

Matrix of Comments and Responses for Docket No BOEM-2012-0006
Commercial Lease of Submerged Lands for Renewable Energy
Development on the Outer Continental Shelf

The Bureau of Ocean Energy Management (BOEM or Bureau) developed a draft of the form included in this Notice, and published it in the *Federal Register* on September 6, 2011, (76 Fed. Reg. 55090-55107, Sep. 6, 2011) with a 30-day comment period (Draft Form). In response to the September 6th publication, BOEM received over 20 comments. BOEM has reviewed all the comments submitted, and revised the draft form accordingly. In early February 2012, BOEM is publishing a revised Form 0008 in the *Federal Register*. The commercial lease form will be effective 15 days following publication.

This is the form that BOEM will use to issue commercial renewable energy leases on the Outer Continental Shelf (OCS). In the preamble to the April 29, 2009, Final Rule, “Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf,” BOEM stated that “we intend to develop a model lease form through a public process that will invite all interested and affected parties for their input” (at p. 19729).

Revisions to the Lease Form That Were Not Made In Response to Comments

BOEM has added several revisions to the lease form that were not requested by any commenter.

- In October 2011, the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) reorganized into two individual bureaus: BOEM, and the Bureau of Safety and Environmental Enforcement (BSEE). The renewable energy program function is performed by BOEM. Accordingly, all references to BOEMRE have been replaced with BOEM.
- On October 18, 2011, a rule was published that contained regulations that will be under the authority of the two newly formed bureaus. This October 2011 rule pertained solely to the reorganization and codification of existing rules and related technical changes necessitated by a division of one agency into two separate entities. As published, BOEM’s renewable energy regulations are now found at 30 CFR Part 585 instead of at 30 CFR Part 285. Like the change in bureau name, this change is also reflected throughout the form.
- It is unclear whether the lease form as written can be applied to marine hydrokinetic projects on the OCS. Section 2 makes specific references to SAPs and COPs. With regard to the latter, a COP would not apply to a lease issued for a project that would generate electricity from marine hydrokinetic energy (*i.e.*, waves, currents or tides). Such projects are subject to concurrent jurisdiction by BOEM and the Federal Energy Regulatory Commission (FERC). BOEM and FERC have agreed that marine hydrokinetic projects would require a lease from BOEM, and a license (in place of a COP) from FERC. *See* Memorandum of Understanding Between the U.S. Department of the Interior and Federal Energy Regulatory Commission, Apr. 9, 2009. The FERC license would fulfill BOEM’s requirement for a COP. *See, e.g.*, 30 CFR § 601(c). For this reason, BOEM recognizes that Form 0008 may not be appropriate for issuing marine hydrokinetic leases, due to the unique nature of BOEM’s relationship with FERC, and the unique aspects of marine hydrokinetic projects generally. When the time comes to issue such leases, BOEM will determine, in consultation with FERC, whether Form 0008 is suitable for issuing such leases.

- In Section 3(d), we changed “*activities authorized under this lease,*” to “*activities described in Addendum ‘A’*” because the lease itself does not authorize activities (activities are authorized through plan approvals). Addendum “A” will briefly describe the activities that the Lessee plans to undertake pursuant to the lease, however, actual authorization to conduct such activities is conveyed through the approval of plans. We made a similar change to Section 2(c).
- We have added a Modification clause. A lease, like any other contract, may be modified upon the agreement of the parties. We determined that a clause requiring such modification or amendment to be in writing and signed by both parties was warranted

Comments Received and Agency Response

In the table below, we have summarized significant comments received and explained the bureau’s response to those comments.

Lease Reference	Comment	Response
Introductory Paragraph	One commenter noted that BOEM’s regulations at 30 CFR § 585.237 allow for the Effective Date of the lease to be either the first day of the month after it is signed by the Lessor, or, upon approval of a written request, on the day of the month in which it is signed by the Lessor.	BOEM removed the language defining the Effective Date as the first day of the month following the date it is signed by the Lessor, and replaced it with language defining the Effective Date as “ <i>the date above.</i> ” This allows the bureau to put either date in the Effective Date box on the lease header.
Section 1: Statutes and Regulations.	Several commenters expressed concern with the statement that the lease would subject to “ <i>applicable laws hereafter enacted and regulations hereafter promulgated, except to the extent subsequent regulations are inconsistent with an express provision hereof,</i> ” citing <i>Mobil Oil Exploration v. U.S.</i> , 530 U.S. 604 (2000), which held that oil and gas lease terms were not overridden by inconsistent later-enacted laws.	BOEM decided to keep the approach initially described in the draft lease form. We have strengthened this language to address case law which has held that oil and gas leases (whose language more closely resembles the draft lease form) was insufficient to incorporate later-implemented statutes and regulations into the terms of the lease. To ensure that the Lessee is on notice that later-enacted amendments to statutes, as well as new statutes, and the regulations promulgated under them, may affect their lease obligations, we added: <i>It is expressly understood that amendments to existing statutes and regulations, including but not limited to the Act, may be made, and/or new statutes may be enacted or new regulations promulgated, which do not explicitly conflict with an express provision of this lease, and that the Lessee bears the risk that such may increase or decrease the Lessee’s obligations under the lease.</i>
Section 2: Rights of the Lessee.	Several commenters noted that the lease conveys the right to submit a “ <i>SAP and/or COP.</i> ” The commenters rightly noted that while the language implies that the Lessee could submit a COP without a SAP, submission of a SAP is a regulatory requirement per 30 CFR § 585.600(a) for anyone seeking to conduct site assessment activities on a commercial lease.	The Lessee may submit a SAP and COP concurrently, so the lease must be flexible enough to accommodate this situation. Moreover, if BOEM in the future amends its regulations to waive the requirement to submit a SAP in certain defined circumstances, such as when the Lessee does not plan to undertake any activities over which BOEM has jurisdiction during the site assessment term, the lease should be flexible to accommodate this situation. BOEM simplified the language from “ <i>SAP and/or COP</i> ” to “ <i>SAP and COP</i> ”; this language conveys both the right to submit a SAP and the right to submit a COP.

