposed bid appeal process.

Section 285.230 Whether and how any requested information may inhibit requests and on whether this fee will serve its intended purpose.

Section 285.231 Whether our proposal not to return your acquisition fee if you choose not to bid is appropriate.

The proposed SAP or GAP deadlines and the proposed NEPA and CZMA compliance procedures.

Section 285.238 This concept for making areas of the OCS available for alternative energy research.

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

We invite comments on the following items:

1. The proposed provisions for ROWs and RUEs, as well as project easements.
2. The handling of data and information.
3. The provisions on coordination and consultation.
4. The proposed CZMA compliance procedures.
5. The areas available for ROW grants and RUE grants.
6. The proposed ROW and RUE size provisions.
7. The provisions for ROW and RUE terms.
8. The ROW and RUE provisions, forms, financial assurance, and administration.

Subpart D—Lease Administration

We invite comments on all of the proposed provisions. We invite comments on the following items:

1. Noncompliance.
2. Assignments.
3. Alternatives such as open-ended lease terms and automatic renewals.
4. Criteria for consideration in lease renew decisions.

Subpart E—Payments and Financial Assurance Requirements

We invite comments on the following items:

1. Whether or not information from other sources supports the conclusion that proposed rates in this rule are in line with fixed terms used elsewhere and would constitute a small fraction of expected offshore alternative energy project costs. If not, please provide such alternative information.
2. Payments to the landowners.
3. We conclude that the proposed size of our payments would not adversely

affect the rate of offshore alternative energy development. We request comments on whether the results of this analysis accurately characterize the basic economics of anticipated OCS alternative energy projects.

4. Issues related to implementation of revenue sharing.

Section 285.500 Suggestions concerning how the payment procedures should be structured and what the content of alternative energy payment procedures should include.

Section 285.501 Setting the deposit amount and deposit forfeiture requirements, including the extent to which these amounts and requirements should be related to the type of auction format employed.

Section 285.502 For a noncompetitive lease, whether to require an additional payment equal to the difference between the minimum bid we would have set for a competitive sale offering in the same area and the acquisition fee, as an alternative approach.

Whether the size and treatment of acquisition fees proposed in this section is appropriate and whether or not it would discourage expression of any legitimate interest in a possible alternative energy lease.

Section 285.503 Whether the baseline rental fee proposed in this section would be appropriate for lessees and fair to the public.

Section 285.504 Whether there is any valid reason to charge a different rental for limited leases than for commercial leases.

Section 285.505 1. Whether there are operating fee procedures that are as efficient and fair as the one specified here for alternative energy activities. Please include detailed examples and explanations for any alternatives suggested.

2. The frequency of the review and adjustment of the capacity factor.

Section 285.506 Whether this is the most appropriate way to set rentals for easements and whether the size of the rental is appropriate.

Section 285.507 Whether this is the most appropriate way to set rentals for easements, and whether the size of the rental is appropriate.

Subpart G—Facility Design, Fabrication, and Installation

We request comments regarding both the domestic and international availability of CVA's that will be necessary to implement the OCS alternative energy program as described in the proposed rule.

Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments

The MMS would like comments on the use of API RP 2A–WSD for assessments and suggestions for other standards MMS should consider. This relates to the structure only and does not include production or transmission equipment.

Procedural Matters

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, on this rule or the Draft EA, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This proposed 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:

(1) The proposed rule would not have an annual effect on the economy of $100 million or more 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 regulations would govern an industry that is at an early stage of development but which could have developed even without the subject regulations.

The proposed rule would do two things: (1) It would set forth clear regulatory requirements, and (2) it would institute payments to the Government as a fair return for use of public lands. While the proposed program would 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 in only in intermediate and high case scenarios. (See ''Fiscal Cost-Benefit Analysis to Support the Rulemaking Process for 30 CFR 285 Governing Alternative Energy production and Alternative Uses of Existing Facilities on the Outer Continental Shelf,'' Final Technical report prepared for MMS by Industrial Economics, Incorporated, MMS 2007–050, February, 2008.)

Any projections beyond that time horizon should be considered highly speculative given the early stage of development in this industry on the OCS. 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 magnitudes of the required fees and payments, either set in this rule or at time of sale of the leases, are intended primarily to assure receipt of fair value for the lease rights and subsequent activities, not to influence post-lease decisions about the allocation of alternative energy resources. Thus, while the new rule would provide for an increase in the flow of payments from industry to the Federal government and, in some cases, to coastal States, these payments are not intended, nor do we expect them, to create or prevent industry activities that generate alternative energy products. In fact, a key purpose of this rule is to foster an important new industry by reducing regulatory uncertainty.

For the purposes of the fiscal cost-benefit study, the baseline condition is a continuation of the regulatory regime that existed prior to passage of the EPAct, under which other Federal agencies, such as the Army Corps of Engineers (in the case of wind energy) and the Federal Energy Regulatory Commission (FERC, in the case of wave and ocean current energy), assumed primary responsibility for reviewing and permitting alternative energy projects on the OCS. The regulatory alternative to the baseline, as described in this rulemaking, is the MMS program authorized by Section 388 of the EPAct, comprising the granting of property rights, collection of payments for alternative energy and other uses of the OCS (primarily in the form of lease bonuses, rentals and operating fees), and establishment of a comprehensive ''cradle-to-grave'' regulatory program for authorizing alternative energy activity on the OCS. The analysis further considers three different sets of fiscal terms (identified as the ''Low,'' ''Intermediate,'' and ''High'' payment cases), which vary in the way fees and rental payments are calculated. Rental would be paid in each of the payment cases before the construction and operation of a generation facility. During construction and operations, an annual operating fee would be charged in the Intermediate and High cases, while

MMS specified that a rental payment be substituted for an operating fee in the Low case. These payment cases are explained in Section 4 of the report MMS 2007–050. The analysis considers projects that are constructed and that begin operations (i.e., begin to generate electricity for sale) or that are in development during the 20-year period from 2008–2027. While these projects would have revenue and cost impacts that extend beyond this period (based on 20 years of electricity generation over an assumed 25-year operational term), the only fiscal impacts reported are those that occur during the period 2008–2027. The cost side of the analysis comprises the Federal government's costs to implement the program that will administer the proposed regulation.

In accordance with OMB guidance, we estimated the present value of cumulative net revenues in constant dollars for the Baseline, Low, Intermediate, and High payment cases assuming real discount rates of three and seven percent. These results were computed from project level nominal revenues which were aggregated annually for years from 2008 through 2027, then deflated and discounted as end-of-year cash flows back to 2008. Section 8(p)(2)(B) of OCS Lands Act requires the distribution of 27 percent of fiscal revenues to the appropriate coastal states, when a project is located partially or wholly in the area extending 3 nautical miles seaward of state submerged lands. The revenue estimates reported for this analysis were adjusted assuming that 40 percent of the projects included in the development forecast would be subject to the revenue sharing provision.

As of January 1, 2008, at a three percent discount rate, the present value of cumulative net Federal revenues over the 20-year period of the analysis ranges from approximately −9.3 million and −$57.3 million in the Baseline and Low cases, respectively, to approximately $357 million and $538 million in the Intermediate and High payment cases, respectively. When a 7 percent discount rate is applied, the present value of cumulative net Federal revenues over the period of the analysis ranges from approximately −$7.8 million and −$46.5 million in the Baseline and Low cases, respectively, to approximately $190 million and $291 million in the Intermediate and High payment cases, respectively. The significant difference in net revenues is attributable to the inclusion of operating fee payments to MMS in the latter two cases. The preliminary development forecast was comprised of 76 projects that would proceed through the pre-development period of their respective lease terms, and could at least begin construction before 2027, the last year of the period of analysis. We evaluated the economics of each project and found that 58 might be considered viable by virtue of having a calculated internal rate of return (IRR) greater than or equal to 11 percent, under the payment requirements of the Baseline (no payments), Low and Intermediate cases. In fact, the categorization of wind energy projects by IRR does not vary between payment cases, with the exception of three 500 MW wind projects that drop below an 11 percent IRR in the High case. This analysis shows that the magnitude of MMS payments under the assumed cases should not have a significant influence on decisions to invest in lease development on the OCS.

Categorization of the results by technology and region highlights the impact of wind energy projects and the Atlantic region, which, respectively, account for over 99 percent and approximately 79 percent of the present value cumulative net revenues in the Intermediate payment case. None of the nine wave energy projects included in our preliminary development forecast cleared the IRR of 11 percent due to their location exclusively in the Pacific region, particularly the Pacific Northwest. Low electricity prices in this market are influenced by the presence of large, lower cost onshore hydroelectric resources. Wave energy projects developed over the next 20 years might be more economically viable in nearer-shore environments that are subject to State rather than MMS jurisdiction. In contrast, all 15 of the ocean current projects included in the preliminary development forecast have IRRs greater than or equal to 11 percent, primarily because of their relatively high capacity factors (80 percent compared to 38 percent for wind and 35 percent for wave).

We then analyzed the impact of renewable portfolio standard financial incentives on project viability. Total viable projects might be reduced by 25 percent without revenue from renewable energy certificate (REC) sales. For the Intermediate case, we found that the number of viable projects modeled in the development forecast would drop from 58 to 43 without revenue from the sale of RECs. Therefore, renewable portfolio standards implemented by coastal states could be essential to the economic success of many OCS projects.

We also analyzed the effect that elimination of the present Federal PTC could have on the viability of the wind, wave and current projects in the preliminary development forecast. This more focused analysis was made by assuming the PTC would not be extended beyond an expiration date of December 31, 2008. In that event, we determined that only 33 of the 76 projects might have IRRs of greater than or equal to 11 percent, regardless of the payment case analyzed. The difference in the number of projects constructed, 25 fewer than the 58 viable for the Baseline, Low and Intermediate cases, may be less if a change to economic conditions creates a benefit approximately equivalent to the PTC. Absent such a change, a reduction in total viable projects of more than 40 percent could occur if the PTC is not available, making this incentive the most significant for investors. Thus, we concluded that project viability is more sensitive to the availability of the PTC benefit than REC benefits, or any of the fiscal requirements assumed in the payment cases.

We further reviewed 12 of the 25 projects that might not be constructed without the PTC, to discern how much the MMS payments could detract from the value of the PTC. Specifically, the ratio of MMS payments over PTC value was calculated: (1) For the 10 years that the PTC would be in effect for each project, and (2) over the life of each project. Lease interests would discount the values at private rates and the government would discount with social rates. To simplify comparison of the results, ratios were calculated with undiscounted nominal dollar values. Ratios for the 10 years that the PTC would be in effect for each project fell within a range of 4.5 to 6.5 percent. Ratios calculated using the total of all payments made to MMS over the life of the project, divided by the total value of the PTCs over the 10 years following the date that a project is placed in service, ranged from about 11.0 percent to 14.5 percent. The second set of ratios are higher than the first set, because payments made before and after the 10 year PTC period are considered. The MMS recognizes that the alternative energy program payment requirements would effectively lower the value of the PTC. However, the payment cases analyzed would not reduce the value of the PTC by a significant amount. Of greater importance, this analysis seems to imply that the elimination of the requirement to make payments to MMS will not increase the rate of alternative energy development on the OCS.

In developing the fiscal cost-benefit analysis and specifically regarding the financial cash flow model, a number of generalized assumptions were made, due in large part to the absence of reliable data for offshore alternative

energy technologies. The following are some issues that may warrant additional examination.

The IEc study relied upon a literature review to develop the necessary assumptions used in the financial cash flow model. A major component driving the economics of an offshore alternative energy project is the capital cost assumption, specifically the rate at which the capital cost is forecasted to decline. This capital cost reduction results from a combination of ''learning'' and economies of scale. Learning based capital cost reductions for the offshore alternative energy technologies are based on publicly available studies and are summarized in table 2–3 for offshore wind and table 2–4 for wave and ocean current. Economies of scale, as observed through the capital cost reduction of projects as a function of increasing capacity (MW) is assumed only for U.S. offshore wind energy projects. Table 2–3 on page 14 in the IEc study gives the assumed capital costs (2007$/kW) of U.S. offshore wind energy for representative sizes of 150 MW, 500 MW, and 1,000 MW. Given the immaturity and lack of commercial development of wave and ocean current energy technologies, no economies of scale assumptions were made for these technologies.

As the preliminary forecast projected by the IEc study are not project specific, default capacity factors for each of the three offshore alternative energy projects considered in the IEc study were used and are provided in Table 4–6, which lists each of the key inputs of the cash flow model and a description of the corresponding assumptions. The default capacity factors of 38 percent, 35 percent, and 80 percent for wind, wave, and ocean current projects, respectively, were used.

The preliminary forecast of project development on the OCS is an indication of the projected growth rate of the industry, both on the individual technology level and aggregately as the offshore alternative energy industry. However, as an industry that is in its infancy, it is difficult to predict the path of this industry's development with any degree of certainty. To that extent, the IEc study bases the preliminary forecast on non-economic considerations as a starting point, such as likely regions where development will occur, and provides refinements using the cash flow model to determine the economic viability of each individual project.

