

**PART 764 [AMENDED]**

■ 18. The authority citation for 15 CFR part 764 is revised to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

**PART 766 [AMENDED]**

■ 19. The authority citation for 15 CFR part 766 is revised to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

**PART 768 [AMENDED]**

■ 20. The authority citation for 15 CFR part 768 is revised to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

**PART 770 [AMENDED]**

■ 21. The authority citation for 15 CFR part 770 is revised to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

**PART 772 [AMENDED]**

■ 22. The authority citation for 15 CFR part 772 is revised to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

**PART 774 [AMENDED]**

■ 23. The authority citation for 15 CFR part 774 is revised to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

Dated: September 25, 2017.

**Richard E. Ashooh,**

*Assistant Secretary for Export Administration.*

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**DEPARTMENT OF THE INTERIOR****Bureau of Ocean Energy Management****30 CFR Part 583**

[Docket ID: BOEM-2010-0041; MMAA104000]

RIN 1010-AD90

**Negotiated Noncompetitive Agreements for the Use of Sand, Gravel, and/or Shell Resources on the Outer Continental Shelf**

**AGENCY:** Bureau of Ocean Energy Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes new regulations to address the use of Outer Continental Shelf (OCS) sand, gravel, and/or shell resources for shore protection, beach restoration, or coastal wetlands restoration projects by Federal, state, or local government agencies, and for use in construction projects authorized by or funded in whole or in part by the Federal Government. The final rule describes the negotiated noncompetitive agreement process for qualifying projects and codifies new and existing procedures.

**DATES:** This rule is effective December 4, 2017.

**FOR FURTHER INFORMATION CONTACT:** Deanna Meyer-Pietruszka, Chief, Office of Policy, Regulations, and Analysis, Bureau of Ocean Energy Management, at: [deanna.meyer-pietruszka@boem.gov](mailto:deanna.meyer-pietruszka@boem.gov) or 202-208-6352.

**SUPPLEMENTARY INFORMATION:** On March 22, 2016, the Bureau of Ocean Energy Management (BOEM) published in the **Federal Register** (81 FR 15190) a proposed rule entitled “Negotiated Noncompetitive Leasing for the Use of Sand, Gravel, and Shell Resources on the Outer Continental Shelf.” BOEM received comments from 8 individuals and organizations. BOEM reviewed these comments, categorized and organized them by subject, and has provided responses to those substantive comments in Section III below. These comments are available for viewing in their original form on [www.regulations.gov](http://www.regulations.gov) by searching for the term: “BOEM AD90.” BOEM also renumbered the sections contained in the proposed rule to facilitate any later amendments that may be necessary. Finally, BOEM altered the title of the proposed rule by replacing “Leasing” with “Agreements” to more accurately reflect the types of instruments BOEM uses to convey offshore sand, gravel, and/or shell resources (*i.e.* leases or

memoranda of agreement, as described below).

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**I. Background**

Congress amended the Outer Continental Shelf Lands Act, 43 U.S.C. 1331–1356 (OCSLA), in 1994 to authorize the Secretary of the Interior to negotiate noncompetitive agreements with any person for the use of OCS sand, gravel, and/or shell resources in a program of, or project for, shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, state, or local government agency, or in a construction project either authorized by, or funded in whole or in part by the Federal Government. See 43 U.S.C. 1337(k)(2). In negotiating an agreement for use of the OCS sand, gravel, and/or shell resources, OCSLA provides that “the Secretary may assess a fee based on an assessment of the value of the resources and the public interest served by promoting development of the resources.” However, the same provision of OCSLA also states that no fee will be assessed directly or indirectly against a Federal, state, or local government agency. See 43 U.S.C. 1337(k)(2)(B).

**A. Program Description**

Generally, shore protection and beach and coastal wetlands restoration projects are initiated to rebuild eroding shoreline segments, such as beaches and dunes, barrier islands, and wetlands. In sensitive wetland areas, these projects are intended to forestall further erosion, restore habitat and/or to provide protection from hurricanes and storms. These projects are typically accomplished by placing sand, gravel, or shell resources directly on the beach, in open water areas that are the location of an eroded beach, and/or within breaches in the shoreline that compromise the integrity of the beach or barrier island system or its capacity to form, and subsequently maintain, a beach. Material may also be placed updrift from the beach, allowing longshore processes to redistribute the

sand, gravel, and/or shell resources along the beach.

OCSLA authorizes BOEM to enter into a negotiated noncompetitive agreement when the use of OCS sand, gravel, and/or shell resources is authorized for qualifying projects. This negotiated agreement may take the form of a lease or a Memorandum of Agreement (MOA), depending upon the type of applicant(s) requesting use of OCS sand, gravel, and/or shell resources. If a non-Federal entity requests the use of OCS sand, gravel, and/or shell resources, the negotiated noncompetitive agreement required by OCSLA would generally take the form of a lease. If a Federal agency requests the use of OCS sand, gravel, and/or shell resources, BOEM and the Federal agency, as well as their Federal, state, or local government agency counterparts on the project, would enter into an MOA. For example, when a Federal agency partially or wholly funds a non-Federal entity to conduct a project that is otherwise eligible for OCS sand, gravel, and/or shell resources, the negotiated noncompetitive agreement may take the form of a three-party MOA. As warranted, the Federal applicant(s) and BOEM would designate a lead agency and enter into a cooperating agency agreement for the environmental analysis and review of the proposed project. Likewise, if another Federal agency is not involved, BOEM would ensure that appropriate environmental analysis and review is completed. The negotiated noncompetitive agreement in each of these situations would describe the project and procedures that would be followed, and identify environmental and administrative requirements that must be met. As described in Section III below in response to a comment received, the requirements and processes for entering into a negotiated noncompetitive agreement are the same whether the agreement takes the form of a lease or a MOA. The only distinction is that which Congress provides in OCSLA that, when these projects involve Federal agencies, the Federal agency “shall enter into a Memorandum of Agreement with the Secretary. . . .” See 43 U.S.C. 1337(k)(2)(D).

#### *B. Program History*

BOEM and its predecessor agencies—the Minerals Management Service and the Bureau of Ocean Energy Management, Regulation and Enforcement—through the Marine Minerals Program, have been exercising statutory authority regarding OCS sand, gravel, and/or shell resources under OCSLA pursuant to written guidelines, without the benefit of implementing

regulations. BOEM has negotiated over 50 noncompetitive agreements, providing for the use of more than 100 million cubic yards of OCS sand, gravel, and/or shell resources for shore protection, beach restoration, or coastal wetlands restoration projects undertaken by a Federal, state, or local government agency, and for federally authorized or funded construction projects. BOEM believes that promulgation of regulations at this time is advisable to provide additional clarity and certainty and to help ensure continuity of the Marine Minerals Program.

## **II. Section-by-Section Analysis of the Final Rule**

### *Subpart A—General*

Section 583.100 What is BOEM’s authority for information collection (IC)?

This section explains BOEM’s authority for IC activities related to part 583. It explains the reasons the information is being collected and confirms the Office of Management and Budget (OMB) approval of the collection.

Section 583.105 What is the purpose of this rule and to whom does it apply?

This section explains that the purpose of this rule is to refine and formally adopt procedures for entering into negotiated noncompetitive agreements for the use of OCS sand, gravel, and/or shell resources for shore protection; beach or coastal wetlands restoration by a Federal, state, or local government agency; or for construction projects authorized or funded, in whole or in part, by the Federal Government. This section explains that the rule applies exclusively to the negotiated noncompetitive use of sand, gravel, and/or shell resources on the OCS and does not apply to competitive leasing of minerals, including oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals that are authorized by an Act of Congress to be produced from “public lands” as defined in section 103 of the Federal Land Policy and Management Act of 1976, as amended (FLPMA). (43 U.S.C. 1701 *et seq.*)

Section 583.110 What is BOEM’s authority for this rule?

This section explains that in adopting these regulations, BOEM is operating under authority granted to the Secretary of the Interior by OCSLA.

Section 583.115 What definitions do I need to know?

This section defines many of the terms commonly used in the Marine Minerals Program and now used in this part, including “borrow area,” “placement area,” and “project.” This section also defines other terms for purposes of this part, including “agreement,” “amendment,” “applicant,” “BOEM,” “Federal agency,” “local government,” “modification,” “program,” and “Secretary.” This section also makes the definitions applicable to Part 550 of Title 30 of the CFR applicable to this part.

Section 583.120 Who is qualified for a project?

This section explains who is qualified to enter into an agreement with BOEM for the use of OCS sand, gravel, and/or shell resources, and explains the requirements to comply with the relevant debarment regulations.

Section 583.125 What are my rights to seek reconsideration of an unfavorable decision by BOEM?

This section sets out the kinds of decisions that would be subject to reconsideration, and the process available to an unsuccessful applicant or adversely affected party for obtaining reconsideration.

Section 583.130 What are the minimum contents of an agreement to use OCS sand, gravel, and/or shell resources?