Lease Reference	Comment	Response
		While submission of a COP without a SAP is not prohibited by the lease, the Lessee is still required to submit SAPs by BOEM's regulations.
	Several commenters requested an explicit statement in the lease that the Lessee is bound by the terms and conditions provided in Addendum C.	Although Addendum C is enforceable without such a recitation, we added one to Section 2(b).
	One commenter requested an acknowledgement that the lease conveys a broader range of rights to the Lessee, for example, a right to assignment where certain conditions are met.	BOEM considers the range of Lessee's rights set forth in the lease to be adequate and BOEM did not include a broader right to assign the lease because, while the regulations provide a process for assignment, the decision of whether or not to approve an assignment request is in BOEM's discretion. As such, there is no "right" to an assignment in BOEM's regulations at 30 CFR §§ 585.408-411.
Section 3: Reservations to Lessor.	The draft lease form Section 3(b) stated that " <i>the Lessor retains the right to disapprove a proposed SAP or COP, without liability to the Lessee...</i> " Many commenters noted that this appeared to be a typographical error, and that it is important that the lease state that BOEM may disapprove plans without the <u>Lessor</u> incurring liability.	To clarify that BOEM may disapprove plans without incurring any liability on the part of the Lessor, BOEM added the following sentence, " <i>Disapproval of plans will not subject the Lessor to liability.</i> "
	One commenter objected to the phrase " <i>unacceptable environmental consequences,</i> " arguing that this would create an indefensible subjective standard, since what is acceptable to one person may not be acceptable to another.	BOEM understands the concern expressed; however, this standard is one that has been used by the courts. <i>See, Sierra Club v. Peterson</i> , 717 F.2d 1409 at 1415 (D.C. Cir 1983) ("If, however, [the Department] is unable to <i>preclude</i> activities which might have unacceptable environmental consequences, then the Department cannot issue leases sanctioning such activities without first preparing an EIS."). Use of the " <i>unacceptable environmental consequences</i> " standard in this instance was deliberate.
	One commenter asserted that reserving the right to disapprove plans for " <i>other reasons provided by BOEM</i> " could be read to inappropriately give the agency unfettered discretion to fabricate any reasons it chooses to deny activity on a lease.	First, there are no limits on BOEM's discretion to deny plans, apart from the arbitrary and capricious standard of the Administrative Procedure Act. Second, even if there were limits to BOEM's discretion to disapprove plans, the lease form is not the appropriate place to articulate those limits. If the law or BOEM's regulations place additional constraints on BOEM's discretion to deny plans, then BOEM is bound by those constraints notwithstanding the language objected to here.
	One comment requested that BOEM also retain the right " <i>to determine whether, and where, and how construction and operation of facilities may proceed after full environmental review and compliance with all applicable environmental laws.</i> "	BOEM's regulations articulate the process by it reviews and acts upon plans such as SAPs and COPs. BOEM may approve, disapprove or approve with modifications such plans. Nothing in the lease form interferes with that right, so no additional reservation of such rights is necessary.
	One comment recommended adding a provision to Section 3(c) stating the Lessor should be able to suspend rent payments and/or operating fee payments for the duration of any suspension of lease activities for reasons of national security or defense.	BOEM did not include such a reservation in the lease form because it is unnecessary, since such a suspension of activity would trigger a suspension in payments per BOEM's regulations at 30 CFR § 585.420(c).
	Several commenters recommended adding a sentence to Section 3(d). The proposed addition	BOEM did not adopt this recommendation because it could prevent BOEM from issuing leases in the