Additionally, the offshore alternative energy technologies considered in the IEc study are limited to offshore wind, wave, and ocean current as these represent the technologies that have a reasonable probability of becoming commercially viable in the 20-year period that defines the scope of the IEc study. In this vein, hydrogen production on the OCS may be realized in the future and thus be governed by this proposed rule.

Due to the uncertainty regarding the nature and scope of interest in alternative uses of existing OCS facilities, a qualitative analysis of the potential impacts of a number of these activities was conducted in the IEc study in chapter 8. In terms of the net fiscal impact that these alternative activities entail, the magnitude of such impacts are likely to be insignificant.

MMS solicits comments regarding the assumptions made in the fiscal cost-benefit analysis. In particular, the agency solicits comments on the reasonableness of assumptions on: (1) Economies of scale; (2) learning and cost reduction; (3) capacity factors; (4) projected growth rate of the industry; (5) hydrogen production; (6) technology characterization; (7) alternative uses of existing facilities; (8) regulatory and legislative climate assumed in the analysis.

(2) The proposed rule would not create a serious inconsistency with or otherwise interfere with the actions taken or planned by any other agency except for the Federal Energy Regulatory Commission. By its terms, section 388 of the EPAct avoids this problem by granting to the Secretary of the Interior authority to authorize and regulate alternative energy activities on the OCS only to the extent such activities were not previously authorized by other laws, such as the Deepwater Port Act or the Ocean Thermal Energy Conversion Act. Therefore this rule does not address activities such as LNG storage or ocean thermal energy conversion.

The Federal Energy Regulatory Commission has entertained applications for licenses for wave and current energy projects under the authority of the Federal Power Act. In comments on the ANPR for this rulemaking, FERC asserted that its jurisdiction to license such projects extends ''at least 12 nautical miles offshore.'' Under the Federal Power Act, the seaward limit of the authority is the territorial sea, and was understood to be a belt extending three miles from the coastal baseline at the time that FERC's statutory authority was established. When President Reagan issued his proclamation on December 27, 1988, extending the territorial sea to 12 miles, he expressly stated ''nothing in this Proclamation * * * extends or otherwise alters existing Federal or State law or any jurisdiction, rights, legal interests or obligations derived therefrom.'' Presidential Proclamation 5928, 54 FR 777. Nothing in the Federal Power Act or its legislative history expressed an intent to allow changes in the definition of territorial sea for international law purposes to change the extent of the jurisdiction conferred therein.

There is no inconsistency or conflict between the Interior program for the outer continental shelf, which commences three miles from the coastline (or three leagues in the case of Texas and the Florida Gulf Coast), and FERC licensing of projects within the historic territorial sea. MMS has conferred with FERC staff in an effort to reduce unnecessary inconsistencies between the regulatory requirements applicable to FERC licensed projects within the territorial sea and those that would operate under these proposed MMS rules. Such coordination is essential because it is foreseeable that some projects may straddle the boundary between the territorial sea and the OCS. However, the agencies have not been able to resolve their conflicting views as to whether the Federal Power Act grants FERC jurisdiction ''to at least 12 nautical miles,'' which would constitute ''other applicable law'' under section 8(p), that would limit Interior authority to oversee wave or current projects.

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients. The proposed rule does not contain any requirements or regulations that would alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients.

(4) This proposed rule would raise novel legal or policy issues because the rulemaking would establish a new regulatory program for the development of alternative 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.

Primarily for the reason that the proposed rule would raise novel legal or policy issues, MMS was required to conduct an economic analysis of this rule. Prior to the passage of the EPAct, the Federal Government lacked the authority to oversee all aspects of alternative 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. These regulations

will provide the framework for MMS's management of an 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 alternative energy project on the OCS, as it will address lease and grant issuance, activity authorization, payment collection, financial assurance, and project decommissioning.

As described above, MMS is required to conduct an economic (''benefit-cost'') analysis of this rulemaking because it has been determined to be a significant regulatory action, as defined in Executive Order 12866. Discussions between MMS and OMB resulted in a determination that the appropriate analysis of the proposed 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 proposed 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 (SBRFA) and Executive Order 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 baseline condition, against which the impact of the proposed rule is to be compared, is a continuation of the regulatory regime that existed prior to the EPAct, under which the Army Corps of Engineers (Corps) assumed principal responsibility for reviewing and permitting wind energy projects and the Federal Energy Regulatory Commission (FERC) asserted authority for wave and ocean current projects on the OCS. For the purposes of this analysis, we assume that the project development forecast is independent of the regulatory regime; the locations, types, and timing of development would be the same with or without the MMS program contemplated by the EPAct. MMS is considering only one alternative to the baseline—a regulatory program under which MMS grants property rights, collects payments for activities conducted on the OCS, and establishes a comprehensive ''cradle-to-grave'' regulatory program for authorizing alternative energy activity. Within this alternative, MMS considered three payment cases: a ''Low'' payment case requiring only rental payments for the use of Federal lands, an ''Intermediate'' payment case that also included a fixed generation capacity fee, and a ''High'' payment case that included a graduated generation fee.

Given the considerable uncertainty in forecasting activity levels for a nascent industry, MMS used expressed interest by potential developers, estimates of wind resources, regional electricity prices, and other information to create a development scenario that included 103 (predominantly wind energy) projects that at least reached the application stage during the 2008–2027 period of analysis. Based on the financial viability results of cash flow model—given size, capacity factor, capital costs, operations and maintenance cost, regional electricity prices, availability of financing, financial incentives (e.g., the Production Tax Credit), and other factors—63 of these projects were assumed to begin operations during the 20-year period of analysis and an additional 13 were assumed to drop out of the process prior to beginning operations, primarily for financial reasons. MMS estimated the personnel and other costs of reviewing all 103 applications and the additional costs of processing applications that made it to the approval stage, as well as any other regulatory compliance costs through 2027 for those projects that went into operation. On the ''benefits'' side, MMS also estimated the revenues to be received from developers under each payment case through 2027. (Payments to the Government beyond 2027 were considered only to assess project viability and the potential effects of this action on small entities.)

Under the Intermediate and High payment cases, respectively, MMS estimated that net revenues (to the Federal Government) would turn positive about 2015 and about 2014, increasing to over $100 million by 2025 and by 2022. Net revenues would be negative throughout the period of analysis under the Low payment case. However, as noted above, these revenue numbers indicate the effect on the Federal Treasury, not on the economy. Given the assumptions agreed upon with OMB, the industry would have developed with or without the new rule and, therefore, this rule would not determine the amount of money to be generated and spent but rather who would spend it.

Regulatory Flexibility Act (RFA)

Under the requirements of the RFA (5 U.S.C. 601 *et seq.*), as amended by SBREFA and Executive Order 13272, Federal agencies must consider the potential distributional impact of new rules on small businesses, small governmental jurisdictions, and small organizations. MMS prepared an initial regulatory flexibility analysis to determine the impacts of this proposed 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. Please see the following discussion for the basis of our conclusion.

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 proposed 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 alternative 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 alternative energy projects into a larger portfolio of electricity generating stations, will exceed the 4 million MWh threshold.

Given the newness of the offshore alternative 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 proposed 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, and MMS has no means to predict what kinds of entities would likely be involved in OCS hydrogen production, given the lack of proposals for projects that would produce hydrogen.

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 alternative 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 believed it is necessary, at this time to have different sets of 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 project size is determined by the applicant and the rental and operating fee will not burden small business more than large because the project size determines the fee. Moreover, 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%) are considered to be small companies according to 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 proposed rule would require the use of Certified Verification Agents (CVA). 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. Much of the data required for this proposed rule would 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 environment and endangered species.

MMS also has provisions that allow for departures from the requirements in this proposed rule. MMS can evaluate, on a case-by-case basis, if any part of this proposed regulation places an undue burden on a small business and make adjustments to the requirements, as appropriate. However, MMS cannot waive requirements to comply with other Federal laws, such as NEPA and CZMA.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call: 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

The proposed rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more, as discussed previously under the Regulatory Planning and Review section.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule would allow greater production of energy from the OCS and would make more energy available in the US.

c. Would 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 U.S. or companies incorporated in the U.S. under this proposed rule. This rule would encourage competition, employment, investment, productivity, innovation, and would not have an adverse impact on the ability of U.S.-based companies to compete with foreign-based enterprises. This rule would allow production of energy (e.g., electricity) in areas where there is no production at this time. It would encourage companies to explore new avenues for generating electricity and other energy from sources other than oil and gas. The proposed rule includes a competitive process for leasing. New developments and projects would create new jobs and investment. Since this is a nascent industry in the U.S., it would also encourage the development of new technology.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State local or tribal governments or the private sector. This proposed rule does not impose any (zero) Federal mandates on State, local, or tribal governments or any mandate on any part of the private sector that would involve more than $100 million a year

to operate on the OCS; therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. There are not, at present, any property rights in alternative energy facilities. Further, the rule on alternate use of existing facilities would require consent of the owner of the existing facility to any RUE MMS might issue. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule would 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, there is nothing in this proposed rule that would 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 proposed rule and determined that it has no potential effects on federally recognized Indian tribes. There are no Indian or tribal lands in the OCS.

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 § 515, 114 Stat. 2763, 2763A–153–154).

Paperwork Reduction Act (PRA)

This proposed rule contains a collection of information being submitted to the Office of Management and Budget (OMB) for review and approval under § 3507(d) of the PRA. The title of the collection of information for this rule is ''30 CFR 285—Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf'' (OMB Control Number 1010–NEW). 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 alternative energy-related uses of the OCS; certified verification agents (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, its implementing regulations, and 30 CFR 285.112 through 285.114.

As discussed earlier in the preamble, the rule establishes regulations to implement a new program to allow access for operations of alternative energy projects and alternate uses of existing facilities on the OCS. The information collection requirements are all new paperwork burdens. We estimate 31,251 total annual burden hours. Based on a cost factor of $85 per hour, we estimate the total annual hour burden cost to industry at $2,656,335 ($85 × 31,251 hours = $2,656,335).

In addition, there are three non-hour cost burdens associated with this rulemaking.

- The first concerns § 285.111 requiring respondents to pay a processing fee for MMS document or study preparation to process applications and requests. The processing fee is $4,000 and we anticipate approximately four payments.
- The second non-hour cost burden concerns § 285.111(b)(3) requiring respondents to pay for the cost of independent third-party contractors selected by MMS for all or part of any document, study, or other activity (including NEPA) and providing the results to MMS. We estimate the non-hour cost burden of this study could range from $100,000 to $2,000,000, depending on the nature of the study. For estimating purposes, we have averaged the cost range at $950,000 per submittal. We expect three submissions to be done by a contractor.
- And the last concerns § 285.417(b) requiring respondents to pay for a site-specific study to evaluate the cause of harm or damage to natural resources, and submit a report to MMS. We estimate the non-hour cost burden of this study could range from $100,000 to $2,000,000, depending on the nature of the study. For estimating purposes, we have averaged the cost range at $950,000 per submittal. We expect one submittal.

We estimate the total annual non-hour cost burden for these requirements at $3,816,000.

The following table provides a breakdown of the paperwork burden estimates for this proposed rulemaking.