This section explains who is allowed to use OCS sand, gravel, and/or shell resources under these regulations, and explains that use authorizations are in the form of agreements that are negotiated on a case-by-case basis. It also explains that the agreements identify the location, type and volume of OCS sand, gravel, and/or shell resources allowed to be used under the agreement. In addition, it explains that an authorization to use OCS sand, gravel, and/or shell resources is not exclusive. BOEM has modified language in this section from the proposed rule by adding language stating that “terms and conditions and environmental stipulations” will be included in the list of the minimum contents of an agreement, and adding language to clarify the conditions under which more than one entity may use the same borrow area.

*Subpart B—Reserved**Subpart C—Outer Continental Shelf Sand, Gravel, and/or Shell Resources Negotiated Agreements***Section 583.300** How do I submit a request for an agreement?

This section explains who may submit a request to BOEM to obtain an agreement for the use of OCS sand, gravel, and/or shell resources. It lists the information that the request must include, such as a detailed description of the proposed project and how it qualifies as a program or project eligible under OCSLA to receive OCS sand, gravel, and/or shell resources pursuant to a negotiated noncompetitive agreement; a description of borrow and placement areas; certain maps and data; other uses of the OCS and infrastructure in the borrow area that are known to the applicant; a description of the environmental evaluations that have been completed or are being prepared that cover the project, including both onshore and offshore components; a target date or date range when the resources will be needed; a description of the person or government entities that are undertaking the project and points of contact; a list of permits, licenses and authorization required for the project; a description of potential inconsistencies with state coastal zone management plans or other applicable state and local laws; and a statement explaining who authorized the project and how the project will be funded. Since issuance of the proposed rule, BOEM replaced the requirement that hard copy maps be provided with the request for a negotiated noncompetitive agreement in section 583.300(a)(2)(i); instead, the final rule requires digital (pdf) maps be provided. This modification in the final rule recognizes changes in technology and that most submissions are now made electronically.

**Section 583.305** How will BOEM determine if a project qualifies?

This section lays out the factors that BOEM uses to determine whether a project qualifies for use of OCS sand, gravel, and/or shell resources under a negotiated noncompetitive agreement. The section enumerates the evaluation criteria, including: The project purpose; other uses of OCS sand, gravel, and/or shell resources that are currently or previously authorized from the same borrow area; the project funding source(s) and amounts; the proposed design and feasibility of the project; any potential environmental and safety risks associated with the project; other Federal interests located near or within

the specified borrow area; comments received from potentially affected state or local governments, if any; the applicant's background and experience working on similar projects or activities; whether the project operations can be conducted in a manner that protects the environment and promotes orderly development of OCS mineral resources; whether activities can be conducted in a manner that does not pose a threat of serious harm or damage to, or waste of, any natural resources, any life, property, or the marine, coastal, or human environment; and whether the project is consistent with applicable statutes and their implementing regulations, which may include, but are not limited to, the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*), the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*), the Marine Debris Research, Prevention, and Reduction Act (MDRPA) (33 U.S.C. 1951 *et seq.*), the Marine Plastic Pollution Research and Control Act (MPPCA) (33 U.S.C. 1901 *et seq.*), the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1381 *et seq.*), and the International Convention for the Prevention of Pollution from Ships (MARPOL), MARPOL-Annex V Treaty.

**Section 583.310** What process does BOEM use to technically and environmentally evaluate a qualified project?

This section explains the process that BOEM follows to evaluate a project that qualifies for the use of OCS sand, gravel, and/or shell resources to decide whether to enter into a negotiated noncompetitive agreement. It states that BOEM coordinates with relevant Federal agencies, states, and local governments, and any potentially affected federally recognized Indian tribes or Alaska Native corporations during this process. It also describes how BOEM evaluates the project and additional information provided under sections 583.300 and 583.305 to determine if the information is sufficient to conduct necessary technical and environmental reviews to comply with the requirements of applicable statutes and regulations, which may include, but are but not limited to: OCSLA (43 U.S.C. 1331 *et seq.*), the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the ESA (16 U.S.C. 1531 *et seq.*), the MMPA (16 U.S.C. 1361 *et seq.*), the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) (16 U.S.C. 1801 *et seq.*), the National Historic Preservation Act (NHPA) (54 U.S.C. 300101 *et seq.*), and the Coastal Zone Management Act (CZMA) (16 U.S.C.

1451 *et seq.*). Finally, this section provides that BOEM will not enter into a negotiated noncompetitive agreement until the information requested for the evaluation has been provided and BOEM has evaluated it.

**Section 583.315** What is the process for negotiating and executing an agreement?

This section describes the steps BOEM takes once it has completed its technical, environmental and other evaluations. This section provides further that, once BOEM has completed its review of an application, BOEM will decide whether to enter into an agreement. This section provides that, if BOEM decides to enter into an agreement, BOEM will negotiate the terms of the agreement and prepare a draft agreement for the applicant's review and comment. The section also provides that, after BOEM considers the applicant's comments and suggestions, it may, at its discretion, finalize the agreement and send it to the applicant for signature. As provided in this section, once BOEM receives the agreement with the applicant's signature, BOEM will execute the agreement and distribute it to the parties to the agreement. Finally, this section describes the process BOEM would use when it decides not to approve an agreement.

**Section 583.320** What kinds of information must be included in an agreement?

This section describes the minimum information that an agreement is required to include, such as an agreement number assigned by BOEM; the purpose of, and authorities for, the agreement; the designated and delineated borrow area(s); the project description, including the timeframe within which the project is to be started and completed; the terms and conditions of the agreement, including any reporting requirements; all obligations of the parties; and the signatures of appropriate individuals authorized to bind the applicants and BOEM. In this final rule, in section 583.320(e), BOEM added "environmental mitigations and operating parameters" to the examples of terms and conditions that might be included in an agreement, to make clear that, if there are any environmental mitigations or operating parameters, that information must be included in negotiated noncompetitive agreements.

Section 583.325 What is the effective date of an agreement?

This section describes what determines the effective date of the agreement.

Section 583.330 How will BOEM enforce the agreement?

This section describes how BOEM would enforce the terms of an agreement and the consequences, including termination, for failure to comply with any applicable law or with the agreement terms. This section also provides that the failure to comply in a timely and satisfactory manner with any provision, term or condition of the agreement may delay or prevent BOEM's approval of future requests for use of OCS sand, gravel, and/or shell resources on the part of the parties to the agreement.

Section 583.335 What is the term of the agreement?

This section explains when an agreement terminates: (1) By a date specified in the agreement; (2) pursuant to 30 CFR 583.350; or (3) when parties to the agreement notify BOEM in writing that sufficient resources, up to the amount authorized in the agreement, have been removed to complete the project. This section also explains that, absent extraordinary circumstances, no agreement will have a term that is longer than five years from its effective date. Examples of extraordinary circumstances where a term longer than five years may be appropriate include a program of multiple individual projects to be carried out over multiple seasons, or where the Congressional authorization for a project calls for multiple phases. It is within BOEM's sole discretion to determine when extraordinary circumstances warrant a term longer than five years. Prior to the end of the term in an agreement, the parties would have the option to request an extension or modification to the terms of the agreement, as set forth in section 583.345.

Section 583.340 What debarment or suspension obligations apply to transactions and contracts related to a project?

This section explains that the applicant has the obligation to ensure that all contracts and transactions related to an agreement issued under this part comply with the suspension and debarment regulations at 2 CFR part 180 and 2 CFR part 1400.

Section 583.345 What is the process for extending or modifying an agreement?

This section explains how an applicant may seek to extend or modify an agreement and spells out the timeframes when this might be accomplished. It provides that BOEM is under no obligation to extend or modify an agreement and cannot be held liable for the consequences of the expiration of an agreement. If BOEM approves a modification, BOEM will prepare an amendment to the agreement and provide it for review by the parties to the agreement prior to execution of the amendment. If BOEM disapproves the request, BOEM will notify the parties to the agreement of the reasons in writing. Parties to the agreement may ask the BOEM Director for reconsideration in accordance with section 583.125.

Section 583.350 When can an agreement be terminated?

This section explains the circumstances under which the Director will terminate an agreement after notice and an opportunity to be heard. The termination factors include fraud or misrepresentation. This section also explains the circumstances under which the Director may immediately suspend and subsequently terminate an agreement, including when there is noncompliance with the agreement; national security or defense reasons; or when the Director determines that: (1) There are situations in which continuing with the agreement would cause serious harm or damage to natural resources, life, property, the marine, coastal, or human environment, or significant historical or archaeological sites, structures or objects; (2) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and (3) the advantages of termination outweigh the advantages of continuing the agreement. This section also explains the process for terminations and suspensions and explains that none of the parties to the agreement will be entitled to compensation as a result of expenses or lost revenues that may result from the termination.

### III. Summary of Comments Received on the Proposed Rule and BOEM Responses

#### General Comments on 30 CFR Part 583

*Comment:* Two commenters commended BOEM for its existing program to utilize OCS sand, gravel, and/or shell resources to repair damaged coastal areas and improve shore protection, beach restoration and

coastal wetlands protection. They commented that BOEM's activities are beneficial, lawful, and properly within the jurisdiction of the United States Department of the Interior.