Lease Reference	Comment	Response
	reads, “ <i>For purposes of this lease, these activities could include but would not be limited to a material adverse effect on the business, assets, properties, results of operations, or financial condition of the Lessee and/or the activities authorized under this lease.</i> ”	future that could have a material adverse effect on an existing lessee, but where the agency determines that the adverse effect would not amount to unreasonable interference.
	One commenter requested the addition of assurances that the Lessor: “... <i>shall not authorize any other use within or outside of the leased area that: (i) obstructs in any material respect the free flow of the wind throughout the leased area, (ii) unreasonably interferes with the construction, installation, maintenance or operation of the facilities, equipment, cabling, and other activities described in a plan approved by Lessor in accordance with this lease, (iii) unreasonably interferes with access to the leased area for purposes of construction, installation, maintenance or operation of the facilities, equipment and cabling described in the SAP or COP approved by Lessor in accordance with this lease, or (iv) otherwise unreasonably interferes with activities described in a Lessee’s plan as approved by Lessor. With respect to (i) above, an adjacent wind farm that complies with [IEEE conventions or similar industry standard] respecting wind farm separation shall not be deemed to be obstructing in any material respect the free flow of the wind throughout the leased area.</i> ”	BOEM did not adopt this suggestion because it would unnecessarily restrict BOEM’s future decision-making. First, BOEM believes that sufficient protection from unreasonable interference with the Lessee’s enjoyment of its lease is already provided in the language in sections 3(d) and 7(a). Second, interference of the kind described in the proposed language will be taken into account in making future decisions. For example, wake effects of future wind development on existing lessees will likely be scrutinized in issuing future leases, as will the effects of later leasing on the construction, installation, and maintenance of facilities, equipment or cabling. Third, BOEM must balance a wide variety of interests on the OCS. BOEM must ensure that it retains the right to interfere with the Lessee’s enjoyment of its lease, if necessary (for example, if the Coast Guard informs us that a wind development is a threat to navigation or public safety, or another agency identifies threats to endangered species, etc.). While every effort will be made before the issuance of leases to prevent or minimize conflict with other ocean uses, BOEM cannot commit to putting the Lessee’s enjoyment of its lease rights ahead of other interests on the OCS without looking at the circumstances surrounding any potential conflict.
	A commenter suggested adding the following to the suggestions noted in the paragraph above: <i>Notwithstanding the foregoing, Lessor shall not authorize any of the following uses (other than those described in the SAP or COP approved by Lessor in accordance with this lease) at any time within the leased area without the prior written consent of Lessee, which shall not be unreasonably withheld or delayed: (i) the construction or installation of any fixed or floating facilities, equipment, or cabling; and (ii) exploration for, or development or production of, oil, gas, other seabed minerals, or renewable energy resources.</i>	This language was not adopted because it contradicts BOEM’s policy that BOEM may permit other uses of the OCS that do not unreasonably interfere with issued rights. If installation of another structure in the leased area would not interfere with the rights of an existing lease, prior written approval of the existing lessee should not be required. The fact that the listed activities appear likely to cause an unreasonable interference does not justify use of a higher standard than the unreasonable interference standard present in the lease.
Section 5: Plans.	One commenter recommends changing “ <i>deviate</i> ” to “ <i>materially deviate</i> ” in the sentence, “ <i>the Lessee may not deviate from an approved plan except as provided in applicable regulations at 30 CFR Part [5]85.</i> ”	We have not adopted this revision, because BOEM approval is only required for material changes to plans (See 30 CFR § 585.617 (“What activities require a revision to my [Site Assessment Plan] (SAP) and when will [BOEM] approve the revision?”); § 634 (“What activities require a revision to my [Construction and Operations Plan]