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
Subpart A—General Provisions				
102; 105; 110	These sections contain general references to submitting requests, applications, plans, notices, 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

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
103	Request general departures not specifically covered elsewhere in part 285.	2	6 requests	12
105(c)	Make oral requests and submit written follow up within 10 business days not specifically covered elsewhere in part 285.	1	8 requests	8
106(b)(1)	Request exception from exclusion or disqualification from participating in transactions covered by Federal non-procurement debarment and suspension system.	1	1 exception	1
107; 212(f); 230(f); 302(a); 408(b)(6); 409(c); 1005(c); 1007(c); 1013(b)(7).	Submit evidence of qualifications to hold a lease or grant.	2	20 evidence submissions	40
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 calendar days after earliest of either the effective date or filing date.	Exempt under 5 CFR 1320.3(h)(1).		0
111	Within 30 calendar days of receiving bill, submit processing fee payments for MMS document or study preparation to process applications and requests.	.5	4 processing fee payment submissions.	2
		4 MMS payments × $4,000 = $16,000		
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 × $950,000 = $2,850,000		
111(b)(7); 118(a); 290.2; 436(c).	Appeal MMS estimated processing costs, decisions, or orders pursuant to 30 CFR 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 calendar days of bid rejection, request reconsideration of bid decision or rejection.	Exempt under 5 CFR 1320.3(h)(9).		0
Subtotal			78 responses	19,183
			$2,866,000 non-hour costs	

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
Subpart B—Issuance of OCS Alternative Energy Leases				
200; 224; 231; 235; 236	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); 212 thru 215.	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); 215; 220 thru 222; 231(c)(2).	Submit bid, payments, and required information in response to **Federal Register** Final Sale Notice.	5	12 bids	60
223	Within 15 calendar days of MMS notification of tied bids, tied bidders file agreement to accept joint lease or notify MMS which bidder will become lessee.	4	1 agreement or notice	4
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 re interest of unsolicited request for a lease.	4	4 unsolicited requests	16
231(e), (f)	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			50 responses	185
Subpart C—ROW Grants and RUE Grants for Alternative 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 a 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

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
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	Exempt under 5 CFR 1320.3(h)(1)		0
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 calendar 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); 421(b); 428(b).	Submit request for suspension and required information no later than 90 calendar 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 × $950,000 = $950,000		
425 thru 428; 652(a)	Request lease or grant renewal no later than 180 calendar 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.	Exempt under 5 CFR 1320.3(h)(9).		0
Subtotal			11 responses	237
			$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 508; 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
509	Submit application and required information for waiver or reduction of rental or other payment.	1	1 waiver or rental reduction.	1
*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

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
517(d)(1)	Submit comments on proposed adjustment to bond amounts.	1	3 adjustment comments	3
517(d)(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
*527	In lieu of surety bond, request authorization to establish decommissioning account, including written authorizations and approvals associated with account.	2	1 decommissioning account.	2
530(a)	Notify MMS promptly of lapse in bond or other security.	1	1 notice	1
532(b)	Surety requests MMS terminate period of liability and notifies lessee or ROW/RUE grant holder.	1	1 request	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
536(b)	Within 10 business days following MMS notice, lessee, grant holder, or surety agree to and demonstrate to MMS that lease will be brought into compliance.	16	1 agreement demonstration.	16
Subtotal			25 responses	52
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 calendar days after determination of no competitive interest, submit 1 paper copy and 1 electronic version of a SAP, including air quality and all required information, certifications, etc.	240	6 SAPs	1,440
**600(b); 601(c), (d)(1); 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 air quality and all required information, surveys and reports, certifications, project easements, etc.	1,000	3 COPs	3,000
**600(c); 601(a), (b); 640 thru 647.	Within 6 months after issuance of a competitive lease or grant, or within 60 calendar days after determination of no competitive interest, submit 1 paper copy and 1 electronic version of a GAP, including air quality and all required information, surveys and reports, certifications, project easements, etc.	240	1 GAP	240

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
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
** 612(e), (f); 617	Submit revised or modified SAPs and required additional information.	50	1 revised or modified SAP.	50
614	Before beginning construction of OCS facility described in SAP, complete survey activities identified in SAP 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	6 surveys/reports	180
615(a)	Notify MMS in writing within 30 calendar days of completion of construction and installation activities under SAP.	1	5 completion construction notices.	5
615(b)	Submit annual report summarizing findings from site assessment activities.	30	8 annual reports	240
615(c)	Submit annual, or at other time periods as MMS determines, SAP compliance certification and reports.	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
** 601(d)(2), 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
627(c)	Include oil spill response plan as required by part 254.	Burden covered under 1010–0091, 30 CFR 254.		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 and reports.	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 calendar 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 calendar days after completion of construction and installation activities.	1	3 completion notices	3
636(c)	Notify MMS in writing at least 7 calendar days before commencing commercial operations.	1	3 initial ops notices	3
** 647(f); 655; 658(c)(3)	Submit revised or modified GAPs and required additional information.	50	1 revised or modified GAP.	50

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
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 calendar days of completion of construction and installation activities under the GAP.	1	5 construction completion notices.	5
653(b)	Submit annual report summarizing findings from activities conducted under approved GAP.	30	8 annual reports	240
653(c)	Submit annual, or at other time periods as MMS determines, GAP compliance certification and reports.	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
Subtotal			100 responses	7,074
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, 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 and all required information.	160	3 Fabrication & Installation Reports.	480
705(b); 707; 712	Certified Verification Agent (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(b); 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

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
705(b); 711; 712	CVA monitors major project modifications and repairs 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.	20	1 CVA interim report	20
		15	1 CVA final report	15
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 notify MMS if modifications identified by CVA 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 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			42 responses	2,829
Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments				
801	Submit information with plans to ensure proposed activities will be conducted in compliance with the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA); including, agreements and mitigating measures designed to avoid or minimize adverse effects and incidental take of species or habitat.	6	2 ESA/MMPA submissions.	12
801(d), (e)	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
802(a), (b)	If applicable, consult with MMS and conduct survey and submit an archaeological report with applications or plans.	10	1 archaeological report	10
802(c); 803(b)	If requested, conduct further archaeological investigations and submit report.	10	1 archaeological report	10
803(a)(2); 902(e)	Notify MMS of archaeological resource within 72 hours of discovery.	3	1 archaeological notice	3
803(d)	If applicable, submit payment for MMS costs in carrying out National Historic Preservation Act 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 number of annual responses	Annual burden hours
			Non-hour costs	
807	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/info.	700
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 calendar 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(b)	Notify MMS (oral or written) as soon as practicable of the repair of any P/L, cable, equipment, or facility associated with lease or grant.	.5	3 repair notices	1.5
815(c)	When required, analyze cable, P/L, or facility failures to determine cause and as soon as available submit comprehensive written report.	1.5	1 failure analysis report	1.5
816	Submit plan of corrective action report on observed detrimental affects on cable, P/L, or facility within 30 calendar days of discovery; take remedial action and submit report of remedial action within 30 calendar 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, investigation on or related to lease or ROW/RUE area, and make available to MMS for inspection.	1	4 records retention	4
823	Request reimbursement within 90 calendar days for food, quarters, and transportation provided to MMS reps during inspection.	2	1 reimbursement 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 assessment plans	96
824(b)	Conduct annual self inspection and submit report by November 1.	36	4 annual reports	144
825	Based on API RP 2A–WSD, 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 assessments and mitigation actions.	240
830(a), (b), (c); 831 thru 833	Immediately report incidents to MMS via oral communications, submit written follow-up 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 254.		0
Subtotal			66 responses	[2] 1,620

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
Subpart I—Decommissioning				
902(b), (c), (d); 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 calendar days after completion of activities, or 90 calendar days after cancellation, relinquishment, or other termination of lease or grant. Include 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 calendar days before commencing decommissioning activities.	1	1 decommissioning notice.	1
910	Within 60 calendar days after removing a facility, verify to MMS that site is cleared.	1	1 removal verification	1
912	Within 60 calendar 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
Subpart J—RUEs 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 alternative 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), (d), (e)	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
1013	Submit request for assignment of an alternative 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
30 CFR Parts 250 & 290 Proposed Revisions				
250.1730(c)	Request departure from requirement to remove a platform or other facility.	No change to burden covered by 1010–0142, 30 CFR 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.	Exempt under 5 CFR 1320.3(h)(9).		0

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
Subtotal			1 response	1
Total Hour Burden			390 Responses	31,251
Total Non-Hour Burden Costs			$3,816,000 Non-Hour Costs	

[1] Retention of these records is usual and customary business practice; the burden is primarily to make them available to MMS and CVAs.

As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. You may submit your comments directly to the Office of Information and Regulatory Affairs, OMB. You should provide MMS with a copy of your comments so that we can summarize all written comments and address them in the final rule preamble. Refer to the **ADDRESSEES** section for instructions on submitting comments. You may obtain a copy of the supporting statement for this new collection of information by contacting the Bureau's Information Collection Clearance Officer at (202) 208–7744.

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves this collection of information and assigns an OMB control number and the regulations become effective, you are not required to respond. The OMB is required to make a decision concerning the collection of information of this proposed regulation between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by August 8, 2008. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

a. The MMS specifically solicits comments on the following questions:

(1) Is the proposed collection of information necessary for MMS to properly perform its functions, and will it be useful?

(2) Are the estimates of the burden hours of the proposed collection reasonable?

(3) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(4) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

b. In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping ''non-hour cost'' burden resulting from the collection of information. Other than the non-hour cost burdens previously identified and discussed, we have not identified any other non-hour burden costs, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) Total capital and start-up cost component, and (2) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

National Environmental Policy Act (NEPA) of 1969

The Minerals Management Service (MMS) has prepared a Draft EA analyzing the proposed regulations for the MMS Alternative Energy and Alternate Use program. The Draft EA incorporates by reference the Programmatic Environmental Impact Statement (EIS) *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 Draft EA was prepared to assess any impacts as a result of this rule. The Draft EA is available on the MMS Web site at: *http://www.mms.gov/offshore/AlternativeEnergy/RegulatoryInformation.htm.*

To obtain single copies of the Programmatic EIS published on November 7, 2007, you may contact Mr. James F. Bennett, Minerals Management Service, MS 4042, 381 Elden Street, Herndon, VA 20170. You may also *view the Programmatic EIS* on the MMS Web site at: *ocsenergy.anl.gov.*

Effects on the Energy Supply (E.O. 13211)

While this proposed rule is a significant regulatory action under Executive Order 12866, the proposed rule would not have a significant adverse effect on the supply, distribution, or use of energy. In fact, this proposed rule is expected to have a positive effect on the production, supply, and distribution of energy because the proposed 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 proposed rule a significant energy action. Therefore, this proposed rule is not a significant energy action and does not require a Statement of Energy Effects. E.O. 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.

Clarity of This Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized,

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects

30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements.

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: March 19, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

Editorial Note: This document was received at the Office of the Federal Register on June 24, 2008.

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR chapter II as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for 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(a) by adding a third and fourth sentence and new paragraphs (a)(1) and (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 ''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 part 285, subpart I of this subchapter 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 read as follows:

PART 285—ALTERNATIVE ENERGY AND 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 the regulations governing operations?
285.104 Do I need an MMS lease or other authorization to produce or support the production of electricity or other energy product from an alternative 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 Where 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 alternative energy industry.
285.117 [Reserved]
285.118 What are my appeal rights?

Subpart B—Issuance of OCS Alternative 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 through 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 must I submit in response to a Request for Interest or a Call for Information and Nominations?
285.213 What will MMS do with information from the Requests for Information or Calls for Information and Nominations?
285.214 What areas will MMS offer in a lease sale?
285.215 What information will MMS publish in the Proposed Sale Notice and Final Sale Notice?
285.216 through 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 through 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 through 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 How can I conduct alternative energy research activities on the OCS?

Subpart C—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Alternative 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 a 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 a ROW grant or RUE grant?
285.311 through 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 [Reserved]
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 through 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 through 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 through 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?

Lease or Grant Contraction

285.436 Can MMS require lease or grant contraction?

Lease or Grant Cancellation

285.437 When can my lease or grant be canceled?

Subpart E—Payments and Financial Assurance Requirements

Payments

285.500 How do I make payments under this part?
285.501 What deposits will MMS collect for a competitively issued lease, ROW grant, or RUE grant?
285.502 What initial payments will MMS require to obtain a noncompetitive lease, ROW grant, or RUE grant?
285.503 What rentals will MMS collect on a commercial lease?
285.504 What rentals will MMS collect on a limited lease?
285.505 What operating fees will MMS collect from a commercial lease?
285.506 What rental payments will MMS collect on a project easement?
285.507 What rental payments will MMS collect on ROW grants or RUE grants associated with alternative energy projects?
285.508 Who is responsible for submitting lease or grant payments to MMS?
285.509 May MMS reduce or waive lease or grant payments?
285.510 through 285.514 [Reserved]

Basic Financial Assurance Requirements for Commercial Leases

285.515 What financial assurance must I provide when I obtain my commercial lease?
285.516 What are the financial assurance requirements for each stage of my commercial lease?
285.517 How will MMS determine the amounts of the SAP and COP financial assurance requirements associated with commercial leases?
285.518 [Reserved]
285.519 [Reserved]

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

285.520 What financial assurance amount must I provide when I obtain my limited lease, ROW grant or RUE grant?
285.521 Do my financial assurance requirements change as activities progress on my limited lease or grant?

285.522 through 285.524 [Reserved]

Requirements for Financial Assurance Instruments

285.525 What general requirements must a financial assurance instrument meet?
285.526 What instruments other than a surety bond may I use to meet the financial assurance requirement?
285.527 Can I use a lease or grant-specific decommissioning account to meet the financial assurance requirements?
285.528 [Reserved]
285.529 [Reserved]

Changes in Financial Assurance

285.530 What must I do if my financial assurance lapses?
285.531 What happens if the value of my financial assurance is reduced?
285.532 What happens if my surety wants to terminate the period of liability of my bond?
285.533 How does my surety obtain cancellation of my bond?
285.534 When may MMS cancel my bond?
285.535 Why might MMS call for forfeiture of my bond?
285.536 How will I be notified of a call for forfeiture?
285.537 How will MMS proceed once my bond or other security is forfeited?
285.538 [Reserved]
285.539 [Reserved]

Revenue Sharing with States

285.540 How will MMS equitably distribute revenues to States?
285.541 How will a qualified project's location affect an eligible State's share of revenues?

