

BOEM Proposes to Streamline Offshore Wind Projects



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The Bureau of Ocean Energy Management (BOEM) recently released for public comment a [notice of proposed rulemaking \(NPRM\)](#) that would, if adopted, comprehensively update its Outer Continental Shelf (OCS) renewable energy regulations for the first time since

2009. The NPRM proposes reforms identified by both BOEM and industry designed to modernize the framework for offshore renewable energy development, particularly offshore wind. BOEM estimates its proposals will save offshore wind energy developers about \$1 billion over 20 years by eliminating or reducing regulatory, financial, and other obligations and further the Administration's climate goals. Comments on the NPRM are due sixty days following publication in the Federal Register.

NPRM Key Takeaways

The purpose of the NPRM is to streamline the administrative process governing offshore renewable energy development—from lease auctions to decommissioning—while promoting U.S. climate and renewable energy goals. Key proposed regulatory updates include:

1. Publishing a schedule of anticipated renewable energy lease sales to be held for the next five years.

Under the proposed regulations, the Department of the Interior (Interior) will regularly publish a schedule of anticipated lease sales that BOEM intends to hold in the subsequent five years. Interior is already required by statute to prepare and maintain a five-year schedule for offshore oil and gas lease sales.

2. Reforming renewable energy auction processes.

BOEM proposes to update its pre- and post-auction procedures. In recent years, BOEM has increasingly used multi-factor auctions for offshore wind that do not simply award the lease to the highest cash bonus bid but also aim to incentivize developer investments in domestic supply chains and labor or other benefits. BOEM would continue using bidding credits to evaluate bidders, including awarding credits to bidders for having contracts such as Power Purchase Agreements or Workforce Development Agreements or committing to execute those contracts. This would allow a bidder to offer a lower cash price than its competitors and still win an auction. However, under the NPRM, if the winning bidder fails to perform on any such commitment, it will be required to

compensate BOEM for amounts credited based upon failed commitments. A winning bidder can also take additional actions to increase its bidding credits by undertaking commitments or entering transactions that either support efforts to address climate change or promote environmental justice goals.

3. Streamlining approval of site assessment plan activities.

BOEM also proposes to eliminate requirements for developers of offshore renewable energy projects to submit a site assessment plan (SAP) to BOEM outlining the lessee's initial activities after winning a lease. These activities typically include deploying meteorological towers and/or buoys necessary to characterize a lease site and create an environmentally-protective project design. Under the NPRM, developers would need to obtain a U.S. Army Corps of Engineers (USACE) permit, and no separate BOEM authorization to place met towers and buoys to collect data for site selection and project design, streamlining the current requirement. BOEM also proposes to delay the submission of certain geotechnical survey data for proposed wind turbine locations until after the Construction and Operations Plan (COP) is approved by BOEM.

4. Codifying project design envelope approach.

The NPRM would codify BOEM's current practice of allowing lessees to propose a range of design parameters and construction and operation activities when lessees submit their COP for evaluation by BOEM. This approach allows for flexibility as project designs are finalized, while enabling the agency to analyze the maximum impacts that could occur from the range of design parameters. This approach, however, must be carefully managed and coordinated with other federal agencies to avoid subsequent permitting delays.

5. Delaying decommissioning funding obligations.

The NPRM would replace the current requirement to fully fund decommissioning accounts for renewable energy facilities before installation with a BOEM-approved funding schedule to be established only after operations begin, with full funding due by the time of actual decommissioning. Under the revised regulations, developers would also be able to obtain letters of credit or use a combination of financial assurance instruments such as surety bonds and third-party guarantees to satisfy any financial assurance requirements. Additional issues may arise as BSEE assumes responsibility for decommissioning. However, decommissioning activities are ostensibly decades away, as the offshore wind projects are not even built yet.

Related BOEM Efforts

BOEM's proposal is part of an active period for the agency regarding offshore renewable energy. Concurrently, via an immediate [final rule](#) and [Notice to Lessees](#), BOEM split out and transferred to the Bureau of Safety and Environmental Enforcement (BSEE) several of BOEM's responsibilities and regulations governing workplace safety and environmental oversight and enforcement of OCS renewable energy activities. BOEM proposed [draft guidance](#) regarding the contents of a submitted Construction and Operations Plan (COP) for offshore renewable energy projects for BOEM to formally commence the National Environmental Policy Act (NEPA) environmental review process. BOEM and its sister agencies are processing several COPs and their associated NEPA and other legally required reviews.

These collective efforts are intended to help the U.S. reach the Biden Administration's ambitious target of deploying 30 gigawatts of offshore wind by 2030. Yet, some details remain unresolved to achieve that result. Developers of offshore energy should therefore consider submitting comments on the NPRM, including comments to improve the proposals.

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