Lease Reference	Comment	Response
		(COP), and when will [BOEM] approve the revision?"); and § 655 ("What activities require a revision to my [General Activities Plan] (GAP), and when will [BOEM] approve the revision?").
Section 7: Conduct of Activities.	A commenter recommended adding a subsection (e) that would require activities authorized by the lease to be carried out in a manner that " <i>would not interfere with or pose a hazard to safe vessel navigation.</i> "	BOEM shares the concern for vessel safety and we believe that safe vessel navigation is subsumed under subsection (c) of the same part, which reads, " <i>could create hazardous or unsafe conditions.</i> " BOEM did not adopt this recommendation.
	One commenter requested the addition of the following to Section 7: " <i>subject to Section 1 of this lease, the Lessee must conduct and agrees to conduct all activities in the leased area in accordance with all approved plans, applicable laws and regulations in effect at the time of the issuance of this lease.</i> "	We have not adopted this recommendation. The language suggested is duplicative of language already found in the lease. The commitment to conduct activities in accordance with approved plans appears duplicative of Section 5: Plans, which reads, " <i>The Lessee may conduct activities authorized by this lease only in accordance with plans approved by the Lessor.</i> " The requirement to act in conformity with laws and regulations in effect at the time of the issuance of the lease is contained in Section 1 of the lease. This commenter's proposal could be read to conflict with the language that requires adherence to later enacted laws and regulations, except where those future laws and regulations explicitly conflict with an express provision of the lease.
	Several commenters objected to the requirement that no activities authorized by the lease be carried out in a manner that " <i>could cause undue harm or damage to the environment.</i> " They maintain that the appropriate standard should be " <i>significant adverse effect</i> " instead of " <i>undue harm or damage.</i> " They stated that a lease form prohibiting undue harm to the environment might have been appropriate before the Department of the Interior's Smart from the Start initiative, because the full impact of the project (including construction, operation, and decommissioning) would have already received a full review under the National Environmental Policy Act (NEPA) by the time the lease had been issued. Following the Smart from the Start initiative, however, leasing need only be supported by a NEPA analysis that considers lease issuance and site characterization. Because it is likely that leases will be supported by an Environmental Assessment (EA) rather than a more comprehensive Environmental Impact Statement (EIS), the commenters state the lease form should hold the Lessee to a higher degree of environmental protection—a prohibition on significant adverse effects instead of undue harm or damage.	We have not adopted this recommendation. While it is true that under Smart from the Start, the act of issuing leases may be supported by an EA rather than an EIS, the lease itself does not authorize any new activities. The lease authorizes only submission of plans setting forth these activities. Those activities may only take place once the plans have been approved. BOEM's plan approval process will be supported by a NEPA analysis that examines the broad range of construction and operational activities to be authorized. This means that before the Lessee may undertake activities that would cause undue damage to the environment, those activities will be supported by an appropriate level of NEPA analysis and documentation. Moreover, the lease language in this section sets a floor for the entire duration of the lease. The lease is effective over the entire life cycle of a project.
	One comment stated that Section 7 selectively restates provisions from the regulations, divorced from the regulatory context. The commenter proposes replacing the list of (a) through (d) in Section 7 with a general statement that " <i>no activities authorized by this lease will be carried</i>	This suggestion has not been adopted. The requested language would eliminate the prohibition on interference with later-issued rights. We prefer to include a prohibition on such interference in the lease instrument, rather than leaving it to the parties to litigate through tort

Lease Reference	Comment	Response
	<i>out in a manner that unreasonably interferes with or endangers activities or operations under any federally-issued lease, grant, or license existing on the date of issuance of this lease.</i>	actions. Further, we have opted to keep the prohibitions listed in (b) through (d) of the lease form. For discussion on other modifications to this section, see the section entitled, “Other Changes Not Made In Response to Comments,” below.
	One commenter recommended employing a material adverse effect standard for Lease Draft subsections 7(a) and 7(d), and changing liability for environmental, health, and safety conditions is not unreasonably broad. The comment proposed that 7(a) require the Lessee to agree that no activities under the lease would be carried out in a manner that <i>“creates or could reasonably be expected to create a material adverse effect on other activities or operations carried out under any lease issued or maintained pursuant to the Act and in effect as of the date of issuance of this lease.”</i>	We have not adopted this revision because it eliminates any responsibility on the part of the Lessee with regard to later lessees. While we respect the principle of “first in time, first in right,” it is still reasonable to expect the Lessee to avoid unreasonable interference with later right holders. Furthermore, it introduces a “material adverse effect” standard without explanation. We are concerned that it could subject the Lessee to liability in the event that, for example, the project has greater wake effects on existing lessees than anticipated, or creates some other unanticipated conflict with other lessees.
	One commenter proposed that 7(b) require the Lessee to agree that no activities under the lease would be carried out in a manner that <i>“the Lessor reasonably concludes causes any undue harm or damage to the environment.”</i>	We have not adopted this proposed revision. The language proposed would change the lease form from prohibiting activities that <i>“could cause undue harm or damage to the environment”</i> to prohibiting activities that <i>“the Lessor reasonably concludes causes any undue harm or damage to the environment.”</i> This would require a finding by BOEM that there had been undue harm or damage to the environment. This would prevent BOEM from taking preventative action under this section to address a potential problem. BOEM has the authority to take preventative action per 30 CFR 585.417(a)(2) in the face of an “imminent threat of serious or irreplaceable 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.”
	One commenter proposed that 7(c) require the Lessee to agree that no activities under the lease would be carried out in a manner that <i>“the Lessor reasonably concludes creates hazardous or unsafe conditions.”</i>	For the reasons cited in the paragraph above, we have not adopted the suggested language to section 7(c).
	One commenter recommended that section 7(d) be changed to have the Lessees agree that no activities under the lease will be carried out in a manner that <i>“creates or could reasonably be expected to create a material adverse effect on sites, structures, or objects of historical, cultural, or archaeological significance without prior notice to and direction from the Lessor on how to proceed.”</i>	For the reasons cited above, we have not adopted this commenter’s suggested changes to section 7(d).
	One commenter commented that the first sentence, which states that <i>“the Lessee must conduct, and agrees to conduct, all activities in the leased area in accordance with approved plans, applicable laws, and regulations”</i> is duplicative of requirements found elsewhere in the lease. The comment noted that the Energy Policy Act of 2005, Section 388 specifically	We understand the issue identified, however, we think it relevant that although several agencies with jurisdiction over such matters have commented on the lease draft, none expressed concern that BOEM would use this clause to assert jurisdiction over matters more properly within their jurisdiction. To the contrary, BOEM’s experience is that resource agencies frequently