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?
285.601 When am I required to submit my plans to MMS?
285.602 What records must I maintain?
285.603 [Reserved]
285.604 [Reserved]

Site Assessment Plan and Information Requirements for Commercial Leases

285.605 What is a Site Assessment Plan (SAP)?
285.606 What must I demonstrate in my SAP?
285.607 How do I submit my SAP?
285.608 [Reserved]
285.609 [Reserved]

Contents of the Site Assessment Plan

285.610 What must I include in my SAP?
285.611 What information and certifications must I submit with my SAP to assist MMS in complying with NEPA and other relevant laws?
285.612 How will MMS process my SAP?

Activities Under an Approved SAP

285.613 When may I begin conducting activities under my approved SAP?
285.614 When may I construct OCS facilities proposed under my SAP?
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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 Section 8 of the Outer Continental Shelf Lands Act (OCS Lands Act) (43 U.S.C. 1337), as set forth in Subsection 388(a) of the Energy Policy Act of 2005 (Pub. L. 109–58).

§ 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 alternative 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 alternative 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 is not intended to 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;

(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, 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, rentals, 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 that may be affected by a lease, easement, or right-of-way under this subsection. The MMS may invite any affected State Governor 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 the regulations governing operations?

(a) The MMS may prescribe or approve departures from the operating requirements of this part 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 an alternative energy resource on the OCS?

Except as otherwise authorized by law, it shall 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 alternative energy resource on any part of the Outer Continental Shelf except under and in accordance with the terms of a lease, easement or right-of-way 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 minimizes adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components to the extent practicable;

(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 all plans, revisions, and other MMS approvals, as provided in this part;

(e) Make all applicable payments on time;

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

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

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

(i) Compile, retain, and make available to 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) A lease or grant issued under this part may be held only by:

(1) Citizens and nationals of the United States;

(2) Aliens 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 U.S., the District of Columbia, or any territory or insular possession subject to U.S. jurisdiction; or

(4) Associations of such citizens, nationals, resident aliens, or corporations;

(5) States of the U.S.; or

(6) Political subdivisions of States of the U.S.

(b) You may not become a lessee, ROW grant holder, RUE grant holder, Alternate Use RUE grant holder 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 non-procurement 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;

(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 calendar 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; or

(4) After notice and hearing, MMS finds that you are not meeting the diligence requirements on any other OCS lease issued under this subchapter.

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

(a) An individual must submit a written statement of citizenship status attesting to U.S. citizenship. It need not 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.

(b) A corporation or association must submit evidence, as specified in the table in paragraph (c) 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 us.

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

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

§ 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 calendar 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 Where do I submit plans, applications, reports or notices required by this part?

You must submit all plans, applications, reports or notices required by this part to MMS at the following address: Associate Director OMM, Minerals Management Service, MS 4000, 381 Elden Street, Herndon, VA 20170.

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

(a) 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 Impact Statement.

(b) We will measure the ongoing processing cost 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 for reasonable processing costs.

(2) You may comment on the proposed fee.

(3) You may ask for our approval to perform, or to directly pay a contractor for, 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.

(4) We will then give you the final estimate of the processing fee amount

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 procedure 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) 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 calendar 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, subpart J. 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; or

(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; or

(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.

Alternative 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.

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 (BAST) 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 means 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 means all activities associated with the generation, storage, or transmission of electricity or other energy product from an alternative energy project on the OCS, and for which such electricity or other energy product is intended for distribution, sale or other commercial use. This term also includes activities associated with all stages of development, including initial site characterization and assessment, facility construction, and project decommissioning.

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

Commercial operations means the generation of electricity or other energy product for commercial use, sale, or distribution.

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.

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 meeting either or both of the following criteria: Having submerged lands within 3 miles of any portion of a qualified project area or having a coastline no more than 15 miles from the geographic center of a qualified project.

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 that is used to determine State eligibility and the distribution of revenues among States. 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 intersected. 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. As such, use of the term does not require that project receipts exceed project expenses.

Lease means an authorization to use a designated portion of the OCS for activities authorized under this part. The term also means the area covered by that authorization, when the context requires.

Lessee means the holder of a lease and, depending upon the context, all persons authorized by the holder of a lease, to conduct activities authorized in this part.

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.

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, for the purpose of distributing revenues from alternate energy and alternate use projects, under this part, means nautical miles, as opposed to statute miles.

MMS means the Minerals Management Service of the Department of the Interior.

Natural resources includes, without limiting the generality thereof, alternative energy, oil, gas, and all other minerals (as ''minerals'' is 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 State, a political subdivision of a State, a Native American Tribal Government or a private, public, or municipal corporation.

Project, for the purposes of revenue sharing under this part, means the activities conducted on the OCS that are authorized and/or regulated under this part. The term project can also be used to refer to the facilities used to conduct those activities or to the project area.

Project area means the geographic surface area necessary, or granted, for the purpose of a specific project: A lease block, a group of lease blocks, or equivalent acreage that the Federal Government determines to be a source of the generation of income subject to revenue payments under this part. 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 generally would be considered the project area. To avoid having projects distant from shore being designated a qualified project, and to mitigate 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, though any fees paid for such acreage would constitute part of the revenues from the qualified project.

Project easement means an easement to which, upon approval of your Construction and Operations Plan or General Activities Plan, 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.

Qualified project is a project as defined above whose area is located wholly or partially within the area extending 3 miles seaward of State submerged lands, determined by the seaward boundary of any coastal State as established under 43 U.S.C. 1312.

Qualified project area is the MMS-determined project area for a qualified project.

Revenues means 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.

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 an alternative energy lease or other approval issued by a State or private party. The term also means the area covered by the authorization.

Right-of-way (ROW) grant means an authorization issued by MMS under this part that allows 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 alternative 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 to the National Register of Historic Places as defined in 36 CFR 60.4, or its successor.

Site assessment activities means those initial activities conducted to characterize a site on the OCS, including physical characterization studies (e.g., geological and geophysical surveys, hazard and archaeological surveys), resource assessment surveys (e.g., meteorological and oceanographic), and baseline collection studies (e.g., biological, economic).

You and *your* mean 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, as applicable.

We, us and *our* mean the Minerals Management Service of the Department of the Interior, or its possessive, as applicable.

§ 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 (5 U.S.C. 552), the regulations contained in 43 CFR part 2 (Records and Testimony), and the requirements of the Act.

(b) If MMS determines that any data or information is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(4)), MMS will not disclose the data and information unless the submitter agrees to the disclosure except to the extent required by law.

§ 285.114 Paperwork Reduction Act statements—information collection.

(a) 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–XXXX. The table in paragraph (e) of this section lists the subpart in the rule requiring the information, its title, summarizes the reasons for collecting the information, and how MMS uses the information.

(b) Respondents are primarily alternative 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) Send comments regarding any aspect of the collections of information under this part, including suggestions for reducing the burden, 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:

30 CFR 285 subpart/title	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 Alternative Energy Leases.	To provide MMS with information needed to determine when to use a competitive process for issuing an alternative energy lease and to identify auction formats and bidding systems and variables that we may use when that determination is affirmative; to determine the terms under which we will issue alternative energy leases.
(3) Subpart C—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Alternative Energy Activities.	To issue ROW grants and RUE grants for OCS alternative energy activities that are not associated with an MMS-issued alternative 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 provide a payment structure for alternative energy leases that complies with subsection 8(p)(2) of the OCS Lands Act, to ensure a fair return to the government for use of the OCS. To ensure that lessee and grant holders provide the required financial assurance on their lease or grant.
(6) Subpart F—Plans and Information Requirements.	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. MMS needs the information for compliance with NEPA, CZMA, and other Federal laws and to ensure the safety of the environment on the OCS.
(7) Subpart G—Facility Design, Fabrication, and Installation.	MMS would require lessees, operators, and grant holders to submit reports that address 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 according to 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 manor 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—Rights of Use and Easement for Energy and Marine-Related Activities Using Existing OCS Facilities.	To provide MMS with 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 approved plans.

§ 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 any changes to the incorporation by reference of these documents in the **Federal Register**.

(2) The MMS may make a rule amending the incorporation by reference of the document effective without prior opportunity for public comment when MMS:

(i) 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

(ii) Meets the requirements for making a rule immediately effective under 5 U.S.C. 553; and

(iii) Obtains approval from the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51.

(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 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; 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.

(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, October 2005.	§ 285.825

§ 285.116 Requests for information on the state of the offshore alternative 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 alternative energy industry, including the identification of potential challenges or obstacles to its continued development. Such requests for information could relate to the identification of environmental, technical or economic matters that promote or detract from continued development of alternative energy technologies on the OCS. You must respond to such at request in a timely manner, as established in the request. 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 ensures fair value for use of the Nation's OCS.

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

(c) MMS will publish such requests for information by the Director of the Federal Register.

§ 285.117 [Reserved]

§ 285.118 What are my appeal rights?

(a) Any party adversely affected by a decision of an MMS official made under the provisions of this part has the right of appeal under part 290, subpart A, of this title, except for bid acceptance, as 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 4.21.

(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 calendar 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 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 Alternative 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 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 an alternative 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 Construction and Operations Plan (COP) or General Activities Plan (GAP), as provided under subpart F of this part; and

(2) The MMS will incorporate your approved project easement as an addendum to your lease.

(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 through 285.231. 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 alternative 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, by either the competitive or noncompetitive process, MMS will coordinate and consult with relevant Federal agencies, 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), 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 an alternative 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 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 through 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 alternative 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 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. 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, 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 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.

(d) *Final Sale Notice.* The MMS will publish the Final Sale Notice in the **Federal Register**.

§ 285.212 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 all of the items listed in paragraphs (a) through (g) of this section.

(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 alternative 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 protect these data and information from public disclosure to the extent allowed by law.

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

(f) Documentation showing that you are qualified to hold a lease, as specified in § 285.107.

(g) Any other information requested by MMS in Request for Interest or Call for Information and Nominations.

§ 285.213 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 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 Endangered Species Act (ESA), and the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

§ 285.214 What areas will MMS offer in a lease sale?

The MMS will offer areas for leasing as identified in § 285.211(b) of this part. We will not accept nominations after the Call for Information and Nominations closes.

§ 285.215 What information will MMS publish in the Proposed Sale Notice and Final Sale Notice?

For each 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 paragraphs (a) through (h) of 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.

§ 285.216 through 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 alternative 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 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 pre-determined time after the end of stage one bidding.

(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 § 285.505 of this part 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 formula in § 285.505 of this part 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 as in paragraph (1) of this section and operating fee rate as in paragraph (2) of this section. (Two-stage auction format only.)
(5) Cash bonus *and* sliding operating fee rate	Cash bonus as in paragraph (1) of this section and operating fee rate as in paragraph (3) of this section. (Two-stage auction format only.)

(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, regardless of the amount offered or bidding system used. We intend to accept or reject all high bids within 90 calendar days, but we may extend that time if necessary.

(b) If we use ascending bidding, we may designate 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, the winning bid will be determined as in paragraph (b) of this section if the auction concludes with an ascending bidding stage or as in paragraph (a) of this section if the auction process concludes with a sealed bidding stage.

(d) 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 random selection by lot.

(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) Pay the first 6 months' rental as required in § 285.503;

(3) Pay the balance of the bonus bid as specified in the lease sale notice or in the lease agreement as required in § 285.500;

(4) File financial assurance as required under §§ 285.515 through 285.537.

(b) 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.

(c) 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 stipulations in the Final Sale Notice.

(d) 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.

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

(f) 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.

(g) MMS will only accept the highest bid. 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 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 through 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 alternative energy and environmental conditions in the area of interest, including energy and resource data and information used to evaluate the area of interest. We will protect proprietary data and information from public disclosure to the extent allowed by law;

(e) If available from the appropriate State or local government authority, certification 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; and

(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 the request 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; and

(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.

(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 Site Assessment Plan (SAP), as described in §§ 285.605 through 285.612; or

(ii) For a limited lease, a General Activities Plan (GAP), as described in § 285.640 through 285.647.

(e) If we approve or approve with conditions your SAP or GAP, we may offer you a noncompetitive lease.

(f) 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.

(g) 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 through 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 are as shown in the following table:

Lease term	Requirements	Automatic extensions
(1) Each commercial lease issued competitively will have a preliminary term of 6 months to submit a Site Assessment Plan (SAP).	The SAP must meet the requirements of §§ 285.605 through 285.612. The preliminary term begins on the effective date of the lease.	If we receive a SAP that satisfies the requirements of §§ 285.605 through 285.612. The preliminary term will be automatically extended for the time necessary for us to conduct technical and environmental reviews of the SAP.
(2) A commercial lease issued noncompetitively does not have a preliminary term. You must submit your SAP within 60 calendar days of MMS issuing a public notice of the determination. Before MMS will issue a lease we must receive your SAP and approve.	The SAP must meet the requirements of §§ 285.605 through 285.612. The site assessment term begins when MMS approves your SAP and issues your lease.	
(3) A commercial lease will have a site assessment term of 5 years to conduct site assessment activities and to submit a Construction and Operations Plan (COP).	The COP must meet the requirements of §§ 285.620 through 285.629 of this part. The site assessment term begins on the date that we approve your SAP.	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.
(4) 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.	The operations term begins on the date that we approve your COP. The lease renewal request must meet the requirements of §§ 285.425 through 428.	
(5) A commercial lease may have additional time added to the operations term through a lease renewal, not to exceed the original term of the lease.	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 421.