*Response:* BOEM and its predecessor agencies have been exercising statutory authority to successfully operate this popular program for many years. BOEM has negotiated over 50 agreements, providing for the use of more than 100 million cubic yards of OCS sand, gravel, and/or shell resources for shore protection, beach restoration, or coastal wetlands restoration. This final rule codifies the procedures BOEM has used to implement this program for many years and ensures consistency as the program continues to process requests for use of OCS sand, gravel, and/or shell resources and manage these resources into the future.

*Comment:* Another commenter suggested that BOEM needs to more clearly identify the basis that staff will use to weigh the stated criteria for approval of a negotiated noncompetitive agreement in the face of competing interests. The commenter also suggested that a timeline for approval of an agreement be stated in the rule.

*Response:* Currently, BOEM evaluates applications for the use of OCS sand, gravel, and/or shell resources on a case-by-case basis as they are submitted, taking into account relevant factors and criteria described in the rule and below. The criteria BOEM uses in evaluating an application are provided in Section 583.305. BOEM does not assign a weight to each criterion but considers each criterion in the context of the entire proposed project, as well as pending requests for other projects in the same or nearby borrow areas.

The timelines for processing applications and requests vary based upon a number of factors, including, but not limited to, completion of necessary environmental analyses (e.g., through the NEPA process) and consultation processes (e.g., Tribal consultations or ESA consultations). The environmental review process can range from six months to a year or more. The duration of the environmental review is variable and can be influenced by many factors that can drive different timeframes, including the scope and issues of a project, type of environmental review needed (e.g., Environmental Assessment (EA) or Environmental Impact Statement (EIS) under NEPA), applicability of reviews or consultations previously completed, additional information or studies that may be necessary, emergent stakeholder concerns, and whether or not another Federal partner is leading, or

cooperating on, the environmental review and consultations. Once the environmental reviews and consultations are completed, it may take up to an additional six months to complete the process for issuing a final agreement, as project-specific stipulations in the agreement are negotiated between the applicant(s) and BOEM.

Because every project must be evaluated using a number of factors and project-specific information, BOEM determined that it is not possible to modify the rule as requested by the commenters. Providing specific weighting of criteria or providing an inflexible review deadline would be unnecessarily restrictive given the complexities of evaluating individual, site specific projects while complying with multiple statutes governing environmental review and consultation.

*Comment:* One commenter thought there should be public notice of every application and agreement to increase the transparency of the process. Another expressed that BOEM should consider a process to provide notice and solicit additional expressions of interest or proposals from the public when it receives an application for a particular area. Finally, one commenter stated that the procedures set out in the rule do not contain sufficient opportunities or avenues for public engagement.

*Response:* BOEM is endeavoring to increase transparency of the negotiated noncompetitive agreement process through efforts such as posting formal request letters on its Web page and coordinating with the states in advance of anticipated requests for OCS sand, gravel, and/or shell resources. BOEM will be unable, however, to formally solicit additional expressions of interest each time it receives an application because the applicable statutory provision governing agreements issued pursuant to these regulations specifically provides for a noncompetitive process where agreements are negotiated on a qualifying program or project basis. See 43 U.S.C. 1337(k)(2). Public notice of projects will be provided through the BOEM Web site and, as appropriate, during the public participation process of NEPA; the permitting process for authorized U.S. Army Corps of Engineers (USACE) civil works projects, through the USACE Section 404 permitting process, where applicable; and through BOEM engagement during stakeholder outreach and government-to-government consultations. In addition, to facilitate stakeholder awareness and engagement, BOEM holds annual regional Sand

Management Working Group meetings in close consultation with the states to understand future projected OCS sand, gravel, and/or shell resource needs. BOEM seeks to make its process a collaborative effort that involves all interested stakeholders, where appropriate.

*Comment:* One commenter suggested that since sand resources are often identified by and valuable to local governments, they should be granted exclusive use for those OCS sand, gravel, and/or shell resources if they expend the resources to develop them as potential borrow areas. The commenter referenced local government funding of borrow area studies and questioned whether funding would be reimbursed if the area studied is authorized for use by another party. The commenter suggested that BOEM should decide which particular use of resources is in the national interest.

*Response:* An executed agreement grants the right to a party to extract and use OCS sand, gravel, and/or shell resources from a designated borrow area as further described below. The provision of OCSLA, which this final rule implements, does not provide for agreements that grant the exclusive use of OCS sand, gravel, and/or shell resources, but rather provides for the negotiation of agreements on a noncompetitive basis as qualifying projects and programs are proposed. See 43 U.S.C. 1337(k)(2). BOEM does not reimburse parties for independent studies conducted on the OCS. However, BOEM does often work with individual states through funded cooperative agreements to identify potential sand resources on the OCS. BOEM operates the program in the national interest and in keeping with the policies under OCSLA for providing access to OCS sand, gravel, and/or shell resources.

*Comment:* A commenter expressed concern that a proximal OCS borrow area specifically identified for a local project as containing appropriate material could be removed by another entity, thereby increasing the cost to the original local sponsor as they have to haul material from a greater distance. A commenter also suggested that BOEM needs a way to prioritize projects.

*Response:* BOEM encourages ongoing dialogue among stakeholders so that it can manage the interests of multiple parties in these critical resources going forward. BOEM facilitates such discussions through its annual regional Sand Management Working Group meetings. In addition, BOEM will undertake additional future coordination with interested

stakeholders to identify and manage overlapping interest by state and local governments in using OCS borrow areas. As BOEM evaluates an individual project through the environmental analyses, it will consider potential cumulative impacts to borrow areas from other past, present and proposed uses.

*Comment:* A commenter suggested that the non-exclusive use of resources provision is not workable because the rule does not specify that concurrent negotiated noncompetitive agreements will be non-conflicting, and could provide an advantage to the first applicant granted access to use a resource.

*Response:* Nothing in OCSLA authorizes BOEM to grant an ownership interest in OCS borrow areas or the sand, gravel, and/or shell resources on the OCS, or the exclusive use of an OCS sand, gravel, or shell resource in a negotiated noncompetitive agreement (43 U.S.C. 1337(k)(2)). In BOEM negotiated agreements, BOEM expressly reserves the right to authorize other uses in the designated borrow area that will not unreasonably interfere with activities authorized under the agreement. BOEM allows parties to an agreement to review and comment on any proposed authorizations for use of OCS sand resources in the designated borrow area while their agreement is in effect. To the extent there are multiple projects in the same borrow area, the negotiated noncompetitive agreements may encourage coordination between the parties to reduce the potential for space/use conflicts.

This final rule modified language in the proposed rule at section 583.130 to state “BOEM may allow other entities to use OCS sand, gravel, and/or shell resources from the same borrow area if these uses are determined by BOEM to be non-conflicting and do not exceed the availability of the OCS resource.”

*Comment:* One commenter stated that the proposed rule does not address borrow area sediment use, quantity, and quality.

*Response:* Regarding borrow sediment use, section 583.120 (a) states that “BOEM may enter into an agreement with any person proposing to use OCS sand, gravel, or shell resources for a program of, or project for, shore protection, beach restoration, or coastal wetlands restoration.” Section 583.300(a) requires that the applicant detail how the material will be used and how the proposed project qualifies as an eligible project. Regarding quantity, section 583.130 calls for any issued agreement to identify the volume and type of OCS sand, gravel, and/or shell

resources that may be obtained from the authorized borrow site for the qualified project, gravel, and/or shell.

Aside from identifying the type of resources included in an agreement, the regulation does not address quality. BOEM will not make representations as to any aspects of quality, other than the type, of any particular material utilized for qualified projects. It is the applicant's responsibility to assess the quality of the type of OCS sand, gravel, and/or shell resources in a borrow area as it relates to the suitability of these resources for the applicant's proposed use.

*Comment:* A commenter suggested that BOEM prepare a programmatic environmental impact statement for this rule, as well as engage in consultation under the Endangered Species Act. The commenter felt that a project-by-project approach to NEPA and ESA consultations would fail to account for cumulative impacts from multiple projects.

*Response:* These final regulations are administrative and procedural in nature and therefore meet the criteria set forth in 43 CFR 46.210(i) for a Departmental "categorical exclusion" in that this rule is "... of an administrative, financial, legal, technical, or procedural nature. . . ." BOEM has also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215. Similarly, the rule does not itself result in any impacts to listed species under the ESA.

BOEM has determined, in its discretion under NEPA, it will either individually or programmatically evaluate the environmental impacts of projects as they are proposed, when there is sufficient information on the proposal to be evaluated, including but not limited to the timing, location, and resources that may be implicated. Without these types of project specific details, impacts could not be reasonably evaluated at a national programmatic level. NEPA requires, even in project specific analyses, that cumulative impacts from past, present, and reasonably foreseeable activities be considered. There is a similar requirement during ESA consultations to ensure cumulative impacts on listed species are considered.

#### *Comments Related to Specific Sections of the Rule*

##### 583.120 Who is qualified for a project?

*Comment:* One commenter suggested that the rule seems to apply only to Federal projects and makes the application process to obtain an agreement easier when another Federal

agency is one of the applicants. Another commenter noted that the proposed rule seems to apply only to projects funded in whole or in part by the Federal Government, and it questions how these regulations will affect local and state projects proposed without a Federal partner. A commenter asked how BOEM's negotiated noncompetitive agreement process addresses when non-Federal projects identify borrow areas that a Federal project also identifies.