Lease Reference	Comment	Response
	declined to disturb existing responsibilities of other agencies under Federal law. To avoid inconsistency and the possible implication that BOEM is encroaching on the jurisdiction of other agencies, the commenter recommended that the lease reiterate that Lessee will be subject to laws other than OCSLA and the implementing regulations while avoiding any suggestion that BOEM seeks to use its position as Lessor to exercise primary responsibility for enforcement of those requirements.	request that BOEM add lease provisions requiring lessees to abide by rules and laws that are outside BOEM’s statutory jurisdiction. The lease requirement that the Lessee abide by the law is an additional authority that may be exercised at the request of resource agencies with proper jurisdiction, rather than as a source of new authority to enforce laws outside the purview of BOEM’s jurisdiction. This lease language allows BOEM to take action against a lessee under the lease when another agency finds the lessee to have violated its regulations. Finally, it is important to note that the lease is a contract between the Lessor and the Lessee, and enforceable only by the parties to the contract.
	A Federal agency requested that Section 7 make specific reference to applicable Federal statutes, noting that BOEM has included such references in other sections of the lease.	We have not adopted this recommendation. With some exceptions, BOEM has not listed specific statutory authorities in the lease form. Section 1 refers specifically to the Outer Continental Shelf Lands Act because that is the statutory authority supporting the issuance of offshore renewable energy leases. Listing statutory authorities rather than requiring compliance with “ <i>applicable law</i> ,” would run the risk of inadvertently omitting some authority, or of becoming outdated in the event that some statutory authority changes while Form 0008 is in use.
	A Federal agency also suggested that Section 7 would also benefit from more detailed language outlining the various natural resources [BOEM] believes may be impacted, including visual, night sky, and sound resources.	We have not adopted this revision. The prohibitions in Section 7(b), (c), and (d) provide adequate protection for a wide variety of resources. It is not clear what advantage is to be gained by listing some, but not other, potentially-impacted resources.
Section 8: Violations, Suspensions, Cancellations, and Remedies.	One commenter recommended that BOEM carefully review Form 0008 and ensure that references to “Lessor” refer only to BOEM and do not encompass functions now exercised by BSEE.	Per the introductory paragraph of the lease, the Lessor is the United States of America, acting through BOEM. Certain enforcement responsibilities may in the future fall under BSEE’s jurisdiction. In the event that BSEE needs to take enforcement action against a Lessee, it may do so under its regulations, and/or it may request that BOEM take action against the Lessee under the lease.
	One commenter noted that while Section 8 identifies the Lessor’s rights to exercise certain remedies, it does not adequately identify the associated rights of the Lessee before those remedies are imposed.	In response to this comment, we have added “ <i>...in accordance with the Act and applicable regulations</i> .” We intended to restate rather than alter the regulatory rights and responsibilities in this section.
Section 9: Indemnification.	Several commenters noted that indemnification for “any claim” is overly broad, and suggested replacing this with indemnification for “direct liabilities,” or indemnification for claims only to the extent the claims can be traced to some action or omission of the Lessee. Likewise, another commenter recommended excluding from the Lessee’s indemnification obligations any loss or damage arising from the Lessee’s actions that are consistent with approved plans, which approvals would have considered environmental impacts	The language in the draft form did not require indemnification for <i>all</i> claims. We rephrased Section 9 to clarify that indemnification only applies to any claim that is “ <i>caused by or resulting from any of Lessee’s operations or activities on the leased area or project easements or arising out of any activities conducted by or on behalf of the Lessee or its employees, contractors (including Operator, if applicable), subcontractors, or their employees, under this lease...</i> ” It would not be appropriate to go further, and free the Lessee from

