

BOEM Proposes to Modify its Offshore Renewable Energy Regulations

Update

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On January 12, 2023, the U.S. Department of the Interior's Bureau of Ocean Energy Management ("BOEM") announced a proposed rule (the "Modernization Rule") to modernize its regulations for renewable energy development on the U.S. Outer Continental Shelf ("OCS"). The announcement marks the first time BOEM has substantially updated its renewable energy program regulations since they were first promulgated at Title 30 Part 585 in 2009. Since then, the U.S. offshore wind industry has grown apace, with numerous projects in various stages of development on the Pacific and Atlantic coasts and with lease sales anticipated for the Gulf of Mexico and the Gulf of Maine. The Modernization Rule aims to harmonize BOEM's regulations with its current practices and to reflect lessons learned during the industry's growth since 2009.

Much of the Modernization Rule aligns Part 585 with BOEM's current practices in planning, permitting, site assessment, leasing, and project review. This includes multi-factor auctions and bidding credits, which BOEM deployed in its most recent lease auctions offshore New York, North Carolina, and California in order to bolster domestic supply chain development, labor training, and community benefits. The Modernization Rule would also provide a regulatory anchor for using Project Design Envelopes ("PDE") when permitting offshore wind projects. PDEs allow project applicants to propose a range of design parameters in their project applications, so that agencies can start their permit reviews while the applicant continues to refine the commercial project within the PDE. While PDEs are standard practice now, the Modernization Rule would cement them as a key element of agency practice.

Other portions of the Modernization Rule consider new additions to BOEM's renewable energy program, including:

- Establishing a five-year Renewable Energy Leasing Schedule, updated every two years;

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- Eliminating unnecessary requirements for the deployment of meteorological buoys;
- Increasing survey flexibility by deferring certain geotechnical survey requirements;
- Focusing financial assurance requirements on estimated decommissioning obligations;
- Expanding the operating period for a lease;
- Allowing fabrication of certain project components before submission of a project's facility design report (FDR) and fabrication and installation report (FIR);
- Expanding the role of a certified verification agent ("CVA") as an independent third-party reviewer of a project's design, fabrication, and installation.

BOEM also seeks comment on: whether to require a new permit for survey activities; what regulatory changes might be necessary to facilitate a coordinated approach to transmission; how best to avoid anti-competitive bidding behavior; and more. An official notice of proposed rulemaking will be published in the Federal Register in the coming days, at which time a 60-day comment period will begin. BOEM is expected to receive a significant response from industry members, stakeholders, and regulators looking to weigh in on the most significant regulatory development the U.S. offshore wind industry has seen in more than 13 years.

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