(b) If you do not timely submit a SAP or 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 a SAP or COP, 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	Requirements	Extension or suspension
(1) Each limited lease issued competitively has a preliminary term of 6 months to submit a General Activities Plan (GAP).	The GAP must meet the requirements of §§ 285.640 through 285.647. The preliminary term begins on the effective date of the lease.	If we receive a GAP that satisfies the requirements of §§ 285.640 through 285.647 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.
(2) 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 285.647. The operations term begins when MMS approves your GAP and issues your lease.	
(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, as appropriate, you may request additional time 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 How can I conduct alternative energy research activities on the OCS?

(a) The Director may make areas available on the OCS for alternative energy research activities that support the future production, transportation, and transmission of alternative energy managed by the U.S. Department of Energy (DOE).

(b) In making areas available on the OCS for DOE-managed alternative energy research under this provision, MMS will coordinate and consult with the Department of Energy and other relevant Federal Agencies and affected State and affected local government executives.

(c) MMS may issue leases for DOE-managed research activities 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 Secretary of Energy, or their authorized representatives, will negotiate alternative energy leases under this provision on a case-by-case basis. The framework for such negotiations, and standard terms and conditions of such leases, may be set forth in a memorandum of agreement or other interagency agreement between the MMS and the Department of Energy.

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

ROW Grant and RUE Grants

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

(a) A ROW grant authorizes the holder to install on the OCS cables, pipelines and associated facilities that involve the transportation or transmission of electricity or other energy product from alternative energy projects not on the OCS.

(b) A RUE grant authorizes the holder to construct and maintain facilities or other installations on the OCS that support the production, transportation or transmission of electricity or other energy product from any alternative energy, provided the generation or production of such electricity or other energy product does not occur on an alternative energy lease issued under this part.

(c) You do not need a ROW grant or RUE grant for a project easement authorized under subpart B of this part to serve your lease.

§ 285.301 What do ROW grants and RUE grants include?

(a) A ROW grant:

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

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

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

(b) A RUE grant includes the site on which a facility or other structure is located and the areal extent of anchors, chains and other equipment associated with a facility or other structure. The specific boundaries of a RUE will be determined by 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 a ROW grant or RUE grant you must provide evidence that you meet the qualifications as required in § 285.107; and

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

(1) The rights granted will not prevent or interfere in any way with the management, administration, or 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 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 a 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; and

(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 General Activities Plan (GAP), as described in §§ 285.640 through 285.647, within 60 calendar 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 285.647.

§ 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 calendar 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 rental 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; and

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

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

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

§ 285.311 through 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 sealed-bid, oral, electronic, or other auction format. 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; and

(b) An annual rental for the first year of the grant, as specified in § 285.507(a).

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 it determines 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, or the marine, coastal, or human environment, or to 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, including, when appropriate, a cessation order, to alleviate threats and to abate the violation.

(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, in order 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 [Reserved]

§ 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)), or GAP (under § 285.645(a)(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 authorized to perform activities necessary to fulfill your obligations under the OCS Lands Act, the lease or grant, and the regulations in this part.

(d) You, or your designated operator, must immediately provide MMS a written notification of any change of address.

(e) If there is a change in the designated operator, you must immediately provide written notice to MMS and identify the new designated operator. The lessee(s) or grant holders 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, notwithstanding their resignation as operator.

§ 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 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 regulation.

§ 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 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 as required of an applicant for a lease or grant in § 285.107; and

(8) A statement on how the assignee complies with the financial assurance requirements of §§ 285.515 through 285.536. 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 be billed for all 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.

§ 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 calendar 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 285.536.

(c) The assignee must submit proof of eligibility and other qualifications specified in § 285.107.

(d) An authorized official, on behalf of the holder of a lease or grant or portion thereof, 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 non-monetary, 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. 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, fails to perform any obligation under the lease or grant.

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

(a) As assignee, you and any subsequent assignees 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 reclaim the site as required 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 lessee who held an interest at the time the obligation accrued, unless this part provides otherwise.

§ 285.412 through 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 by 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 calendar 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, as applicable that includes a revised schedule for submission of a SAP, COP, or GAP as appropriate; and

(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, or the marine, coastal, or human environment; or to 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.

(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.

(4) We will use the results of the study and any other information that becomes 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, or the marine, coastal, or human environment; or to 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) A suspension order issued orally will be followed by a written explanation by MMS as soon as practicable.

(c) The written explanation will 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 take action to comply fully with the terms of a suspension order upon receipt.

§ 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.

(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) Except as provided below, a suspension will be in effect for the period specified by MMS.

(b) The MMS will not approve a suspension request pursuant to § 285.416 for a period longer than 2 years.

(c) 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 through 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 alternative 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 calendar 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 it requests 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 on a case-by-case basis not to exceed the original term of the lease or grant.

§ 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.

(b) You may request a suspension of your lease or grant as provided in § 285.416 while MMS considers 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 through 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, 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 1 year 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, including any accrued rentals 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) Company 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. MMS will notify you of our proposal to contract the lease or grant area.

(a) MMS will 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.

(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 that would be canceled, the lessee 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 the failure to comply continued 30 calendar 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 grant holder at its record post office address.

(2) The Secretary determines after notice and opportunity for a hearing that you have terminated commercial operations as provided in § 285.635, or other approved activities 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.

(c) If the Secretary cancels a lease or grant under (b)(3) or (b)(4) of this section, the Federal government may provide compensation as appropriate to the extent funds are authorized and appropriated for such purposes.

Subpart E—Payments and Financial Assurance Requirements

Payments

§ 285.500 How do I make payments under this part?

(a) For acquisition fees, or rentals paid for the preliminary term of your lease, you must make credit card or automated clearing house (ACH) 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/homepage* or directly through Pay.Gov at: *https://www.pay.gov/paygov/.*

(b) For rentals during the preliminary term or 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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Lease or Grant Type	Payment	Amount	Due Date	Payment Mechanism	Section Reference
(1) Lease issued competitively	Bid Deposit	As set in Final Sale Notice/depends on bid	With bid	Pay.Gov	§ 285.501
	Bonus Balance		Lease issuance	Per § 218.51	
(2) Lease issued non-competitively	Acquisition fee	$0.25 per acre	With application	Pay.Gov	§ 285.502
(3) ROW grant or RUE grant		None	na	na	
(4) Commercial and Limited lease	Initial Rental (6 months)	$3.00 per acre per year	Lease issuance	Pay.Gov	§ 285.503 and § 285.504
	Subsequent Rental		Annually	Per § 218.51	
(5) Project easement	Initial Rental	Greater of $5.00 per acre per year or $450 per year	When operations term for associated lease starts	Pay.Gov	§ 285.506
	Subsequent Rental		Annually	Per § 218.51	
(6) ROW grant and RUE grant	Initial Rental	$70 per statute mile, and the greater of $5.00 per acre per year or $450 per year	Grant Issuance	Pay.Gov	§ 285.507
	Subsequent Rental		Annually or in 5-year batches	Per § 218.51	
(7) Commercial lease	Operating fee	Power price * installed capacity * capacity (efficiency) factor * fee rate, or rental set in Final Sale Notice	Annually	Per § 218.51	§ 285.505

§ 285.501 What deposits will MMS collect for a competitively issued lease, ROW grant, or RUE grant?

(a) For a competitive lease or grant 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 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, these regulations 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 applicable regulations or stipulations in the Final Sale Notice.

§ 285.502 What initial payments will MMS require to obtain a noncompetitive lease, ROW grant, or RUE grant?

When requesting a noncompetitive lease, you must meet the initial payment requirements of this section, unless specified otherwise in your lease instrument. No advance 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 as provided in § 285.500.

(b) If we determine that there is no competitive interest we will then:

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

(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 rentals will MMS collect on a commercial lease?

(a) The rental for a commercial lease is $3.00 per acre per year, unless otherwise established in the Final Sale Notice.

(1) You must pay the first 6 months' rental as provided in § 285.500 when we issue your lease.

(2) You must pay rentals at the beginning of each subsequent one year period in accordance with the regulations at § 218.51 of this chapter on the entire lease area until we approve your COP or as otherwise specified in the Final Sale Notice.

(b) After your lease enters its operations term, you must pay operating fees as specified in § 285.505, unless we specify in the Final Sale Notice a rental payment instead of an operating fee during the operating term of the lease.

(1) If you develop your commercial lease in phases, as approved by us in your COP under § 285.629, you must pay:

(i) Rentals on the portion of the lease that is not presently authorized for commercial operations, and

(ii) Operating fees on the portion of the lease that is presently authorized for commercial operations, as specified in § 285.505, unless we specify in the Final Sale Notice a rental payment instead of an operating fee during the operating term of the lease.

(c) You must pay the rental for a project easement in addition to lease rental as provided in § 285.506. You must commence rental payments for your project easement upon our approval of your COP or GAP.

§ 285.504 What rentals will MMS collect on a limited lease?

(a) The rental for a limited lease is $3.00 per acre per year, unless otherwise established in the Final Sale Notice and your lease instrument.

(b) You must pay the first 6 months' rental when MMS issues your limited lease as provided in § 285.500.

(c) You must pay rentals at the beginning of each subsequent one 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.

§ 285.505 What operating fees will MMS collect from a commercial lease?

Unless we substitute a rental payment obligation, you must pay operating fees on your commercial lease during the operations term, as described in this section.

(a) We will determine the annual operating fee for activities relating to the generation of electricity conducted during the operations term of 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 facility installed capacity expressed in megawatts;

(3) H is the number of hours in a year, equal to 8760, used to calculate an annual payment;

(4) c is a ''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 retail 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 and expressed as a decimal between zero and one.

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

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

Example: The operating fee for a 150 megawatt facility with an anticipated capacity factor of 0.35 operating in a region with a typical power price of $65 per megawatt hour and a fee rate of 0.02 would be just under $0.6 million per year (150 megawatts times 8,760 hours per year times 0.35 times $65 per megawatt hour times 0.02).

(c) We will specify operating fee parameters for commercial leases issued competitively in the Final Sale Notice and in the lease instrument for those issued noncompetitively.

(1) Unless we specify otherwise, we intend to set the operating fee rate (r) at 0.01 for the first two years of the operations term, and at 0.02 in the third and remaining years of the operations term. 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 § 285.509 for a given project.

(2) The power price (P) will be determined based on the prior year's average retail power price in the State in which a project's transmission cables make landfall, as published by the Department of Energy, Energy Information Administration. If, at the time the annual operating fee payment is due, the prior year's average retail power price in unavailable, the lessee shall calculate the operating fee based on the most recent average annual retail power price published by the Department of Energy, Energy Information Administration.

(3) We 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. 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). Thereafter, MMS may adjust the capacity factor (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) no earlier than the completion of the sixth year of operation, or any five year period thereafter. The operator or lessee may request review and adjustment of the capacity factor under § 285.509 of this part.

(4) We will use the installed capacity (M) of the equipment you actually install.

(d) You must submit all operating fee payments to MMS in accordance with the regulations at § 218.51 of this chapter.

(e) We will establish the operating fee in the final sale notice or in the lease instrument on a case-by-case basis for activities conducted during the operations term that do not relate to the generation of electricity (*e.g.* hydrogen).

§ 285.506 What rental payments will MMS collect on a project easement?

(a) You must pay us a rental fee for your project easement of the greater of $5.00 per acre per year or $450 per year, unless specified otherwise in the Final Sale Notice.

(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.

(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 rental payments for your project easement upon our approval of your COP or GAP.

(1) You must make the first rental payment as provided in § 285.500.

(2) You must submit all subsequent rental payments to MMS in accordance with the regulations at § 218.51 of this chapter.

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

§ 285.507 What rental payments will MMS collect on ROW grants or RUE grants associated with alternative energy projects?

(a) For each ROW grant we have approved under subpart C of this part, you must pay an annual rental as

follows, unless specified otherwise in the Final Sale Notice:

(1) $70 for each nautical mile or part of a nautical mile of OCS that your right-of way crosses; and

(2) An additional $5.00 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 we have approved under subpart C of this part, you must pay a rental fee equal to the greater of:

(1) $5.00 per acre per year; or

(2) $450 per year.

(c) You must make the rental 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.

(c) You must make the first annual rental payment upon approval of your ROW grant or RUE grant request as provided in § 285.500 and all subsequent rental payments to MMS in accordance with the regulations at § 218.51 of this chapter.