Lease Reference	Comment	Response
	and other legal requirements, and that are conducted in accordance with a prudent operator standard.	claims arising from loss or damage undertaken in accordance with approved plans. This would amount to an assumption of liability by BOEM for losses and damages arising from activities undertaken in accordance with Lessee-proposed and Lessee-executed plans.
	One commenter objected to the part of Section 9 that requires the Lessee to pay within 90 days after written demand. The commenter noted that before damages, costs or expenses may become due and owing by written demand, the Lessee has the right to appeal the demand to the Interior Board of Land Appeals pursuant to 30 CFR § 585.118.	The proposed language does not preclude an appeal by the Lessee, which, pursuant to the regulations, may move to stay the agency decision.
	A Federal agency recommended adding a provision in this section to clarify the distinction between the Lessor and the Lessee as related to the Endangered Species Act (ESA). The agency noted that it is the responsibility of BOEM to comply with the ESA.	We have not adopted this recommendation. BOEM understands and is committed to fulfilling its responsibilities with regard to the ESA. BOEM is aware that its responsibilities and those of the Lessee, under the ESA, are distinct.
Section 10: Financial Assurance.	One commenter requested that Section 10 be modified to recognize the Lessee’s ability to meet financial assurance obligations by a demonstration of financial strength and reliability, as allowed by 30 CFR § 585.527 or a third-party guarantee, as allowed by 30 CFR § 585.528.	The commenter is correct that these are alternative allowable methods for the Lessee to meet its financial assurance obligations. The language of Section 10, however, requires the Lessee to <i>“provide and maintain at all times a surety bond or other form of financial assurance.”</i> A demonstration of financial strength and reliability or a third-party guarantee count as <i>“other form(s) of financial assurance.”</i>
	One commenter requested clarifications in Form 0008 with regard to what additional financial assurance may be required and the financial health test that may trigger the requirement. Moreover, the comment specifically requested that Section 10 reference 30 CFR § 585.516’s requirements.	Although we have not added clarifying language to Section 10 of Form 0008 or specifically referenced § 585.516 of the regulations, we added a general reference to BOEM’s regulations to make clear that Form 0008 is not establishing new or additional financial assurance rules or requirements that are not already present in the regulations. The comment requested additional information regarding what financial health tests could trigger a decision on the part of BOEM to increase the financial assurance requirement. Information concerning the need for additional financial assurance is in the regulations, and is not appropriate for the lease form.
Section 11: Assignment or Transfer of Lease.	Several commenters requested some commitment that approval of assignment requests will not be unreasonably withheld so long as the proposed assignee met certain minimum qualifying criteria.	We have not adopted this recommendation. BOEM has decided to retain its discretion to approve or disapprove assignment requests as it determines based on the facts of each specific request.
	One commenter suggested that BOEM’s right to deny requests for assignment is constrained by the regulations at 30 CFR §§ 585.409 & .107. The commenter claimed that the lease language could be read as inappropriately giving BOEM unfettered discretion to deny applications for assignment.	A decision to limit BOEM’s discretion regarding the assignment of lease rights would be more appropriate in the context of a change to the regulations than a formalization of the form to be used to issue leases.
Section 13: Removal of Property and	One commenter recommended including a clause to give the Lessee an opportunity to request an extension of the time for decommissioning and	The regulations explicitly give lessees the right to request a departure from decommissioning regulations in 30 CFR § 585.904. Because nothing

Lease Reference	Comment	Response
Restoration of the Leased Area on Termination of Lease.	site clearance in the event of extenuating circumstances of conditions of force majeure.	in Form 0008 contradicts the regulatory rights and responsibilities of the parties described in § 904, we see no need to change the lease form.
	One commenter requested that BOEM not alter the decommissioning rights and responsibilities described in the regulations.	It was not our intention to alter or supersede the regulations in this section. Accordingly, we added an additional reference to the regulations in this section to make it clear that this section is not intended to contradict the regulations (“ <i>Unless otherwise authorized by Lessor, pursuant to the applicable regulations in 30 CFR Part 585...</i> ”).
	One commenter requested that approval of requests for an extension of time to complete decommissioning requirements not be unreasonably withheld.	We have not adopted this recommendation. BOEM has no intention to act unreasonably.
	One commenter requested that we include a provision stating that underground facilities may be abandoned in place upon terms and conditions acceptable to the Lessor and the Lessee. Another commenter recommended removing the requirement to clear the sea floor.	The regulations outline procedures to be followed for authorizing facilities to remain in place following termination of a lease or grant, at 30 CFR § 585.909. It is not our intent to change the rights and responsibilities described in the regulations, so we have not adopted these recommendations.
Section 14: Safety Requirements.	<p>One commenter suggested new language for Section 14(a). In place of the existing language, “<i>the lessee must ... maintain all places of employment for activities authorized under this lease in compliance with occupational safety and health standards...</i>” the commenter recommended inserting the following:</p> <ul style="list-style-type: none"> <i>a. Maintain all operations within the leased area in compliance with the regulations in 30 CFR Part 285 and orders intended to protect persons, property and the environment on the OCS;</i> <i>b. Allow prompt access at the site of any operation or activity that is subject to safety regulations, to any inspector authorized by the BOEM or other Federal agency having jurisdiction; and</i> <i>c. Provide to BOEM any requested documents and records that are pertinent to occupational or public health, safety or environmental protection.</i> <p><i>Further, Lessee’s activities remain subject to requirements that it maintain all places of employment for activities authorized under this lease in compliance with applicable occupational safety and health standards and free from prohibited hazards to employees of the Lessee or of any contractor or subcontractor operating under this lease.</i></p>	<p>We have declined to adopt these revisions, because taken together, they result in an easing of the safety requirements proposed in the Lease Draft. Safety is first on the list of priorities that the department must provide for according to the Energy Policy Act of 2005, Section 388. Moreover, in its regulations at 30 CFR § 585.102, BOEM has committed to ensuring “that any activities authorized in this part are carried out in a manner that provides for safety...” The decision to have the lease form be protective in this regard was intentional.</p>
Addendum A: Description of the Leased Area and Lease Activities.	On commenter recommended that we include a provision describing BOEM’s right to contract the lease area every five years, provided the Lessee has an opportunity to defend its continued need for the lease area, notice and appeal rights.	Most of what the commenter has requested is set out in BOEM’s regulations at 30 CFR § 585.436. However, to accurately reflect the fact that the lease acreage could change over time, we added the following sentence in section II, Description of the Leased Area, “ <i>This area is subject to later</i>

