



# Offshore Wind Regulatory Framework: New Developments

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The proposed rule would replace the existing ad hoc scheduling of offshore renewable energy lease sales with a requirement that DOI publish a schedule of renewable energy lease auctions it intends to hold over the subsequent five years. BOEM [notes](#) that the proposed change “is intended to provide advance notice to stakeholders of areas being considered for future lease sales,” would allow for “increased certainty and enhanced transparency,” and would facilitate advance planning by relevant stakeholders. The proposed requirement is similar to that for [oil and gas lease planning](#) in the [Outer Continental Shelf Lands Act \(OCSLA\)](#), although with some differences. The proposed rule affords more agency flexibility to deviate from the proposed five-year schedule than the requirements found in OCSLA, and the proposed rule also includes fewer specific considerations for the planning process. The proposed rule does not address whether the five-year scheduling of wind lease sales would involve preparation of a programmatic environmental impact statement (EIS) under the [National Environmental Policy Act \(NEPA\)](#), similar to the programmatic EIS prepared for the five-year oil and gas program.

Another proposed change would be codifying the use of “project design envelopes” (PDEs), which allow project applicants to propose “a range of design parameters and construction and operation activities” in [construction and operation plans \(COPs\)](#) submitted for BOEM approval. PDEs are [already being employed](#), but BOEM seeks to explicitly provide for the use of PDEs in its regulations. BOEM [notes](#) that PDEs are “a proven approach to provide lessees and grant holders with flexibility throughout the permitting process while still complying with [NEPA] and other statutory and regulatory obligations.”

Other proposed changes include modernizing the offshore wind lease auction process through a number of technical changes, eliminating the need for a [site assessment plan \(SAP\)](#) for some site characterization activities, and other technical additions and amendments, often aimed at increasing process efficiency or addressing burdens identified by developers. BOEM already employs a number of these proposed changes in its oversight and regulation of offshore oil and gas operations.

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# Final Rule on Agency Renewable Energy Responsibilities

The [final rule](#) transfers certain offshore renewable energy responsibilities from BOEM to BSEE, particularly those related to ensuring workplace safety and enforcing environmental compliance. Correspondingly, the final rule reorganizes 30 C.F.R. Parts [285](#), [585](#), and [586](#) by transferring relevant provisions among them (without substantively modifying the provisions).

Key responsibilities transferred to BSEE [include](#) evaluating and overseeing the design and installation of offshore renewable energy facilities (e.g., wind turbines or transmission cables), overseeing safety management and incident response plans, inspecting facilities and investigating safety incidents, enforcing environmental compliance, and overseeing decommissioning activities. BOEM retains responsibility for issuing and managing renewable energy leases, reviewing and approving development plans—including lessees’ [SAPs and COPs](#)—and conducting environmental analyses under [NEPA](#) for proposed leasing and permitting activities.

The reassignment brings BOEM’s and BSEE’s division of responsibilities closer to that for [offshore oil and gas development](#), although the regulatory regimes differ. The reassignment appears consistent with BSEE’s [mission](#) to “promote safety” and “protect the environment” through “vigorous regulatory oversight and enforcement,” dating from the time when BOEM and BSEE were [established](#). In the aftermath of the [2010 Deepwater Horizon oil spill](#), [DOI Secretarial Order 3299](#) divided the responsibilities of a predecessor agency, the [Minerals Management Service](#), giving BOEM responsibility for offshore energy resource evaluation, planning, and leasing, while BSEE assumed safety and environmental enforcement functions. However, the [secretarial order \(as amended\)](#) stated that for the renewable energy program, BSEE would not assume these functions “until such time that the Assistant Secretary – Land and Minerals Management determines that an increase in activity justifies transferring the inspection and enforcement functions.” As a result, BOEM in principle retained these responsibilities prior to the final rule. Because commercial-scale wind farms are just beginning to be constructed under federal leases, BOEM would not yet have exercised some of these functions, and BSEE will assume control of them as they are becoming more relevant.

In recent years, BOEM and BSEE have been preparing for a reassignment of renewable energy safety and environmental enforcement responsibilities, including through a [partnership framework](#) and [memorandum of agreement](#) in 2020. BSEE has requested and received appropriations to build out its renewable energy program, and for [FY2023](#), the agency’s [budget request](#) included program increases of \$12.7 million across three budget activities for this purpose. Questions for Congress may include how to apportion future funding, in light of the formal transfer of functions and the anticipated increase in federal safety and enforcement activities as wind projects on the OCS move toward construction and operations.

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