*Response:* OCSLA, at 43 U.S.C. 1337(k), provides that BOEM may enter into agreements for use of OCS sand, gravel, and/or shell resources in: (i) A program of, or project for, shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, state, or local government agency; or (ii) for use in a construction project, other than a project described in clause (i), that is funded in whole or in part by or authorized by the Federal Government (emphasis added). These new regulations at 30 CFR part 583 codify the process for BOEM to enter into negotiated noncompetitive agreements for any of these types of projects. Therefore, a state or local government agency may qualify for a negotiated noncompetitive agreement to use these OCS resources for a project they undertake for shore protection, beach restoration, or coastal wetlands restoration, whether or not they have a Federal partner for the project. Whether a project is undertaken by or funded by a Federal partner or by a non-Federal applicant, the requests are reviewed and processed similarly by BOEM, including, but not limited to, analyzing multiple interests in the same borrow areas at the time a negotiated noncompetitive agreement is processed.

*Comment:* A commenter stated that it appears the process for approval of a negotiated noncompetitive agreement will take more time and be more expensive than preparing a Memorandum of Agreement (MOA) for a Federal project.

*Response:* The timing and expense to obtain an MOA for federally funded, authorized, or constructed projects is the same as for a lease for a non-federal project. Similar required information must be submitted in an application for any negotiated noncompetitive agreement, whether it takes the form of a lease (for projects that do not have a Federal partner) or an MOA (for projects including a Federal agency). Both will undergo the same environmental scrutiny. The decision to call an agreement a MOA versus a lease is strictly a matter of whether another Federal agency is involved, as mandated by OCSLA at 43 U.S.C. 1337(k)(D)

("Any Federal agency which proposes to make use of sand, gravel, and/or shell resources subject to the provisions of this subchapter shall enter into a Memorandum of Agreement with the Secretary concerning the potential use of those resources."'). The application review process and all other requirements are the same.

*Comment:* A commenter asked whether a project might be approved to extract material and create a stockpile onshore, for use as needed over time. The commenter also inquired whether an entity would be allowed to sell any excess material deemed unnecessary for the original purpose to defray costs.

*Response:* Regarding borrow sediment use, section 583.120(a) states that "BOEM may enter into an agreement with any person proposing to use OCS sand, gravel, or shell resources for a program of, or project for, *shore protection, beach restoration, or coastal wetlands restoration* . . ." (emphasis added). Other uses are not authorized under this section of OCSLA. BOEM, with the support of its sister agency the Bureau of Safety and Environmental Enforcement (BSEE), will enforce the provisions of the lease and will take appropriate enforcement actions, if necessary. The new regulation section 583.300(a) specifically requires that the applicant detail how the material will be used and how it qualifies as an eligible project. Staging of the OCS sand, gravel, and/or shell resources onshore for ultimate use in a qualified project or program may be approved so long as the resources are ultimately used for the qualified project identified in the agreement, during the agreement term. However, the sale of excess material not needed for the project would not be a qualified use of the OCS sand, gravel, and/or shell resources and would therefore not be an authorized use.

583.125 What are my rights to seek reconsideration of an unfavorable decision by BOEM?

*Comment:* One commenter suggested that besides the right to request reconsideration of the Director provided by section 583.125, appellants should be allowed to appeal pursuant to 30 CFR part 590, like appeals from other DOI land management decisions. Another commenter thought the appeals process was too limited and provided too much authority to the BOEM Director to decide whether a project qualifies. One commenter requested clarification that this regulation would not affect actions brought under the Administrative Procedure Act.

*Response:* The reconsideration process for unsuccessful applicants in

this rule is consistent with the process BOEM has provided to unsuccessful bidders in other leasing programs administered by the Bureau. See *e.g.*, 30 CFR 556.517 and 585.118. Due to the similarities between this program and other mineral leasing programs administered by BOEM, the Bureau determined that using a similar process to allow applicants to request reconsideration of disapprovals of applications for leases or MOAs related to OCS sand, gravel, and/or shell resources would give applicants an appropriate review opportunity. Therefore, the final rule includes BOEM's standard process of allowing unsuccessful applicants, whose request was disapproved or disqualified by the Regional Director or equivalent, to seek reconsideration by the Director. This final rule provides for a reconsideration process for decisions on negotiated noncompetitive agreements under 43 U.S.C. 1337(k). Agreements typically include a dispute resolution process as part of the terms negotiated with the applicants; therefore, a separate appeals process is not necessary once the agreement is executed.

**583.130** What are the minimum contents of an agreement to use OCS sand, gravel, and/or shell resources?

*Comment:* A commenter requested that BOEM specify that the minimum contents of an agreement should include terms and conditions, including recommended, as well as required environmental mitigation requirements. A commenter questioned whether more than one entity might use the same resource.

*Response:* Text has been added to this final rule in section 583.130, to provide that the negotiated noncompetitive agreement will include "terms and conditions and environmental stipulations." As noted above, text was also added to respond to a comment on non-exclusive use of the resources in a borrow area to state, "BOEM may allow other entities to use OCS sand, gravel, and/or shell resources from the same borrow area if these uses are determined by BOEM to be non-conflicting and do not exceed the availability of the OCS resource."

**583.300** How do I submit a request for an agreement?

*Comment:* One commenter suggested that duplicative information is currently submitted in association with an application under this rule and a Clean Water Act application. It suggested instead that submission of the Clean Water Act application be allowed to

fulfill the information request for any overlapping items.

*Response:* BOEM needs the information identified in the regulations to inform its own decision on whether to issue a negotiated noncompetitive agreement for OCS sand, gravel, and/or shell resources. There may be information requested by section 583.300 that is also collected under the Clean Water Act permit application. In cases where duplicative information is required by more than one agency, BOEM will allow applicants to submit that portion of the Clean Water Act permit application to BOEM as part of the negotiated noncompetitive agreement application to reduce reporting burdens.

*Comment:* Another commenter urged BOEM to modify its rule to include a requirement to identify the location of existing and planned submarine cables, called proximate critical infrastructure, and then for applicants to coordinate and consult about OCS sand, gravel, and/or shell resource extraction operations with the infrastructure owners as a condition to qualifying for a negotiated agreement with BOEM. The commenter encourages the establishment of default or minimum separation distances to protect submarine cables.

*Response:* Although submarine cables are not identified specifically in the rule, the careful evaluation of other uses of potential OCS borrow areas are considered throughout the review process. Minimum separation distances from known infrastructure are already incorporated into the language of negotiated noncompetitive agreements. In addition, survey requirements help ensure that activities avoid hazards or anthropogenic resources, including, but not limited to, potential shipwrecks and infrastructure. BOEM has added a reference to infrastructure to the final rule at section 583.300(a)(4), a term which would include submarine cables and other similar such hazards. BOEM, however, encourages submarine cable owners and operators to coordinate with and inform BOEM on the placement and location of such infrastructure to further reduce the potential for space/use conflicts. BOEM appreciates recent overtures from this industry about this concern and we look forward to ongoing coordination on these issues.

*Comment:* A commenter asked that BOEM specify that all requests for an agreement should include ecological information, including surveys of wildlife and habitat characterizations. A commenter requested that BOEM clarify that separate Marine Mammal Protection Act and Endangered Species

Act permit authorizations may be required for geophysical data acquisition activities, such as sub-bottom profiling and seismic surveys.

*Response:* BOEM believes these issues are already addressed adequately under section 583.300(a)(5) and (a)(8). The minimum list of items that should accompany a request is provided in section 583.300(a). This list is not meant to be exhaustive of all steps/authorizations that may be required in order to provide the necessary information, such as permits for survey work that may be required to support the request. For example, the need for Marine Mammal Protection Act and Endangered Species Act authorizations is project and species specific and cannot be determined in advance of a request.

**583.310** What process does BOEM use to technically and environmentally evaluate a qualified project?

*Comment:* One commenter suggested that an Environmental Impact Statement should be prepared about the effects of resource removal and placement.

*Response:* Once BOEM determines that a project qualifies for a negotiated noncompetitive agreement, a project-specific environmental evaluation process begins, consistent with the Bureau's obligations under NEPA and other applicable law. BOEM will evaluate the project and all relevant information provided to determine if the information is sufficient to conduct necessary technical and environmental reviews to assure the project complies with the requirements of relevant statutes or regulations. As required by law, BOEM complies with NEPA in undertaking agency action. BOEM will determine the level of environmental review (*e.g.*, environmental assessment or environmental impact statement) appropriate to the NEPA process once it has enough site-specific and project information. During that NEPA process and any related ESA consultation, BOEM identifies and evaluates cumulative impacts.

**583.320** What kinds of information must be included in an agreement?

*Comment:* A commenter suggested that BOEM should add language to its rule so that it may require environmental mitigation measures and a reservation for BOEM to modify the agreement and/or terms and conditions to further mitigate detrimental environmental effects.