Lease Reference	Comment	Response
		<i>adjustment, in accordance with applicable regulations (e.g., contraction, relinquishment, etc.).”</i>
Addendum B: Lease Term and Financial Schedule.	Several commenters recommended that we remove the operating fee formula from Form 0008.	We agree that it is not necessary in the form, and have removed it. The operating fee formula is stated in BOEM’s regulations, at 30 CFR §585.506, and in issuing leases, BOEM will include it. Omitting the formula from Form 0008 makes the form more flexible in the event that the operating fee structure in BOEM’s regulations changes at some future time.
	One commenter objected to the language stating that the “ <i>Lessor, at its discretion, may approve a renewal request to conduct substantially the same activities...</i> ” on the grounds that BOEM’s discretion is not unconstrained, but rather must be guided by the regulatory criteria enumerated in the regulations.	We believe that the language in the regulations at 30 CFR § 585.425 supports the phrasing we have chosen for Form 0008, “[BOEM], at its discretion, may approve a renewal request to conduct substantially similar activities...” Although BOEM’s discretion is not constrained by this language, the Bureau is bound by the Administrative Procedure Act requirement that we avoid being “arbitrary and capricious” in making decisions.
	One commenter noted that the lease form stated that financial assurance requirements would be set “ <i>on a case-by-case basis.</i> ” The comment stated that this is not appropriate, because the lease itself <i>is</i> one case.	We agree, and have modified Form 0008 accordingly. The lease now states that the “ <i>Lessor will determine the amount of financial assurance requirements in accordance with applicable regulations at 30 CFR Part 585.</i> ” This reflects the fact that we did not intend to alter the rights and responsibilities of the parties set out in BOEM’s regulations. Tying the lease language more directly to the regulations, as we have done, also addresses several other comments, which highlighted perceived differences between the regulations and the language in the draft lease form published in September 2011.
Addendum C: Lease-Specific Terms, Conditions, and Stipulations.	Many commenters requested that we describe minimum mitigation and monitoring measures that would apply to all lease issuances.	We have declined to adopt this recommendation. First, it is likely that any mitigation and monitoring requirement that is general enough to apply to every conceivable lease issuance would be too general to be effective. Second, there is little environmental benefit in adopting a predetermined set of mitigation and monitoring measures, when more appropriate, case-specific measures can and will be added on a lease-by-lease basis. The individual lease is a more appropriate place for mitigation and monitoring, because that is when the measures most appropriate to the particular circumstances of each lease issuance can be determined. Finally, while not determinative, it is worth noting that oil and gas leases contain no mitigation and monitoring measures that apply across all leases in all regions. If universally applicable mitigation and monitoring has not been developed in this more mature industry, it is surely premature to determine such measures for renewable energy.
	Several commenters also requested that we explain how mitigation and monitoring measures will be incorporated into Addendum C, both at	We anticipate that such requirements will be developed through public comments, NEPA analyses, and consultations with Federal agencies,

