



DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Part 585

[Docket No: BOEM-2023-0035]

RIN 1010-AE20

Conformity with the Inflation Reduction Act for Renewable Energy on the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management (BOEM), Department of the Interior.

ACTION: Direct final rule.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) is amending its renewable energy regulations to update the definition of Outer Continental Shelf and add the definition of State in conformity with the Inflation Reduction Act.

DATES: This direct final rule is effective on [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] without further notice, unless BOEM receives adverse comments by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. If BOEM receives adverse comment that leads it to conclude that the rule is controversial, BOEM will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect.

ADDRESSES: You may send comments regarding the substance of this rule, identified by docket number BOEM-2023-0035 and regulation identifier number (RIN) 1010-AE20, using any of the following methods:

- Federal rulemaking portal: <https://www.regulations.gov>. Search for BOEM-2023-0035. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking.

- U.S. Postal Service or other mail delivery service: Address comments to Office of Regulations, Bureau of Ocean Energy Management, Department of the Interior, Attention: Peter Meffert, 45600 Woodland Road, Mailstop: DIR-BOEM, Sterling, VA 20166. All comments received by BOEM will be reviewed and may be posted to <https://www.regulations.gov>, including any personal information provided with the submission.

FOR FURTHER INFORMATION CONTACT: Peter Meffert, Office of Regulations, BOEM, at (703) 787-1620 or peter.meffert@boem.gov; or Karen Thundiyil, Chief, Office of Regulations, BOEM, at (202) 742-0970 or karen.thundiyil@boem.gov.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

OCSLA authorizes the Secretary of the Interior (the Secretary) to regulate certain activities on the OCS of the United States. Under section 8(p)(1)(C) of OCSLA, BOEM, acting on behalf of the Secretary, may grant a lease, right of use and easement (RUE), or right of way (ROW) to support the development of renewable energy projects on the OCS. The IRA amendments to OCSLA authorize BOEM to issue such leases, RUEs, and ROWs in support of renewable energy activities offshore U.S. territories.

II. Background and Purpose

The Inflation Reduction Act (IRA) Public Law No. 117-169, amended the definition of “Outer Continental Shelf (OCS)” in the Outer Continental Shelf Lands Act (OCSLA) to include submerged lands within the exclusive economic zone (EEZ) adjacent to all U.S. territories. The IRA also amended OCSLA by adding a definition of “State” to include each of the several 50 States of the Union, the Commonwealth of Puerto Rico, Guam, American Samoa, U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. In a subsection entitled, “Offshore Wind for the Territories,” the IRA also imposed several deadlines for wind energy leasing offshore the U.S.

territories. Inflation Reduction Act, Pub. L. No. 117-169, section 50251(b)(2), 136 Stat. 1818, 2054-55 (2022). In section 50251(b)(2), the IRA directs the Secretary to issue an initial call for information and nominations no later than September 30, 2025, and authorizes the Secretary to conduct wind energy lease sales within the EEZs of the five self-governing U.S. territories in areas deemed feasible and of sufficient interest, after the Secretary has consulted with the territorial governor.

To satisfy these new OCSLA requirements, BOEM is incorporating the revised definitions of “outer Continental Shelf” and “State” into its existing regulations governing offshore wind energy leasing. *See* 30 CFR 585.113 (Definitions). These amendments will simply conform BOEM’s pre-IRA regulations governing offshore wind energy leasing to Congress’ command to initiate the regulatory process for wind leasing offshore certain territories by a date certain. The Department of the Interior is publishing this rule as a direct final rule without prior notice and public procedure because it views this action as an administrative, noncontroversial action and anticipates no adverse comment. This direct final rule does not change any other provisions of BOEM’s regulations related to the issuance of leases, RUEs, ROWs, or the approval of plans to support the development of renewable energy activities on the OCS. Thus, the Department for good cause finds that notice and public procedure are unnecessary here.

III. Procedural Requirements

A. Statutes

1. National Environmental Policy Act

This direct final rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.) is not required because, as a regulation of an administrative nature, this rule is covered by a categorical exclusion.¹

¹ See 43 CFR 46.205.

This rule meets the criteria for a categorical exclusion because the proposed activities fall within the bounds of 43 CFR 46.210(i), which address regulatory functions “that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.” See also 516 DM 15.4.C(1). This rule does not authorize any activities, it is fundamentally administrative and technical, and it does not have the potential to cause significant individual or cumulative effects on the quality of the human environment. No activities on the OCS (*e.g.*, site characterization and site assessment activities) are expected to occur until leases are issued. BOEM will draft and publish an environmental analysis document prior to issuance of any lease.

Finally, BOEM has determined that this direct final rule would not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that require further analysis under NEPA.²

2. Data Quality Act

In developing this direct final rule, BOEM did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. No. 106–554, app. C, sec. 515, 114 Stat. 2763, 2763A–153–154).