*Response:* BOEM considers potential mitigation measures throughout the environmental review process for the application and during drafting of



negotiated noncompetitive agreements. BOEM develops environmental protection or mitigation measures for an individual project when reviewing the application and while drafting the agreement or as a result of ESA consultation. BOEM includes these measures, as appropriate, as terms and conditions in the agreement. BOEM has modified the final rule language to explicitly reference environmental mitigations in section 583.320(e).

583.335 What is the term of the agreement?

*Comment:* One commenter objected to a term of only five years, especially since non-federal projects, and those with multiple phases, may have a planning horizon of more than thirty years. The commenter suggested that any negotiated noncompetitive agreement should have a term that coincides with the permitting timelines of the relevant state. Another commenter noted that by limiting the term to only five years, non-federal sponsors may lose the borrow area for subsequent project phases. In addition, the commenter concluded that only federally authorized projects were eligible for a negotiated noncompetitive agreement extension based on the example of “extraordinary circumstances” contained in the “Section-by-Section Analysis of the Proposed Rule” (81 FR 15190, 15193, March 22, 2016) that states that extensions may be obtained “where the Congressional authorization for a project called for multiple phases.”

*Response:* BOEM has determined that having a maximum term for negotiated noncompetitive agreements (see section 583.335(b)), absent an extraordinary circumstance, encourages timely and efficient use of the OCS sand, gravel, and/or shell resources, informs the environmental analyses necessary for BOEM to make a decision on the agreement, and enables BOEM to manage competing uses and requests for use of OCS sand, gravel, and/or shell resources from OCS borrow areas.

BOEM examined a number of options for maximum terms for agreements, absent extraordinary circumstances. A longer maximum agreement term could serve as an incentive for agencies or authorities to seek authorizations for highly speculative projects far into the future that may be unlikely to be funded or that would change significantly in scope and require additional environmental analysis in the future. Therefore, BOEM selected five years as the maximum term for negotiated noncompetitive agreements, which considers the lead times needed for a

project applicant to obtain an agreement and enter into related construction contracts. There must be some reasonable time limit within which BOEM expects the resources to be used and the project completed to fulfill the Bureau's statutory obligations and manage the resources responsibly for multiple stakeholders.

Congressional authorization is not the only available condition for demonstrating an extraordinary circumstance justifying a term longer than five years under section 585.335, or for obtaining a negotiated noncompetitive agreement extension under section 585.345. When referring to section 583.307, the preamble to the proposed rule reads: “Examples of extraordinary circumstances where an initial term longer than five years may be appropriate would include a program of multiple individual projects to be carried out over multiple seasons or where the Congressional authorization for a project called for multiple phases.” (81 FR 15190, 15193, March 22, 2016) (emphasis added). These are examples of instances where an initial negotiated noncompetitive agreement term of greater than five years may be considered, and are not meant to be an exhaustive list. Extensions to agreements are addressed in section 583.345 concerning processes for modification and may be granted, in BOEM's discretion, after it re-evaluates the project and conducts any additional reviews that may be appropriate.

583.345 What is the process for extending or modifying an agreement?

*Comment:* A commenter expressed concern that BOEM would not be able to modify an agreement.

*Response:* Per section 583.345, an agreement may be extended or modified; the rule provides a process for requesting such an amendment.

#### IV. Legal and Regulatory Analysis

##### *Regulatory Planning and Review* (Executive Order (E.O.) 12866)

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA), a part of the OMB, will review all significant rules. OIRA has determined that this rule is not significant.

(1) A regulatory impact analysis is not required. This rule formalizes existing policies and procedures that govern the use of OCS sand, gravel, and/or shell resources. The existing policies, procedures, consultations and monitoring requirements for the noncompetitive use of OCS sand, gravel, and/or shell resources are longstanding

and have remained relatively consistent for two decades. This rule does not materially change the existing requirements for authorizing the use of OCS sand, gravel, and/or shell resources through leases or MOAs for shore protection, beach or wetlands restoration by a Federal, state or local government agency, or for construction projects authorized or funded, in whole or in part, by the Federal Government. The regulatory baseline is essentially the same as the rule. BOEM believes that any changes between the current BOEM process and this rule are immaterial and would not impose additional compliance obligations or costs upon the regulated entities.

Formalizing the existing conveyance process will provide certainty to the public entities requesting noncompetitive leases or MOAs for OCS sand, gravel, and/or shell resources. BOEM believes there is a benefit to the regulated entities in the form of regulatory certainty when Federal, state and local government agencies desire to use OCS sand, gravel, and/or shell resources for qualifying projects. Entities affected by this rulemaking had the opportunity to comment through the rulemaking process on the proposed provisions, which are consistent with current practices for the conveyance of sand, gravel, and/or shell resources.

(2) This rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. It reflects the existing process developed over the life of the program in cooperation with other Federal agencies, including the U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS) and U.S. Army Corps of Engineers, and state and local governments.

(3) This rule does not have an annual effect on the economy of \$100 million or more and does not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities. This rule simply codifies BOEM's longstanding existing practice.

(4) This rule does not alter the budgetary effects of existing entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(5) This rule does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.



### *Improving Regulation and Regulatory Review (E.O. 13563)*

E.O. 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the nation's regulatory system to promote predictability; reduce uncertainty; and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order 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. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. BOEM has developed this rule in a manner consistent with these requirements.

### *Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)*

This rule is not an E.O. 13771 regulatory action because it is not significant under E.O. 12866.

### *Regulatory Flexibility Act (RFA)*

BOEM certifies this rule would not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Small public entities affected by this rulemaking may be cities, counties, towns, townships, villages or special districts, with a population of less than 50,000. Small entities are occasionally parties to an agreement for the use of OCS sand, gravel, and/or shell resources. Over the last two decades, BOEM has issued nearly 50 leases or MOAs with 22 parties, of which five were small public entities. Four out of the five small public entities received significant Federal cost-shares to conduct beach replenishment projects. The application and monitoring requirements are necessary to comply with Federal law and provide BOEM and the public with the best information on the topographic changes in the OCS borrow areas due to dredging. Since BOEM is not proposing any material changes to the longstanding requirements for the use of OCS sand, gravel, and/or shell resources, this rulemaking does not have a substantial effect on small entities.

### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from

small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of BOEM enforcement activities, you may call 1-888-734-3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

This rule is not a major rule under the SBREFA (5 U.S.C. 804 (2)). 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.

### *Unfunded Mandates Reform Act*

This rule would not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

### *Takings Implication Assessment (E.O. 12630)*

Under the criteria in E.O. 12630, this rule will not have significant takings implications. The rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

### *Federalism (E.O. 13132)*

Under the criteria in E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule does not substantially and directly affect the relationship between the Federal and state and local governments. To the extent that State and local governments have a role in OCS activities, this rule would not affect that role. A Federalism Assessment is not required.

### *Civil Justice Reform (E.O. 12988)*

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and

ambiguity and be written to minimize litigation; and,

- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

### *Consultation With Indian Tribes (E.O. 13175)*

The U.S. Department of the Interior (DOI) strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. BOEM's Tribal Liaison Officer has certified that this regulation does not have tribal implications as defined in section 1(a) of E.O. 13175 and has determined that the regulation does not have substantial and direct effects on federally recognized tribes or any Alaska Native Corporation established pursuant to the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 *et seq.*)

As it relates to any federally recognized Indian tribe, this rule merely formalizes existing policies and procedures that govern the use of OCS sand, gravel, and/or shell resources. The existing policies, procedures, consultations and monitoring requirements for the noncompetitive use of OCS sand, gravel, and/or shell resources are longstanding and have remained relatively consistent for two decades. If BOEM determines an individual project authorized under this part may have effects on federally recognized tribes or any Alaska Native Corporation, BOEM will initiate consultation as soon as possible consistent with E.O. 13175 and DOI tribal consultation policies. A tribe or Alaska Native Corporation may also request BOEM to initiate consultation pursuant to E.O. 13175.

### *Paperwork Reduction Act (PRA) of 1995*

This rule contains a collection of information request that was submitted to OMB for review and approval under 44 U.S.C. 3501 *et seq.* The Paperwork Reduction Act (44 U.S.C. 3501-3521) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a "collection of information," unless it has a currently valid OMB control number. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal Agency (44 U.S.C. 3502; 5 CFR 1320.2(c) and (k)).

BOEM included a request for approval of a collection of information in the

proposed rule. OMB approved the collection for the final rule under control number 1010–0191 for a total of 243 burden hours. The final rule adds a new part 583 to address the use of OCS sand, gravel, and/or shell resources for shore protection or replenishment, wetland restoration, or qualified construction projects. This part describes the negotiated noncompetitive agreement process for qualifying projects and codifies procedures.

The title of the IC request is “30 CFR 583, Negotiated Noncompetitive Agreements for the Use of Sand, Gravel, and Shell Resources on the OCS.” Respondents are other Federal, state, and local government agencies; corporations; and individual entities. Responses will primarily be required to obtain or retain a benefit. The frequency of response will vary depending on the requirement. BOEM will protect proprietary information according to 30 CFR 550.197, “Data and information to be made available to the public or for limited inspection,” the Freedom of

Information Act (5 U.S.C. 552) and its implementing regulations at 43 CFR part 2. BOEM will collect the information under this part to evaluate applications for leases/agreements to access sand, gravel, or shell resources on the OCS; to balance multiple uses of the OCS; and to monitor activities for environmental protection and safety.