Lease Reference	Comment	Response
	the lease stage, and at the COP approval stage.	States, local governments, and affected Indian tribes. Measures adopted to reduce potential adverse impacts to environmental and socioeconomic resources from activities associated with lease issuance (e.g., site characterization surveys) will be included in Addendum “C.” Measures adopted related to activities proposed in a plan will be included as terms and conditions (or “modifications”) of that plan. For example, per 30 CFR § 585.628(f)(1), “if we approve your COP, we will specify terms and conditions to be incorporated into your COP.” Such terms and conditions are no less binding on the Lessee than measures found in Addendum C.
	Several commenters requested that we add language to Addendum C that would specifically allow BOEM to modify the Addendum C requirements to ensure that new information, monitoring data, and changing circumstances could be used to make appropriate adjustments within wind energy areas at the site-specific level.	While reserving such broad rights would protect the government’s interest in preventing harms that cannot currently be foreseen, such a broad reservation is not required. BOEM’s reservations in Section 7 and the authority described in BOEM’s regulations (for example, at 30 CFR § 585.400 <i>et seq.</i>) are adequate to ensure that BOEM can address a wide variety of potential future harms.
Addendum D: Project Easement.	One commenter requested that BOEM, in determining the appropriate easement description, also consider the necessary protection of the Lessee’s rights against future renewable energy activities that, because of their nearby locations, could disturb and interfere with the operations and economics of the project earlier installed. The commenter noted that Section 3 of the lease draft reserves the right of the Lessor to authorize other uses of the leased area that do not unreasonably interfere with the Lessee’s enjoyment of its lease rights. The commenter added that restrictions against interference should also apply to BOEM’s consideration of nearby sites for renewable energy projects that could have an adverse impact on existing lessees in a particular area.	BOEM will respect the right of lessees not to be unreasonably interfered with in the enjoyment of their leases. The Lessee is protected by both the Section 3(d) reservation to authorize uses that “ <i>will not unreasonably interfere</i> ” with an existing lease, as well as by Section 7(a), which requires other BOEM lessees to avoid unreasonable interference with other leases, licenses and approvals.
General Comments and Recommendations.	One commenter requested that we add a section committing the Lessee to publicly release all ocean data collected by a date certain.	We have declined to adopt the recommendation. BOEM has responsibilities to respect the Lessee’s confidential business information. We have established procedures for making data and information available to the public in our regulations at 30 CFR § 585.113. Any departure from the procedures outlined in our regulations merits separate consideration and is not appropriate in the context of creating Form 0008.
	One commenter recommended requiring biannual progress reports.	We have not adopted this recommendation for Form 0008, though a similar provision may be suitable for inclusion in leases on a case-by-case basis.
	One commenter recommended adding a due diligence section that would require installation of SAP structures within 12 months of the Effective Date absent “ <i>good cause.</i> ”	We have declined to adopt this recommendation. BOEM’s regulations already contain requirements that require due diligence on the part of the Lessee, including the requirement that the Lessee submit SAPs and COPs within certain timeframes. We

Lease Reference	Comment	Response
		believe that existing due diligence requirements are sufficient to ensure that the Lessee is active under the lease, and that BOEM has the authority to terminate the lease in the event that it is not.
	One commenter requested a section requiring the Lessee to identify accepted Industry standards in its plans.	We have not adopted this recommendation. This comment requests an additional requirement be set for plans, but plan requirements are set forth in the regulations, changes to which must be made through a rulemaking. In any event, it would be inappropriate to set requirements for plans in the lease instrument.
	One commenter requested that we add a section explicitly reserving the right to issue departures.	We have not adopted this recommendation. BOEM has already reserved the right to depart from its regulations at 30 CFR § 585.113. Moreover, the lease, as written, gives BOEM the tools it will need to ensure that it can respond to a wide variety of unforeseen circumstances.
	One commenter requested that we add a section giving the Lessor 30 calendar days to decide on plans.	We have not adopted this suggestion. BOEM needs to ensure that it has sufficient time to conduct plan reviews without artificial deadlines. This includes the need for a reasonable opportunity to conduct consultations and NEPA reviews to support its decisions. We believe that an arbitrary 30-calendar day limit could adversely affect the agency's ability to fulfill its responsibilities under the Outer Continental Shelf Lands Act, its regulations, and other Federal law.
	One commenter requested the addition of a Force Majeure clause that would release the Lessee from lease obligations in the face of unforeseen events beyond the control of the Lessee that prevent it from performing its lease obligations.	We have not adopted this recommendation. BOEM has the flexibility under the regulations to exempt the Lessee from a wide range of responsibilities if we determine that the circumstances warrant it.
	Another Federal agency noted that the lease document and supporting statutes and regulations do not explicitly require BOEM and the Lessee to comply with the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act (BGEPA), or the Mineral Management Service to Service Interagency Memorandum of Understanding regarding the implementation of Executive Order 13186 (MOU). The agency recommended adding language, or clarifying existing language to indicate the Lessee's and BOEM's obligations for complying with these statutes, and the MOU.	We have not adopted this recommendation. Section 1 of the lease makes the lease subject to all applicable laws and regulations, along with OCSLA and regulations promulgated pursuant to OCSLA. Further, while BOEM will comply with the MBTA and BGEPA to the maximum extent possible, it is not necessary or appropriate to list the various statutes that the Lessor and the Lessee will follow. Accordingly, Form 0008 makes no specific mention of other Federal or state laws, including the National Historic Preservation Act, the Rivers and Harbors Act, the Endangered Species Act, the National Marine Sanctuaries Act, the Coastal Zone Management Act, the Clean Water Act, or any number of other applicable statutes and regulations. The failure to enumerate these sources of law has no impact on their applicability.

FOR FURTHER INFORMATION CONTACT: Maureen A. Bornholdt, Program Manager, or
Wright Frank, Renewable Energy Program Specialist, Office of Renewable Energy Programs, at (703)
787-1300 for lease questions.