§ 285.508 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.

§ 285.509 May MMS reduce or waive lease or grant payments?

(a) The MMS Director may reduce or waive the rental or operating fee, including 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

Any other information required by the Director.

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

§ 285.510 through 285.514 [Reserved]

Basic 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 security as specified in § 285.526.

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

(1) The dollar amount of the minimum, lease-specific financial assurance in (a)(1) 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.

(2) The first CPI–U based adjustment can be made no sooner 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 Site Assessment Plan (SAP)	A SAP bond or other financial assurance, in an amount determined by MMS, if upon reviewing your SAP, MMS determines that a SAP 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 Construction and Operations Plan (COP).	A COP 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, including commercial operation, and your anticipated decommissioning costs. The COP financial assurance requirement will be in addition to your lease-specific bond and, if applicable, SAP bond.

(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.

§ 285.517 How will MMS determine the amounts of the SAP and COP financial assurance requirements associated with commercial leases?

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

(b) We determine the amount of the SAP and COP 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:

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

(ii) Any past due rentals and other payments;

(iii) Other monetary obligations; and

(iv) The estimated costs of lease decommissioning, as required by subpart I of this part.

(c) You may satisfy the requirement for a COP bond and, if applicable, a SAP bond by increasing the amount of your existing bond or replacing your existing bond.

(d) If your cumulative potential obligations and liabilities increase or decrease, we may adjust the amount of COP bond or, if applicable, SAP bond.

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

(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 rentals and other payments due the Government over the next 12 months;

(ii) Any past due rentals and other payments;

(iii) Other monetary obligations; and

(iv) The estimated costs of lease decommissioning.

§ 285.518 [Reserved]

§ 285.519 [Reserved]

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

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

(a) You must post a minimum limited lease or grant-specific bond in the amount of $300,000.

(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 MMS may adjust the dollar amount of the minimum, lease-specific or grant-specific bond by the CPI–U or a substantially equivalent index if the CPI–U is discontinued.

(2) The first CPI–U-base 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 rentals and other payments due the Government over the next 12 months;

(2) Any past due rentals and other payments;

(3) Other monetary obligations; and

(4) The estimated costs of lease abandonment and cleanup.

(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.

§ 285.522 through 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, operators and grant holders 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 one 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, terminate, or cancel 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. MMS will accept 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 United States Treasury by MMS; and

(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) of 3 or less.

(b) If you use a Treasury security:

(1) You must post one hundred fifteen (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 the required amount.

(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.

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

(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.

(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 the 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). The commitment may include revenue from another lease, ROW grant, or RUE grant issued under this part.

§ 285.528 [Reserved]

§ 285.529 [Reserved]

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 security expires for any reason, you must:

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

(2) Provide new financial assurance to MMS 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 are, or your surety 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 calendar 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. The MMS will terminate that period of liability within 90 calendar days after MMS receives the request. If you intend to continue activities, or have not met all obligations of your lease or grant, MMS will require you to provide a replacement bond or alternative form of security of equivalent or greater value.

§ 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)(i) The MMS accepts a replacement bond or an alternative form of security 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 seven 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.

(3) MMS will reduce the amount of your bond or return a portion of your financial assurance if MMS determines 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) SAP or COP bonds submitted under § 285.516.	When MMS determines that you have met all your decommissioning, site clearance and other obligations.	(i) 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

Bond—	The period of liability ends—	Your bond will not be released until—
		(ii) The MMS determines that the potential liability resulting from any undetected noncompliance is not greater than the amount of the 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 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 or 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 other lessee, ROW grant holder, RUE grant holder, or other person approved to perform obligations under a lease or grant.

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

(a) The MMS will notify you and your surety 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 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 [Reserved]

§ 285.539 [Reserved]

Revenue Sharing With States

§ 285.540 How will MMS equitably distribute revenues to States?

(a) The MMS will distribute among all eligible States 27 percent of revenues derived from qualified projects. Those revenues include all revenues derived from the entire qualified project area and are not limited to revenues attributable to the portion of the project area within 3 miles of the seaward boundary of a coastal State.

(b) The MMS will determine and announce the qualified project area at the time it grants or issues a lease, easement, or right-of-way on the OCS for the purpose of a specific project. If a qualified project changes in some way that may affect the equitable distribution of revenues, MMS may re-evaluate the project area to restore the equitable distribution of revenues. If a re-evaluation results in a change in the project area, MMS will re-calculate the geographic center of the project upon which the allocation of revenues is based.

(c) To determine each 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 project. If S_i is equal to the nearest distance from the geographic center of the project to the i = 1, 2, ... n^{th} eligible State's coastline, then State i would be entitled to the fraction F_i of the 27-percent aggregate revenue share due all the States according to the formula:

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

§ 285.541 How will a qualified project's location affect an eligible State's share of revenues?

(a) For qualified projects, the criteria for determining a State's eligibility and its share of revenues under this part are illustrated in the three examples shown in the following table. The interpretations of the criteria provided in the examples can be applied to the range of other possible situations that are not specifically included in the table.

If the qualified project area extends into the zone within 3 miles seaward of the submerged lands . . .	and the geographic center of the project is . . .	Then . . .
(1) Of only 1 State, ...	Any distance from that State's coastline and farther than 15 miles from the coastline of any other State,	The single eligible State would receive the entire 27 percent of the revenues from the project.
(2) Of only 1 State, ...	Farther than 15 miles from the coastline of that State, within 15 miles of the coastline of a second State, and farther than 15 miles from the coastline of any other State,	The 2 eligible States would share the 27 percent of revenues under the inverse distance formula based on their distance from the geographic center of the project area. The second State would receive a larger share of the revenues.

If the qualified project area extends into the zone within 3 miles seaward of the submerged lands . . .	and the geographic center of the project is . . .	Then . . .
(3) Of 2 States, ...	More than 15 miles from the coastline of one State, within 15 miles of the coastline of the second State, within 15 miles from the coastline of a third State, and farther than 15 miles from the coastline of any other State,	All 3 eligible States would share the 27 percent of revenues under the inverse distance formula based on their distance from the geographic center of the project area. The States closest to the geographic center of the project would receive proportionally higher revenue shares. The second State would not get a larger share for meeting both eligibility criteria, but it would receive a larger share of the revenues than would the first State based on its relative proximity to the geographic center of the project.

(b)(1) The following calculations use the hypothetical situation in paragraph (a)(2) in the table to demonstrate how the inverse distance formula would be used to distribute revenue shares. Assume that the geographic center of the project lies 20 miles from the closest coastline point of State A and 10 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:

(i) State A's share = [(1/20) ÷ (1/20 + 1/10)] = 1/3.

(ii) State B's share = [(1/10) ÷ (1/20 + 1/10)] = 2/3.

(2) Therefore, State B's coastline, being half the distance to the geographic center of the qualified project as State A's coastline, qualifies State B to receive a share that is twice as large as State A's share.

(3) The sharing rate of the total revenues is mandated to be 27 percent under the EPAct. 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:

(i) State A's share = $270,000 × 1/3 = $90,000.

(ii) State B's share = $270,000 × 2/3 = $180,000.

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 below:

Before you:	You must:
(a) Conduct any site assessment activities on your commercial lease ...	Submit and obtain approval for your Site Assessment Plan (SAP) according to §§ 285.605 through 285.612.
(b) Conduct any activities pertaining to construction of facilities for commercial operations on your commercial lease.	Submit and obtain approval for your Construction and Operations Plan (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 General Activities Plan (GAP) according to §§ 285.640 through 285.647.

§ 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 a lease or grant to be issued noncompetitively, you must submit your SAP or your GAP within 60 calendar days after the Director issues a determination that there is no competitive interest.

(c) If you intend to request an operations term for your commercial lease, you must submit a COP at least 6 months before the end of your site assessment term.

(d) You may submit your COP with your SAP.

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

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

§ 285.602 What records must I maintain?

Until MMS releases your financial assurance under § 285.533, 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 [Reserved]

§ 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 surveys you plan to perform and other activities you propose to conduct for the characterization of your commercial lease, including your project easement. At a minimum, your SAP must describe how you will conduct the following surveys on your lease.

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

(2) Resource assessment surveys (e.g., meteorological and oceanographic data collection); and

(3) Baseline environmental surveys (e.g., biological, archaeological, or socioeconomic surveys).

(b) You must receive MMS approval of your SAP before you can begin any activities on your lease as provided in § 285.613.

(c) If you propose to install facilities on the OCS (e.g., single-monopile meteorological towers), you must submit the information required in § 285.610(b), as part of your SAP. If you propose to construct multiple facilities or a facility which MMS determines to be complex or significant, we will require you to submit the additional reports and information required in § 285.614(b) and to nominate a Certified Verification Agent (CVA) as required in § 285.706.

§ 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, implementing regulations, lease provisions and stipulations or conditions 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, or the marine, coastal, or human environment; or to 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 include the necessary surveys and other activities to gather information and data required for your COP, as provided in § 285.625.

§ 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.

§ 285.608 [Reserved]

§ 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. We will keep this information confidential to the extent allowed by law.

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

Project information:	Including:
(1) Contact information	The name, address, e-mail address, and phone number of a company authorized representative.
(2) The site assessment concept	A discussion of the objectives; description of the proposed activities, including the technology you will use and any surveys you will conduct; 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 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.
(6) A list of agencies and persons with whom you consulted, or with whom you will be consulting, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.
(7) 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.
(8) Other information	Additional information as requested by MMS.

(b) For site assessment activities that include the installation of any facilities (e.g., single monopile meteorological tower) in addition to the information requirements in paragraph (a) of this section, you must provide the following information or a description of how you will acquire the information:

Project information:	Including:
(1) A location plat	The surface location and water depth for all proposed and existing structures, facilities, and appurtenances both located offshore and onshore.
(2) Geotechnical	A description of how you will conduct geotechnical surveys to gather 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.
(3) General structural and project design, fabrication, and installation.	Information for each type of facility associated with your project.
(4) A description of the deployment activities	Safety, prevention, and environmental protection features or measures that you will use.
(5) Shallow hazards	A description of how you will conduct the shallow hazards survey to gather 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.
(6) Archaeological resources	(i) A description of how you will conduct the archaeological resource survey, if required. (ii) Historic and prehistoric archaeological resources, as required by National Historic Preservation Act of 1966, as amended.

Project information:	Including:
(7) Geological	A description of how you will conduct a geological survey to assess: (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.
(8) Biological	A description of how you will conduct biological surveys to determine 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.
(9) Socio-economic	A description of how you will conduct socio-economic analyses to determine visual impacts, competing uses (e.g., commercial fishing, recreation, tourism, military, oil and gas activities, sand and gravel activities), and other impacts as determined by MMS on a case-by-case basis.
(10) A description of any vessels, offshore vehicles, and aircraft you will use to support your activities.	An estimate of the frequency and duration of vessel/vehicle/aircraft traffic.
(11) 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.
(12) CVA nomination, if required	CVA nominations for reports in subpart G of this part, as required by § 285.706.
(13) 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.
(14) Decommissioning and site clearance procedures.	A discussion of methodologies.
(15) Other information	Additional information as requested by MMS.

§ 285.611 What information and certifications 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. The information must include the resources, conditions, and activities listed in this section that could be affected by or could affect your proposed activities.

(b) You must submit one copy of your consistency certification for CZMA. 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).

§ 285.612 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. We will notify you if your submitted SAP lacks any necessary information.

(b) The MMS will prepare appropriate NEPA analysis.

(c) The MMS will forward one copy of your SAP, consistency certification, and associated data and information under the CZMA to the State's CZM Agency after all information requirements for the SAP are met.

(d) As appropriate, we will coordinate and consult with relevant Federal, State, and local agencies and provide to other Federal, State, and local agencies relevant non-proprietary 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 SAP.

(f) Upon completion of our technical and environmental reviews 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 certain of those terms and conditions as required under § 285.615(c).

(2) If we disapprove your SAP, 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.

Activities Under an Approved SAP

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

After MMS approves your SAP, you may begin conducting the survey activities and any other activities approved in your SAP that do not involve the construction of facilities or any other seabed disturbing activities on the OCS.

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

(a) Before you may begin construction of any OCS facility described in your SAP, you must complete the initial survey activities described in § 285.610(b) that relate to the construction and installation of your facility or facilities or to the seabed disturbing activities (*i.e.*, anchoring, coring, etc.), and submit an initial survey report identifying and describing locations where you propose to install facilities and conduct related activities such as coring, anchoring, and mooring. If MMS determines that the facilities are complex or significant, you must also submit the additional information required in paragraph (b) of this section.

(1) You may begin to construct and install your facility or facilities after MMS notifies you that it has received the initial survey report and has no objections. If MMS receives the initial survey report, but does not respond

with objections within 60 calendar days of receipt, MMS is deemed not to have objections to the report and you may commence construction and installation of your facility or facilities.