In response to the proposed rule, BOEM received two comments that addressed aspects of the information collection for this rulemaking and are summarized below. One commenter suggested that the required information submitted with their permit application is duplicative of the information submitted in a Clean Water Act application. In cases where the information is duplicative in nature, BOEM will allow submission of the information in the Clean Water Act permit application to BOEM to comply with the filing requirements of this rule. However, BOEM did not change the burden hours for this requirement, because we do not have sufficient data

to estimate how many parties seeking agreements will be able to use this means of reducing the burdens of the application process. This comment is addressed in more detail in the preamble of this final rule.

Another commenter focused on consultation with the fishing industry regarding renewable energy projects, which is outside the scope of this rulemaking. This commenter stated that the information request does not include any provision requiring consultation with the fishing industry or reporting requirements that would ensure a project is compatible with consideration of fishing rights. However, such outreach and coordination does occur through the NEPA, MSFCMA and other consultation processes.

The information collection burdens were not changed from the proposed rule. The following table provides a breakdown of the IC requirements and burdens in this part.

BURDEN TABLE

Citation 30 CFR 583	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
<b>Subpart A—General—Federal, State, &amp; local governments</b>				
125 .....	Apply for reconsideration to the BOEM Director within 15 days of notification; include statement of reasons; 1 copy to program office.	2	1	2
<b>Subpart A—General—Corporations</b>				
125 .....	Apply for reconsideration to the BOEM Director within 15 days of notification; include statement of reasons; 1 copy to program office.	2	1	2
<b>Subpart A—General—Individuals</b>				
125 .....	Apply for reconsideration to the BOEM Director within 15 days of notification; include statement of reasons; 1 copy to program office.	2	1	2
Total Subpart A .....			3	6
<b>Subpart C—OCS Sand, Gravel, &amp; Shell Resources Negotiated Agreements—State &amp; local governments</b>				
300 .....	Submit to BOEM a written request to obtain agreement; including, but not limited to: Detailed description of project; maps (geographic coordinates); G&G data; description/documentation of environmental evaluations; target dates; description of parties involved; required permits (status of/potential conflicts); points of contact info. for all parties involved; statement of funding.	10	4	40
305; 310(d) .....	Submit additional information as requested by BOEM .....	5	1	5
315(b) .....	Request that the BOEM Director reconsider a disapproved agreement.	Burden covered under 30 CFR part 583, subpart A		2
315(c)–(e) .....	Review and comment on draft agreement; sign and return copies for execution by BOEM.	8	3	24

## BURDEN TABLE—Continued

Citation 30 CFR 583	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
335(a) .....	Submit written notification to BOEM once resources authorized are obtained.	1	1	1
340 .....	Assure all contractors comply with 2 CFR part 180 & 2 CFR part 1400 in contract/transaction.	2	1	2
345 .....	Submit written request to extend or modify agreement to BOEM within 180 days before expiration; submit any other documentation requested by BOEM; sign and return amendment; request that the BOEM Director reconsider a disapproved request to extend or modify.	2	2	4
345(b) .....	Submit written request for letter amendment .....	1	1	1
<b>Subpart C—OCS Sand, Gravel, &amp; Shell Resources Negotiated Agreements—Corporations</b>				
300 .....	Submit to BOEM a written request to obtain agreement; including, but not limited to: Detailed description of project; maps (geographic coordinates); G&G data; description/documentation of environmental evaluations; target dates; description of parties involved; required permits (status of potential conflicts); points of contact info. for all parties involved; statement of funding.	10	4	40
305; 310(d) .....	Submit additional information as requested by BOEM .....	5	1	5
315(b) .....	Request that the BOEM Director reconsider a disapproved agreement.	Burden covered under 30 CFR part 583, subpart A		2
315(c)–(e) .....	Review and comment on draft agreement; sign and return copies for execution by BOEM.	8	3	24
335(a) .....	Submit written notification to BOEM once resources authorized are obtained.	1	1	1
340 .....	Assure all contractors comply with 2 CFR part 180 & 2 CFR part 1400 in contract/transaction.	2	1	2
345 .....	Submit written request to extend or modify agreement to BOEM within 180 days before expiration; submit any other documentation requested by BOEM; sign and return amendment; request that the BOEM Director reconsider a disapproved request to extend or modify.	2	2	4
345(b) .....	Submit written request for letter amendment .....	1	1	1
<b>Subpart C—OCS Sand, Gravel, &amp; Shell Resources Negotiated Agreements—Individuals</b>				
300 .....	Submit to BOEM a written request to obtain agreement; including, but not limited to: Detailed description of project; maps (geographic coordinates); G&G data; description/documentation of environmental evaluations; target dates; description of parties involved; required permits (status of potential conflicts); points of contact info. for all parties involved; statement of funding.	10	4	40
305; 310(d) .....	Submit additional information as requested by BOEM .....	5	1	5
315(b) .....	Request that the BOEM Director reconsider a disapproved agreement.	Burden covered under 30 CFR part 583, subpart A		2
315(c)–(e) .....	Review and comment on draft agreement; sign and return copies for execution by BOEM.	8	3	24
335(a) .....	Submit written notification to BOEM once resources authorized are obtained.	1	1	1
340 .....	Assure all contractors comply with 2 CFR part 180 & 2 CFR part 1400 in contract/transaction.	2	1	2

BURDEN TABLE—Continued

Citation 30 CFR 583	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
345 .....	Submit written request to extend or modify agreement to BOEM within 180 days before expiration; submit any other documentation requested by BOEM; sign and return amendment; request that the BOEM Director reconsider a disapproved request to extend, modify, or change.	2	2	4
345(b) .....	Submit written request for letter amendment .....	1	1	1
Total Subpart C .....			39	237
Grand Total .....			42	243

An agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it has a currently valid OMB control number. The public may comment, at any time, on the accuracy of the IC burden estimate in this rule and may submit any comments to the Information Collection Clearance Officer, Office of Policy, Regulation and Analysis; Bureau of Ocean Energy Management; VAM-BOEM DIR; 45600 Woodland Road, Sterling, Virginia 20166.

#### *National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. BOEM has analyzed this rule under the criteria of the NEPA and DOI's NEPA implementing regulations at 43 CFR part 46. This rule meets the criteria set forth in 43 CFR 46.210(i) for a Departmental "categorical exclusion" in that this rule is "... of an administrative, financial, legal, technical, or procedural nature ... ." BOEM has also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215.

#### *Information Quality Act (IQA)*

In accordance with the IQA, DOI has issued guidance regarding the quality of information that it relies upon for regulatory decisions. This guidance is available at DOI's Web site at <http://www.doi.gov>.

Send your comments to the U.S. Department of the Interior, Bureau of Ocean Energy Management, Office of Policy, Regulation and Analysis, Attn: IQA Comments, 45600 Woodland Road, VAM-BOEM DIR, Sterling, Virginia 20166.

#### *Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action under the definition in E.O.

13211. A Statement of Energy Effects is not required.

#### *Clarity of This Regulation*

We are required by E.O. 12866, E.O. 12988, and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever helpful.

#### **List of Subjects in 30 CFR Part 583**

Administrative practice and procedure, Beach restoration, Coastal wetlands restoration, Continental shelf, Federal lands, Gravel, Government contracts, Intergovernmental relations, Marine minerals, Marine minerals program, Noncompetitive agreements, Negotiated agreements, Outer Continental Shelf, Reporting and recordkeeping, Sand, Shell resources, and Shore protection.

Dated: September 27, 2017.

**Katharine S. MacGregor,**

*Acting Assistant Secretary—Land and Minerals Management.*

For the reasons stated in the preamble, BOEM amends 30 CFR chapter V by adding 30 CFR part 583 to subchapter B to read as follows:

#### **PART 583—NEGOTIATED NONCOMPETITIVE AGREEMENTS FOR THE USE OF OUTER CONTINENTAL SHELF SAND, GRAVEL, AND/OR SHELL RESOURCES**

##### **Subpart A—General**

Sec.

583.100 What is BOEM's authority for information collection (IC)?

583.105 What is the purpose of this part and to whom does it apply?

583.110 What is BOEM's authority for this part?

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**Authority:** 43 U.S.C. 1334.

##### **Subpart A—General**

##### **§ 583.100 What is BOEM's authority for information collection (IC)?**

The IC requirements contained in part 583 have been approved by OMB under 44 U.S.C. 3501 and assigned control number 1010–0191. The information is being collected to determine if the applicant for a negotiated noncompetitive agreement (agreement)

for the use of sand, gravel, and/or shell resources on the Outer Continental Shelf (OCS) is qualified to enter into such an agreement and to determine if the requested action is warranted. Applicants and parties to an agreement are required to respond to requests related to IC activities.

**§ 583.105 What is the purpose of this part and to whom does it apply?**

The regulations in this part provide procedures for entering into negotiated noncompetitive agreements for the use of OCS sand, gravel, and/or shell resources. The rules of this part apply exclusively to negotiated noncompetitive use of OCS sand, gravel, and/or shell resources and do not apply to competitive leasing of minerals, including oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals that are authorized by an Act of Congress to be produced from "public lands" as defined in section 103 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*).