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). Because this rule simply conforms BOEM’s regulations to the updated version of OCSLA, the RFA does not apply.

² See 43 CFR 46.215.

4. *Paperwork Reduction Act*

This direct final rule does not contain information collection requirements, and, therefore, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We 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.

5. *Unfunded Mandates Reform Act*

This direct final rule does not impose an unfunded mandate on State, local, or Tribal governments, or on 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 on the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

6. *Congressional Review Act*

This action is subject to the CRA, 5 U.S.C. 801 *et seq.* BOEM will submit a rule report to each chamber of Congress and to the Comptroller General of the United States.

This action is not a “major rule” as defined by 5 U.S.C. 804(2) because this rule:

- (a) will not have an annual effect on the economy of \$100 million or more;
- (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and
- (c) will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

B. Executive Orders (E.O.)

1. *Governmental Actions and Interference with Constitutionally Protected Property Rights (E.O. 12630)*

This direct final rule would have no implications for any constitutionally protected private property rights and would not interfere with any other procedures or undertakings of the Federal Government.

2. Takings Implication Assessment (E.O. 12630)

This direct final rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

3. Regulatory Planning and Review (E.O. 12866); as amended by Executive Order 14094, Modernizing Regulatory Review, and Executive Order 13563, Improving Regulation and Regulatory Review

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this direct final rule is not a significant regulatory action, and therefore, it was not submitted to OMB for review.

Executive Order 13563 reaffirms the principles of Executive Order 12866, as amended by Executive Order 14094, while calling for improvements in the Nation's regulatory system to promote predictability and reduce uncertainty and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. Executive Order 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. BOEM has developed this rule in a manner consistent with these requirements.

4. Civil Justice Reform (E.O. 12988)

This direct final rule complies with the requirements of E.O. 12988. Specifically, this rule meets the criteria of:

(a) Section 3(a), which requires that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Section 3(b)(2), which requires that all regulations be written in clear language and contain clear legal standards.

5. Federalism (E.O. 13132)

Under the criteria in section one of E.O. 13132, this direct final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule merely conforms the terms in 30 CFR part 585 with those in OCSLA. Therefore, a federalism summary impact statement is not required.

6. Consultation and Coordination with Indian Tribal Governments (E.O. 13175 and Departmental Policy)

Executive Order 13175 defines “policies that have tribal implications” as regulations, legislative comments, proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, or on the relationship between the Federal Government and one or more Indian Tribes.

We have evaluated this direct final rule under E.O. 13175 and Department of the Interior consultation policies and have determined that this direct final rule would not have implications for any federally recognized Indian Tribe or Alaska Native Claims Settlement Act corporation. As noted in the NEPA discussion above, this direct final rule is fundamentally administrative in nature. This rule simply implements a statutory direction. No activities on the OCS (*e.g.*, site characterization and site assessment activities) are expected to occur until leases are issued, and BOEM will consider Tribal implications of any particular proposed leases before any lease sale.

7. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)

The IRA amendments to OCSLA granted the Secretary the authority to issue leases for renewable energy activities to take place offshore the U.S. territories. This direct final rule only conforms BOEM's existing regulations for wind energy leasing with that authorization and with Congress' mandate to initiate the regulatory planning process for wind leases offshore certain territories by a date certain. Further, this rule does not authorize any specific activities. Consequently, this rule is not a significant regulatory action under E.O. 12866, and it does not have a significant adverse effect on the supply, distribution, or use of energy.

8. Clarity of this Regulation

BOEM is 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 that BOEM publishes must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that BOEM has not met these requirements, send comments by one of the methods listed in the **ADDRESSES** section.

List of Subjects in 30 CFR part 585

Administrative practice and procedure, Continental shelf, Energy, Intergovernmental relations, Marine resources, Natural resources, Renewable energy, Rights-of-way

This action by the Principal Deputy Assistant Secretary is taken herein pursuant to an existing delegation of authority.

Laura Daniel-Davis
Principal Deputy Assistant Secretary,
Land and Minerals Management

For the reasons stated in the preamble, the BOEM amends 30 CFR part 585 as follows:

Part 585—Renewable Energy on the Outer Continental Shelf

1. The authority citation for part 585 continues to read as follows:

Authority: 43 U.S.C. 1337.

2. Amend § 585.113 by revising the definition of “Outer Continental Shelf (OCS)” and by adding the definition of “State” in alphabetical order to read as follows:

§ 585.113 Definitions.

* * * * *

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control or within the exclusive economic zone of the United States and adjacent to any territory of the United States; and does not include any area conveyed by Congress to a territorial government for administration.

* * * * *

State means:

- (1) Each of the several States;
- (2) The Commonwealth of Puerto Rico;
- (3) Guam;
- (4) American Samoa;
- (5) The United States Virgin Islands; and
- (6) The Commonwealth of the Northern Mariana Islands.

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