(2) If MMS has any objections to your initial survey report, we will notify you verbally or in writing within 60 calendar days of receipt. Following initial notification of objections, MMS may follow-up with written correspondence outlining its specific objections to the initial survey report and requesting certain actions necessary to resolve our objections. You cannot begin construction until you resolve any objections to MMS's satisfaction.

(b) If you are constructing multiple facilities or a facility deemed by MMS to be complex or significant as provided in § 285.605(c), you must complete the activities described in § 285.610(b) and submit an initial survey report of the results of those activities to MMS. You also must submit the following before construction may begin:

(1) Facility Design Report described in § 285.701;

(2) Facility Fabrication and Installation Report described in§ 285.702; and

(3) Your Safety Management System described in § 285.810.

§ 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 calendar days of completing construction and installation activities approved in your SAP.

(b) You must prepare and submit to MMS annually a report that summarizes your site assessment activities and the results of those activities. We will protect the information from public disclosure 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 § 285.612(f)(i). 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 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 requirement 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; or

(7) 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, or the marine, coastal, or human environment; or to 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 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.

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

(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) 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.

(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 activities on your lease or grant.

§ 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, or the marine, coastal, or human environment; or to 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.

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

§ 285.623 [Reserved]

§ 285.624 [Reserved]

Contents of the Construction and Operations Plan

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

You must conduct the following surveys and submit the results before MMS will approve the proposed site of your facility(ies). The MMS will keep such information confidential to the extent allowed by law. Your COP must include the following information:

Information	Report contents	Including—
(a) Shallow hazards	The results of the shallow hazards survey	Information sufficient to determine the presence of the following features and their likely effects on your proposed facility, including: (1) Shallow faults; (2) Gas seeps or shallow gas; (3) Slump blocks or slump sediments; (5) Hydrates; or (6) Ice scour of seabed sediments.
(b) Geological survey relevant to the design and siting of your facility.	The results of the geological survey	Assessment of: (1) Seismic activity at your proposed site; (2) Fault zones; (3) The possibility and effects of seabed subsidence; and (4) The extent and geometry of faulting attenuation effects of geologic conditions near your site.
(c) Biological	The biological project information	A description of how you conducted biological surveys to determine 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.
(d) Socio-economic	The socio-economic project information	A description of how you conducted socio-economic analyses to determine visual impacts, competing uses (e.g., commercial fishing, recreation, tourism, military, oil and gas activities, sand and gravel activities), and other impacts as determined by MMS on a case-by-case basis.
(e) Geotechnical survey	The results of your sediment testing program, 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.	(1) A testing program to investigate the stratigraphic and engineering properties of the sediment that may affect the foundations or anchoring systems for your facility. (2) 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. (3) At a minimum 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.
(f) Archaeological resources	A summary that describes the results of the archaeological resource survey.	Historic and prehistoric archaeological resources, as required by National Historic Preservation Act of 1966, as amended.

Information	Report contents	Including—
(g) 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.	An analysis of the potential for: (1) Scouring of the seabed; (2) Hydraulic instability; (3) The occurrence of sand waves; (4) Instability of slopes at the facility location; (5) Liquefaction, or possible reduction of sediment strength due to increased pore pressures; (6) Degradation of subsea permafrost layers; (7) Cyclic loading; (8) Lateral loading; (9) Dynamic loading; (10) Settlements and displacements; (11) Plastic deformation and formation collapse mechanisms; and (12) Sediment reactions on the facility foundations or anchoring systems.

§ 285.626 What must I include in my COP?

Your COP must include the following project-specific information, as applicable. We will keep this information confidential to the extent allowed by law.

Project information	Including—
(a) Contact information	The name, address, e-mail address, and phone number of a company authorized representative.
(b) Designation of operator, if applicable	As provided in § 285.405.
(c) 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.
(d) 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.
(e) A location plat	The surface location and water depth for all proposed and existing structures, facilities, and appurtenances both located offshore and onshore, including all anchor/mooring data.
(f) 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.
(g) All cables and pipelines, including cables on project easements.	Describe the location, design and installation methods, testing, maintenance, repair, safety devices, exterior corrosion protection, inspections, and decommissioning.
(h) A description of the deployment activities	Safety, prevention, and environmental protection features or measures that you will use.
(i) A list of solid and liquid wastes generated	Disposal methods and locations.
(j) A listing of chemical products used (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.
(k) 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.
(l) A general description of the operating procedures and systems.	(1) Under normal conditions. (2) In the case of accidents or emergencies, including those that are natural or manmade.
(m) Decommissioning and site clearance procedures	A discussion of general concepts and methodologies.
(n) A listing of all Federal, State, and local authorizations, approvals or permits that are required to conduct the proposed activities, including commercial operations.	(1) USCG, USACE, 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). (2) A statement indicating whether such authorization, approval or permit has been applied for or obtained.
(o) 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.
(p) 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.
(q) Information you incorporate by reference	A listing of the documents you referenced.

Project information	Including—
(r) A list of agencies and persons with whom you consulted, or with whom you will be consulting, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.
(s) 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.
(t) 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.
(u) CVA nominations for reports required in subpart G of this part.	The information required in § 285.706.
(v) Construction schedule	A reasonable schedule of construction activity showing significant milestones leading to the commencement of commercial operations.
(w) Other	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. The information must include the resources, conditions, and activities listed in this section, that could be affected by or could affect your proposed activities.

(b) You must submit one 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 of this part.

§ 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 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 provide to other local, State, and Federal agencies relevant non-proprietary 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 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).

(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, is 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(v), 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) 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 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) 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; or

(7) Changes in 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, or the marine, coastal, or human environment; or to 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 calendar 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 calendar days after completion of construction and installation activities under a Fabrication and Installation Report; and

(c) At least 7 calendar days before commencing commercial operations.

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

You may commence commercial operations 30 calendar days after the CVA has submitted to MMS the final Fabrication and Installation Report for the fabrication and installation review, as provided in § 285.708.

§ 285.638 What must I do upon completion of my commercial operations as approved in my COP?

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 provide in §§ 285.905 through 906.

§ 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 activities for the assessment and development of your limited lease or grant including, if applicable, your project easement. Such activities include:

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

(2) Resource assessment surveys (e.g., meteorological and oceanographic data collection);

(3) Baseline environmental surveys (e.g., biological, archaeological, or socioeconomic surveys); and

(4) Your construction, activities, and conceptual decommissioning plans for all planned facilities, including onshore and support facilities, that you will construct and use for your project including any project easements.

(b) If you are installing any facilities, you must submit the information required in § 285.645(b), as part of your GAP. If MMS determines that the proposed facilities are complex or significant, or you intend to apply for a project easement, you must submit the information required in §§ 285.645(c) and 285.651(b), with your GAP.

(c) 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 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, or the marine, coastal, or human environment; or to 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.

(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 [Reserved]

§ 285.644 [Reserved]

Contents of the General Activities Plan

§ 285.645 What must I include in my GAP?

Your GAP must include the following information, as applicable. We will keep this information confidential to the extent allowed by law.

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

Project information	Including—
(1) Contact	The name, address, e-mail address, and phone number of a company authorized representative.
(2) The site assessment concept	A discussion of the objectives; description of the proposed activities, including the technology you will use and any surveys you will conduct; and tentative 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 any or grant stipulation.
(5) A listing of all Federal, State, and local authorizations, approvals, or permits required to conduct activities on your lease or grant.	A statement indicating whether such authorization, approval or permit has been applied for or obtained.
(6) Financial assurance	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.
(7) Other	Additional information as requested by MMS.

(b) For activities that include the installation of any facilities (*e.g.*, single monopile meteorological tower, anchored vessels, transmission substations) in addition to the information requirements in paragraph (a) of this section, you must provide the following information or a description of how you will acquire the information:

Project information	Including—
(1) A location plat	The surface location and water depth for all proposed and existing structures, facilities, and appurtenances both located offshore and onshore, including all anchor/mooring data.
(2) Geotechnical	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.
(3) General structural and project design, fabrication, and installation.	Information for each type of facility associated with your project.
(4) A description of the deployment activities	Safety, prevention, and environmental protection features or measures that you will use.
(5) A list of solid and liquid wastes generated	Disposal methods and locations.
(6) 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.
(7) Shallow hazards	A description of how you will conduct the shallow hazards survey to gather 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.
(8) Archaeological resources	(i) The results of the archaeological resource survey, if required. (ii) Historic and prehistoric archaeological resources, as required by National Historic Preservation Act of 1966, as amended.
(9) Geological survey relevant to the design and siting of your facility.	A description of how you will conduct a geological survey to assess: (i) Seismic activity at your proposed site; (ii) Fault zones;

Project information	Including—
	(iii) The possibility and effects of seabed subsidence; and (iv) The extent and geometry of faulting attenuation effects of geologic conditions near your site.
(10) Biological	A description of how you will conduct biological surveys to determine 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.
(11) Socio-economic	A description of how you will conduct socio-economic analyses to determine visual impacts, competing uses (e.g., commercial fishing, recreation, tourism, military, oil and gas activities, sand and gravel activities), and other impacts as determined by MMS on a case-by-case basis.
(12) 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.
(13) A description of any vessels, offshore vehicles, and aircraft you will use to support your activities.	An estimate of the frequency and duration of vessel/vehicle/aircraft traffic.
(14) Decommissioning and site clearance procedures.	A discussion of methodologies.
(15) 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.
(16) Other	Additional information as requested by MMS.

(c) If you are applying for a project easement, or constructing multiple facilities, or a facility 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:

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.	Describe the location, design and 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) A list of agencies and persons with whom you consulted, or with whom you will be consulting, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.
(6) CVA nominations for reports required in subpart G of this part.	The information required in § 285.706.
(7) Construction schedule	A reasonable schedule of construction activity showing significant milestones leading to the commencement of activities.
(8) Other information	Additional information as required by the MMS.

§ 285.646 What information and certifications must I submit with my GAP to assist MMS in complying with NEPA and other relevant laws?

(a) You must submit with your GAP detailed information to assist MMS in complying with NEPA and other relevant laws. The information must include the resources, conditions, and activities listed in this section, that could be affected by or could affect your proposed activities.

(b) 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).

§ 285.647 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. We will notify you if your submitted GAP lacks any necessary information.

(b) The MMS will prepare appropriate NEPA analysis.

(c) The MMS will forward one copy of your GAP, consistency certification, and associated data and information under the CZMA to the State's CZM Agency, after all information requirements for the GAP are met.

(d) When appropriate, we will coordinate and consult with relevant State and Federal agencies and provide to other local, State and Federal agencies relevant non-proprietary 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 GAP.

(f) Upon completion of our technical and environmental reviews 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(b).

(2) If we disapprove your GAP, 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 or grant, as appropriate, to allow this to occur.

§ 285.648 [Reserved]

§ 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 survey activities and any other activities approved in your GAP that do not involve the construction of facilities on the OCS.

§ 285.651 When may I construct OCS facilities proposed under my GAP?

(a) Before you may begin construction of any OCS facility or any related seabed disturbing activities proposed in your GAP, you must complete the initial survey activities described in § 285.645(b) that relate to the construction and installation of your proposed facility or facilities, or to the seabed disturbing activities (i.e., anchoring, coring, etc.) and submit an initial survey report identifying and describing locations where you propose to install facilities and conduct related activities such as coring, anchoring, and mooring. If MMS determines that the proposed facilities are complex or significant, you must submit the additional information required in § 285.645(c) and paragraph (b) of this section.

(1) You may begin to construct and install your facility or facilities once MMS notifies you that it has received the initial survey report and has no objections. If MMS receives the initial survey report, but does not respond with objections within 60 calendar days of receipt, MMS is deemed not to have objections to the report and you may commence construction and installation of your facility or facilities.

(2) If MMS has any objections to your initial survey report, we will notify you verbally or in writing within 60 calendar days of receipt. Following initial notification of objections, MMS may follow-up with written correspondence outlining its specific objections to the initial survey report and requesting certain actions necessary to resolve the agency's objections. You cannot begin construction until you resolve any objections to MMS's satisfaction.

(b) If you are applying for a project easement, or constructing multiple facilities or a facility deemed by MMS to be complex or significant as provided in § 285.640(b), you must complete the activities described in § 285.645(c). You also must submit the following before construction may begin:

(1) Facility design report required by § 285.701;

(2) Facility fabrication and installation report required by § 285.702; and

(3) Your Safety Management System required by § 285.810.

§ 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 285.428.

(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 calendar days after completing construction and 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 submit a certification of compliance annually (or other frequency as determined by MMS) with certain terms and conditions of your GAP that MMS identifies under § 285.647(f)(i). 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 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) Changes 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; or

(6) Change 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) Changes 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, or the marine, coastal, or human environment; or to 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 through 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 a deviation after issuing the lease or granting a ROW grant or RUE grant but before the commencement of construction of the cable or pipeline on the lease or grant, MMS may suspend the start of construction of the cable or pipeline until MMS modifies the lease or grant.