**§ 583.110 What is BOEM's authority for this part?**

(a) Pursuant to authority granted by section 8(k) of the Outer Continental Shelf Lands Act (OSCLA), as amended (43 U.S.C. 1337(k)), the Secretary has authority to negotiate a noncompetitive agreement for the use of OCS sand, gravel, and/or shell resources:

(1) In a program of, or project for, shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State, or local government agency; or

(2) In a construction project, other than a project described in paragraph (a)(1) of this section, that is funded in whole or in part by or authorized by the Federal Government.

(b) The Secretary has delegated authority to BOEM to administer the negotiated noncompetitive agreement provisions of OSCLA and prescribe the rules and regulations necessary to carry out those provisions.

**§ 583.115 What definitions do I need to know?**

The definitions at 30 CFR 550.105 apply to this part. In addition, when used in this part, the following terms will have the meaning given below:

*Agreement* means a negotiated noncompetitive agreement that authorizes a person to use OCS sand, gravel, and/or shell resources in a program of, or project for, shore protection, beach restoration or coastal wetlands restoration undertaken by one or more Federal, state or local

government agencies, or in a construction project authorized by, or funded in whole or in part by, the Federal government. The form of the agreement will be a Memorandum of Agreement (if one or more of the parties to the agreement, other than BOEM, is a Federal agency) or a lease (if all of the parties to the agreement other than BOEM are non-Federal agencies or persons).

*Amendment* means a modification to the agreement between BOEM and the parties to the agreement that extends or modifies the terms of the agreement.

*Applicant* means any person proposing to use OCS sand, gravel, and/or shell resources for a shore protection, beach restoration or coastal wetlands restoration project undertaken by a Federal, state or local government agency, or a construction project authorized by, or funded in whole or in part by, the Federal Government. If multiple persons or Federal, state, or local governments, other than BOEM, partner on a project they will be considered joint applicants.

*BOEM* means the Bureau of Ocean Energy Management of the U.S. Department of the Interior (DOI).

*Borrow area* means the offshore geographic area(s) or region(s) where OCS sand, gravel, and/or shell resources have been identified for potential use in a specific project.

*Federal agency* means any department, agency, or instrumentality of the United States.

*Local government* means the governing authority at the county or city level with jurisdiction to administer a particular project(s).

*Modification* means the process whereby parties to an agreement and BOEM mutually agree to change, alter or amend an existing agreement.

*Placement area* means the geographic area in which OCS sand, gravel, and/or shell resources, used by agreement, will be placed pursuant to that agreement.

*Program* means a group of related projects that may be the subject of a negotiated noncompetitive agreement for the use of OCS sand, gravel, and/or shell resources.

*Project* means an undertaking that may be the subject of a negotiated noncompetitive agreement for the use of OCS sand, gravel, and/or shell resources.

*Secretary* means the Secretary of the Interior.

**§ 583.120 Who is qualified for a project?**

(a) BOEM may enter into an agreement with any person proposing to use OCS sand, gravel, and/or shell resources for a program of, or project

for, shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, state, or local government agency or in a construction project that is funded in whole or in part by or authorized by the Federal Government.

(b) To request an agreement under this part, the applicant must be:

(1) A Federal, state, or local government agency;

(2) A citizen or national of the United States;

(3) An alien lawfully admitted for permanent residence in the United States, as defined in the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(20));

(4) A private or public corporation organized under the laws of the United States, or of any State or territory thereof; or

(5) An association of such citizens, nationals, resident aliens, or private or public corporations.

(c) When entering into an agreement under this part, all applicants are subject to the requirements of 2 CFR part 180 and 2 CFR part 1400.

**§ 583.125 What are my rights to seek reconsideration of an unfavorable decision by BOEM?**

(a) After being notified of disqualification or disapproval of an agreement or modification, an unsuccessful applicant, or adversely affected party to an agreement, may apply for reconsideration by the Director.

(1) All applications for reconsideration must be submitted to the Director within 15 days of being notified of disqualification or disapproval of an agreement or modification, and must be accompanied by a statement of reasons for the requested reconsideration, with one copy also submitted to the program office whose decision is the subject of the request for reconsideration.

(2) The Director will respond in writing within 30 days.

(b) No appeal rights are available under 30 CFR part 590 and 43 CFR part 4, subpart E.

**§ 583.130 What are the minimum contents of an agreement to use OCS sand, gravel, and/or shell resources?**

Any use of OCS sand, gravel, and/or shell resources in an agreement will be negotiated on a case-by-case basis. The agreement will specify, at a minimum, who may use the OCS sand, gravel, and/or shell resources; the nature of the rights granted, including any terms and conditions and environmental stipulations; and the location, type, and

volume of OCS sand, gravel, and/or shell resources. An authorization to use OCS sand, gravel, and/or shell resources identified in an agreement is not exclusive; BOEM may allow other entities to use OCS sand, gravel, and/or shell resources from the same borrow area if these uses are determined by BOEM to be non-conflicting and do not exceed the availability of the OCS resource.

#### Subpart B—[Reserved]

#### Subpart C—Outer Continental Shelf Sand, Gravel, and/or Shell Resources Negotiated Agreements

##### § 583.300 How do I submit a request for an agreement?

Any person may submit a written request to BOEM to obtain an agreement for the use of OCS sand, gravel, and/or shell resources for use in a program of, or project for, shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, state, or local government agency, or in a construction project that is funded in whole or in part by or authorized by the Federal Government.

(a) The written request must include:

(1) A detailed description of the proposed project for which the OCS sand, gravel, and/or shell resources will be used and how it qualifies as a program or project eligible under OCSLA to use OCS sand, gravel, or shell resources;

(2) A description of the proposed borrow area(s) and placement area(s), along with maps with geographic coordinates depicting the location of the desired borrow area(s), the OCS block number(s), OCS Planning Area(s), OCS Protraction Diagram Designation(s), and the placement area(s). These should include:

(i) A detailed set of digital (*e.g.*, portable document format or pdf) maps with coordinates and navigation features of the desired OCS project area (including borrow area and other project features); and

(ii) Digital geo-referenced spatial and tabular data depicting the borrow area with features, such as geological sampling locations and any hard or live-bottom benthic habitat present;

(3) Any available geological and geophysical data used to select, design, and delineate the borrow area(s) and potential borrow areas considered but not selected for final design in digital format, geo-referenced where relevant. These may include:

(i) Sediment sampling (sediment cores and grab samples) data such as physical

description sheets, photographs, core locations, and grain size analysis; and

(ii) Geophysical data such as subbottom profiler, marine magnetometer, and side-scan sonar data, and bathymetry including geo-referenced navigation survey tracklines, shotpoints, and/or timestamps;

(4) Any other uses of the OCS or infrastructure in the borrow area that are known to the applicant at the time of application submittal;

(5) A description of the environmental evaluations and corresponding documents that have been completed or are being prepared that cover all offshore and onshore components of the project, as applicable;

(6) A target date or date range when the OCS sand, gravel, and/or shell resources will be needed;

(7) A description of the person or government entities undertaking the project;

(8) A list of any permits, licenses or authorizations required for the project and their current status;

(9) A description of any potential inconsistencies with state coastal zone management plans and/or any other applicable state and local statutes, regulations or ordinances;

(10) The name, title, telephone number, mailing address and email address of any points of contact for any Federal agencies, state, or local governments, and contractor(s) with whom the applicant has contracted or intends to contract;

(11) A statement explaining who authorized the project and how the project is to be funded, indicating whether the project is federally funded, in whole or in part, and whether the project is authorized by the Federal Government; and

(12) For any other Federal, state, or local government agency identified in the application, the name, title, mailing address, telephone number, and email address of both a primary and a secondary point of contact for the agency.

(b) [Reserved]

##### § 583.305 How will BOEM determine if a project qualifies?

BOEM will make a determination as to whether the project, as described in § 583.300, qualifies for a negotiated noncompetitive agreement for the use of OCS sand, gravel, and/or shell resources. Within 15 business days of receipt of the application, BOEM will determine if the application is complete or will request additional information. After it has determined the application is complete, BOEM will review the application and notify the applicant in

writing whether the project qualifies for an agreement. In determining whether a project qualifies for an agreement, BOEM will consider, among other criteria, the following:

(a) The project purpose;

(b) Other uses of OCS sand, gravel, and/or shell resources from the same borrow area that are currently or were previously authorized by BOEM for other projects or programs, including the location, type and volume of such resources;

(c) The project funding source(s) and amounts;

(d) The proposed design and feasibility of the project;

(e) Any potential environmental and safety risks associated with the project;

(f) Other federal interests located near or within the specified borrow area;

(g) Comments received from potentially affected state or local governments, if any;

(h) The applicant's background and experience working on similar projects or activities;

(i) Whether the project operations can be conducted in a manner that protects the environment and promotes orderly development of OCS mineral resources;

(j) Whether activities can be conducted in a manner that does not pose a threat of serious harm or damage to, or waste of, any natural resource, any life (including fish and other aquatic life), property, or the marine, coastal, or human environment; and

(k) Whether the project is consistent with the requirements of applicable statutes and their implementing regulations, which may include, but are not limited to, the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*), the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*), the Marine Debris Research, Prevention, and Reduction Act (MDRPPRA) (33 U.S.C. 1951 *et seq.*), the Marine Plastic Pollution Research and Control Act (MPPRCA) (33 U.S.C. 1901 *et seq.*), the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1381 *et seq.*), and the International Convention for the Prevention of Pollution from Ships (MARPOL), MARPOL-Annex V Treaty.

##### § 583.310 What process does BOEM use to technically and environmentally evaluate a qualified project?

(a) Once BOEM has determined a project qualifies for an agreement, BOEM will begin the project evaluation process to decide whether to enter into a negotiated noncompetitive agreement.

(b) BOEM will coordinate with relevant Federal agencies, State, and local governments and any potentially affected federally recognized Indian

tribes or Alaska Native Corporations in the project evaluation.

(c) BOEM will evaluate the project and additional information provided pursuant to §§ 583.300 and 583.305, to determine if the information is sufficient to conduct necessary technical and environmental reviews to comply with the requirements of applicable statutes and regulations, which may include, but are not limited to: OCSLA (43 U.S.C. 1331 *et seq.*), the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the ESA (16 U.S.C. 1531 *et seq.*), the MMPA (16 U.S.C. 1361 *et seq.*), the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) (16 U.S.C. 1801 *et seq.*), the National Historic Preservation Act (NHPA) (54 U.S.C. 300101 *et seq.*), and the Coastal Zone Management Act (CZMA) (16 U.S.C. 1451 *et seq.*).

(d) BOEM will not enter into a negotiated noncompetitive agreement with the applicant until the information requested for the evaluation has been provided and BOEM has evaluated it.

**§ 583.315 What is the process for negotiating and executing an agreement?**

(a) Upon completion of the technical, environmental and other evaluations established in §§ 583.305 and 583.310, BOEM will decide whether to enter into a negotiated noncompetitive agreement with the applicant for use of OCS sand, gravel, or shell resources for its proposed project.

(b) If BOEM decides not to enter into such an agreement, BOEM will inform the applicant of its reasons for not doing so. An applicant may ask the BOEM Director for reconsideration of this decision, in accordance with § 583.125(a).

(c) If BOEM has decided to enter into a negotiated noncompetitive agreement with the applicant, BOEM will negotiate the terms and conditions of the agreement with the applicant and prepare a draft agreement for the applicant's review.

(d) After considering comments and suggestions from the applicant, BOEM, at its discretion, may finalize the agreement and distribute it to the applicant for signature.

(e) Upon receipt of the agreement with the applicant's signature, BOEM will execute the agreement. A copy of the executed agreement will be mailed to the parties.

**§ 583.320 What kinds of information must be included in an agreement?**

Every agreement is negotiated on a case-by-case basis, but at a minimum, must include:

(a) An agreement number, as assigned by BOEM;

(b) The purpose of, and authorities for, the agreement;

(c) Designated and delineated borrow area(s);

(d) A project description, including the timeframe within which the project is to be started and completed;

(e) The terms and conditions of the agreement, including any reporting requirements, environmental mitigations, and operating parameters;

(f) All obligations of the parties; and

(g) The signatures of appropriate individuals authorized to bind the applicant and BOEM.

**§ 583.325 What is the effective date of an agreement?**

The agreement will become effective on the date when all parties to the agreement have signed it.

**§ 583.330 How will BOEM enforce the agreement?**

(a) Failure to comply with any applicable law or any provision, term, or condition of the agreement may result in the termination of the agreement, a referral to an appropriate Federal or State agency for enforcement, or both. Termination of the agreement for noncompliance will be in the sole discretion of the Director.

(b) The failure to comply in a timely and satisfactory manner with any provision, term or condition of the agreement may delay or prevent BOEM's approval of future requests for use of OCS sand, gravel, and/or shell resources on the part of the parties to the agreement.

**§ 583.335 What is the term of the agreement?**

(a) An agreement will terminate upon one of the following, whichever occurs first:

(1) The agreement expires by its own terms, unless the term is extended prior to expiration under § 583.345;

(2) The project is terminated, as set forth in § 583.350; or

(3) A party to the agreement notifies BOEM, in writing, that sufficient OCS sand, gravel, and/or shell resources, up to the amount authorized in the agreement, have been obtained to complete the project.

(b) Absent extraordinary circumstances, no agreement will be for a term longer than five years from its effective date.

**§ 583.340 What debarment or suspension obligations apply to transactions and contracts related to a project?**

The parties to an agreement must ensure that all contracts and

transactions related to an agreement issued under this part comply with the suspension and debarment regulations in 2 CFR part 180 and 2 CFR part 1400.

**§ 583.345 What is the process for extending or modifying an agreement?**

(a) Unless otherwise provided for in the agreement, the parties to the agreement may submit to BOEM a written request to extend or modify an agreement. BOEM is under no obligation to extend or modify an agreement and cannot be held liable for the consequences of the expiration of an agreement. With the exception of paragraph (b) of this section, any such requests must be made at least 180 days before the term of the agreement expires. BOEM will respond to the request for modification within 30 days of receipt and request any necessary information and evaluations to comply with § 583.305. BOEM may approve the request, disapprove it, or approve it with modifications subject to the requirements of § 583.305.

(1) If BOEM approves a request to extend or modify an agreement, BOEM will draft an agreement modification for review by the parties to the agreement in the form of an amendment to the original agreement. The amendment will include:

(i) The agreement number, as assigned by BOEM;

(ii) The modification(s) agreed to;

(iii) Any additional mitigation required; and

(iv) The signatures of the parties to the agreement and BOEM.

(2) If BOEM disapproves a request to extend or modify an agreement, BOEM will inform the parties to the agreement of the reasons in writing. Parties to the agreement may ask the BOEM Director for reconsideration in accordance with § 583.125.

(b) By written request, for strictly minor modifications that do not change the substance of the project or the analyzed environmental effects of the project, including but not limited to, the change of a business address, the substitution of a different Federal, State or local government agency contact, or an extension of less than 30 days, parties to the agreement may memorialize the minor modification in a letter from BOEM to the parties indicating the request has been granted.

**§ 583.350 When can an agreement be terminated?**

(a) The Director will terminate any agreement issued under this part upon proof that it was obtained by fraud or misrepresentation, after notice and an opportunity to be heard has been afforded to the parties of the agreement.



(b) The Director may immediately suspend and subsequently terminate any agreement issued under this part when:

(1) There is noncompliance with the agreement, pursuant to § 583.330 (a); or

(2) It is necessary for reasons of national security or defense; or

(3) The Director determines that:

(i) Continued activity under the agreement would cause serious 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;

(ii) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) The advantages of termination outweigh the advantages of continuing the agreement.

(c) The Director will immediately notify the parties to the agreement of the suspension or termination. The Director will also mail a letter to the parties to the agreement at their record post office address with notice of any suspension or termination and the cause for such action.

(d) In the event that BOEM terminates an agreement under this section, none of the parties to the agreement will be entitled to compensation as a result of expenses or lost revenues that may result from the termination.

[FR Doc. 2017-21233 Filed 10-2-17; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket Number USCG-2017-0727]

RIN 1625-AA08

#### Special Local Regulation; Tennessee River, Chattanooga, TN

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a special local regulation for all navigable waters of the Tennessee River from mile marker (MM) 453.0 to MM 453.6. This action is necessary to provide for the safety of life on these navigable waters near Chattanooga, TN during the Swim the Suck marine event. Entry into, transiting through, or anchoring within this regulated area is prohibited unless authorized by the

Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

**DATES:** This rule is effective from 9:15 a.m. through 9:45 a.m. on October 14, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0727 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice of enforcement, call Petty Officer Jonathan Braddy, Marine Safety Detachment Nashville, U.S. Coast Guard, telephone 615-736-5421, email [MSDNashville@uscg.mil](mailto:MSDNashville@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations  
COTP Captain of the Port Sector Ohio Valley  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

##### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable.

We must establish this special local regulation by October 14, 2017 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. The NPRM process would delay the establishment of the special local regulation until after the scheduled date of the marine event and jeopardize public safety.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable and contrary to the public

interest because immediate action is necessary to protect persons and property from the dangers associated with the marine event.

##### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the Swim the Suck marine event from 9:15 a.m. through 9:45 a.m. on October 14, 2017 will present a safety concern for all navigable waters on the Tennessee River extending from mile marker (MM) 453.0 to MM 453.6. The purpose of this rulemaking is to ensure the safety of life and vessels on the navigable waters before, during, and after the scheduled event.

##### IV. Discussion of the Rule

This rule establishes a special local regulation from 9:15 a.m. through 9:45 a.m. on October 14, 2017 for all navigable waters on the Tennessee River from MM 453.0 to MM 453.6. The duration of the special local regulation is intended to ensure the safety of life and vessels on these navigable waters before, during, and after the scheduled event. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative.

##### V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

###### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. Vessel traffic will be able to safely navigate through the affected area before