(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; and

(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.

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 (as provided in § 285.632(a)) and, when required by this part, your SAP (as provided in § 285.614(b)) or GAP (as provided in § 285.651(b)):

(1) A Facility Design Report; and

(2) A Fabrication and Installation Report.

(b) You may begin to construct 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 calendar days of receipt, MMS is deemed not to have objections to the reports and you may commence construction and installation of your facility or facilities.

(c) If MMS has any objections, we will notify you verbally or in writing within 60 calendar 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 requesting certain actions necessary to resolve the agency's objections. You cannot commence activities addressed in such report until you resolve any objections to MMS's satisfaction.

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

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:

Required documents	Required contents	Other requirements
(a) Cover letter	(1) Proposed facility designations; (2) Lease, ROW grant or RUE grant number; (3) Area; name and block numbers; and (4) The type of facility.	You must submit 1 paper copy and 1 electronic copy.
(b) Location plat	(1) Latitude and longitude coordinates, Universal Mercator grid-system coordinates, state plane coordinates in the Lambert or Transverse Mercator Projection System; (2) 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 (3) 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 three paper copies.
(c) Front, Side, and Plan View drawings	(1) Facility dimensions and orientation; (2) Elevations relative to Mean Lower Low Water (MLLW); and (3) Pile sizes and penetration.	Your drawing sizes must not exceed 11″ x17″. You must submit three paper copies.

Required documents	Required contents	Other requirements
(d) Complete set of structural drawings	The approved for construction fabrication drawings should be submitted including, e.g.: (1) Cathodic protection systems; (2) Jacket design; (3) Pile foundations; (4) Mooring and tethering systems; (5) Foundations and anchoring systems; and (6) Associated cable and pipeline designs.	Your drawing sizes must not exceed 11″ x 17″. You must submit 1 paper copy.
(e) 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: (1) Extreme weather; (2) Seafloor conditions; and (3) Waves, wind, current, tides, temperature, snow and ice effects, marine growth, and water depth.	You must submit 1 electronic copy. If you submitted these data as part of your SAP, COP, or GAP you may reference the plan.
(f) Summary of the engineering design data	(1) Loading information (e.g., live, dead, environmental); (2) 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); (3) Location of foundation boreholes and foundation piles; and (4) Foundation information (e.g., soil stability, design criteria).	You must submit 1 electronic copy.
(g) A complete set of design calculations		You must submit 1 electronic copy.
(h) 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), 285.626, or 285.645(b).	You must submit 1 electronic copy of each study.
(i) Description of the loads imposed on the facility.	(1) Loads imposed by jacket; (2) Decks; (3) Production components; (4) Foundations, foundation pilings and templates, and anchoring systems; and (5) Mooring or tethering systems.	You must submit 1 electronic copy.
(j) Geotechnical Report	A list of all data from borings and recommended design parameters.	You must submit 1 electronic copy.
(k) Certification statement and location of records as required in § 285.714(c).	The following statement: "The design of this structure has been certified by a MMS approved Certified Verification Agent 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)."	An authorized lessee or grantee representative must sign the statement. You must submit 1 paper copy.

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

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
(a) Cover letter	(1) Proposed facility designation, lease, ROW grant, or RUE grant number; (2) Area, name, and block number; and (3) The type of facility.	You must submit 1 paper copy and 1 electronic copy.
(b) Schedule	Fabrication and installation	You must submit 1 paper copy and 1 electronic copy.

Required documents	Required contents	Other requirements
(c) 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.
(d) 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.
(e) Federal, State, and Local Permits (e.g. EPA, USACE).	Either 1 copy of the permit or information on the status of the application.	You must submit 1 paper copy and 1 electronic copy.
(f) Environmental information	(1) Water discharge; (2) Waste disposal; (3) Vessel information; and (4) 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.
(g) Project easement	Design of any cables, pipelines or facilities. Information on burial methods and vessels.	You must submit 1 hard copy and 1 electronic copy.

§ 285.703 [Reserved]

§ 285.704 [Reserved]

Certified Verification Agent

§ 285.705 What is the function of a Certified Verification Agent (CVA)?

(a) You must use a Certified Verification Agent 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; and

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

(b) The CVA is directly responsible for providing to MMS immediate reports of all incidents that affect the design, fabrication, and installation of the project and its components.

§ 285.706 How do I nominate a CVA for MMS approval?

(a) As part of your COP (as provided in § 285.626(u)) and, when required by this part, your SAP (as provided in § 285.610(b)(11)), or GAP (as provided in § 285.645(c)(6)), 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 would 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, for 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?

(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 the 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 primary duties for fabrication and installation review?

(a) The CVA 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 must verify the items required by § 285.709;

(4) Make periodic onsite inspections while installation is in progress and must 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.

(ii) You may commence commercial operations or other approved activities 30 calendar days after MMS receives the 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 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 finds that fabrication and installation procedures are changed or design specifications are modified, the CVA must inform you.

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

§ 285.709 When conducting on-site fabrication inspections, what must the CVA verify?

(a) To comply with § 285.708(a)(3), the CVA must make periodic on-site 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) The 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 must ensure that the 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.

§ 285.710 When conducting on-site installation inspections, what must the CVA do?

To comply with § 285.708(a)(4), the CVA 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 must verify, as appropriate, all of the following:

(1) Loadout and initial flotation activities;

(2) Towing operations 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 must witness all of 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 must witness all of 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 must conduct an onsite survey of the facility after transportation to the approved location.

(e) The CVA 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 What reports must the CVA submit for project modifications and repairs?

(a) The CVA must verify and, in a report to us, certify that major repairs and major modifications to the project conform with 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.

§ 285.712 What are the CVA's reporting requirements?

(a) The CVA must prepare and submit to you and MMS all reports required by this subpart. The CVA must also submit interim reports to you and MMS, as requested by the MMS.

(b) For each report required by this subpart, the CVA must submit one electronic copy and one paper copy of each final report to MMS. In each report, the CVA must:

(1) Give details of how, by whom, and when the CVA activities were conducted;

(2) Describe the CVA's activities during the verification process;

(3) Summarize the CVA's findings; and

(4) Provide any additional comments that the CVA deems necessary.

§ 285.713 What must I do after the CVA confirms conformance with the Fabrication and Installation Report on my commercial lease?

After the CVA confirms conformance with the Fabrication and Installation Report, you must notify MMS within 10 business days after commencing commercial operations.

§ 285.714 What records must I keep?

(a) Until MMS releases your financial assurance under § 285.533, 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 § 285.533. 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(k), 285.708(a)(5)(i), and 285.711(b).

Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments

§ 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 to minimize the likelihood of harm or damage to human life, the marine environments, 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 What must I do 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 Endangered Species Act of 1973 (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) You must submit plans (SAP, COP, and GAP) to MMS containing sufficient information to ensure that the proposed activities will be conducted in a manner consistent with provisions of the ESA and the MMPA.

(d) 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.

(e) 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.

(f) 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 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 effect the least practicable impact on such species and its habitat and ensure no unmitigable adverse impact on availability of the species for subsistence use.

(g) 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 a MMPA incidental take authorization.

§ 285.802 How must I protect archaeological resources?

(a) When you prepare your SAP, COP, GAP, or decommissioning application, you must consult with MMS about archaeological resources.

(1) If an archaeological resource is known to exist or if we have reason to believe that an archaeological resource may exist in the area of a proposed lease or grant, you must include an archaeological report with your SAP, COP, GAP, or decommissioning application. If you are uncertain of the archaeological survey requirements for your proposed lease or grant, you must consult with the MMS Federal Preservation Officer.

(2) We will specify the survey methods and instrumentation for conducting the archaeological survey and specify the issues to be addressed in the archaeological report.

(b) If the MMS review of your archaeological report included with your SAP, COP, GAP, or decommissioning application concludes that an archaeological resource may be present, we will determine a minimum distance that you must maintain between your activity and the resource, and you must either:

(1) Locate all proposed seafloor-disturbing activities in such a way to avoid the potential archaeological resource by no less than the distance we determine; or

(2) Establish to our satisfaction that an archaeological resource is either unlikely to be present or, if present, that your proposed seafloor disturbing activities have been designed to minimize adverse affects on such resource.

(c) In making a determination under paragraph (b) of this section, we may require you to conduct further archaeological investigations, using personnel, equipment, and techniques we consider appropriate. You must submit the investigation report to us for review. We will notify you if our review of your report determines that an archaeological resource exists and may be adversely affected by your proposed seafloor-disturbing activities.

§ 285.803 What must I do if I discover a potential archaeological resource?

(a) If you, your subcontractors, or any agent acting on your behalf, discover a potential archaeological resource while conducting surveys, 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 how to proceed.

(b) We may require you to conduct additional investigations to determine if the resource is eligible for listing on the National Register of Historic Places under 36 CFR 60.4. We will do this if either:

(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 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 National Historic Preservation Act, we may charge you reasonable costs for carrying out preservation responsibilities under the OCS Lands Act.

§ 285.804 How must I protect essential fish habitats identified and described under MSA?

(a) If MMS finds essential fish habitat or habitat areas of particular concern may be adversely affected by the proposed action, MMS must consult with NMFS.

(b) Any conservation recommendations adopted by MMS to avoid or minimize adverse affects on EFH 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 specify the contents of the biological report.

§ 285.805 [Reserved]

§ 285.806 [Reserved]

Air Quality

§ 285.807 What requirements must I meet 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).	Provide to MMS any information required 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 U.S. Environmental Protection Agency under 40 CFR part 55.

(b) For air quality modeling you perform in support of the activities proposed in your plans, you should contact the jurisdictional 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 addition, 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.

§ 285.808 [Reserved]

§ 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)(3)) or GAP (as provided in § 285.651(b)(3)). 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 [Reserved]

§ 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 remove such equipment or facilities from the lease.

(b) For safety equipment:

(1) You must report within 24 hours when any required safety equipment is taken out of 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) If you remove any required safety equipment from service for greater than 60 calendar days you must submit written confirmation to MMS.

(3) You must notify MMS when you return the safety 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.

(b) You must notify MMS, as soon as practicable, but no later than 3 business days, of the repair of any pipeline, cable, equipment, or facility associated with your lease or grant. The initial notice can be oral or written.

(c) The MMS may require that you analyze cable, pipeline, or facility failures or damage 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 calendar days of the discovery of the adverse effect;

(b) Take remedial action as described in your corrective action plan; and

(c) Submit to the MMS a report of the remedial action taken within 30 calendar days after completion.

§ 285.817 through 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; and

(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) You must 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 § 285.533 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 lease or grant facilities and associated activities. You must send us your reimbursement request within 90 calendar 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 structure 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 structure.

(b) You must submit a report annually no later than November 1 to us 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 through 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 making 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, helicopter, or equipment. It does not include the cost of salvage, cleaning, dry docking, or demurrage.);

(5) Incidents involving structural damage to an OCS facility (Structural damage means damage 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 calendar days after the incident:

(1) Any injuries that result in one or more days away from work or one or more days on restricted work or job transfer (One or more days means the injured person was not 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 orally immediately after aiding the injured and stabilizing the situation. Your oral 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 calendar 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 users of the OCS.

§ 285.902 What are the general requirements for decommissioning?

(a) Except as otherwise authorized by MMS under § 285.909, within 1 year 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, 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 calendar 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.

§ 285.903 [Reserved]

§ 285.904 [Reserved]

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 calendar days after completion of your commercial activities on a commercial lease;

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

(d) 90 calendar 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 statement 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 calendar 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 calendar 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;

(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 right-of-use and easement (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 through 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 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) 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 owners 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.

(b) 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;

(c) Evidence that you meet the requirements of § 285.106 as required by § 285.107.

(d) Any request for an Alternate Use RUE must include 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, 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 time frame, 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 [Reserved]

§ 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 instrument, 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 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 as 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, or the marine, coastal, or human environment; or to 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 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 lessee's operation of the existing facility.

(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 company name and the physical address of its headquarters;

(2) A contact official within the company, including his or her telephone and fax numbers and e-mail address;

(3) The reason you are requesting relinquishment of the Alternate Use RUE;

(4) The MMS-assigned Alternate Use RUE number;

(5) The name of the associated OCS facility, its owner and the lessee for the lease in which the OCS facility is located;

(6) The name, title, and signature of your authorizing official (which must match exactly the name, title, and signature in the MMS qualification records); and

(7) 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:

(a) You no longer qualify to hold an Alternate Use RUE;

(b) You fail to provide any additional security 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, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance;

(d) Continued activity under the Alternate Use RUE is determined to be adversely impacting ongoing lease activities on the existing OCS facility;

(e) You fail to comply with any of the terms and conditions of your approved Alternate Use RUE or your approved plan; or

(f) You otherwise fail 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 this subchapter 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 as terms of each Alternate Use RUE.

(b) Decommissioning activities must be completed within one 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, is not subject to the procedures found in this part.

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