

UNITED STATES DEPARTMENT OF THE INTERIOR

Policy Statement on the Role of the Department of the Interior for Workplace Safety and Health Requirements for Renewable Energy Facilities on the Outer Continental Shelf

May 13, 2019

Purpose and Applicability of Policy Statement

This policy statement clarifies the role of the Department of the Interior (DOI) in regulating workplace safety and health conditions on renewable energy facilities on the Outer Continental Shelf (OCS). This policy does not apply to workplace safety and health requirements for (a) OCS marine hydrokinetic (i.e., wave, tidal, and ocean current) energy projects, for which operational requirements are within the jurisdiction of the Federal Energy Regulatory Commission,¹ or (b) OCS renewable energy facility support vessels, which are under the authority of the United States Coast Guard (USCG).

Statutory Authority for DOI Regulation of Workplace Safety and Health

The Energy Policy Act of 2005, Pub. L. 109-58, amended the Outer Continental Shelf Lands Act (OCSLA) to grant the Secretary of the Interior (Secretary) the authority to oversee renewable energy activities on the OCS (43 U.S.C. § 1337(p)). Under section 8(p) of OCSLA, the Secretary has the authority to issue leases, rights-of-way (ROW), and rights-of-use and easements (RUE) on the OCS for activities that produce, or that support the production, transportation, or transmission of, energy from sources other than oil and gas, not otherwise authorized by other laws. Section 8(p) also gives the Secretary the specific authority to issue regulations to implement its provisions.²

Pursuant to 43 U.S.C. § 1337(p)(4)(A), the Secretary has the statutory authority to ensure that activities conducted on renewable energy leases are carried out in a manner that provides for safety. The DOI has exercised this authority by promulgating regulations that govern renewable energy activities, set forth in 30 CFR Part 585, including provisions to “[e]nsure that renewable energy activities on the OCS and activities involving the alternate use of OCS facilities for energy or marine-related purposes are conducted in a safe and environmentally sound manner, in conformance with the requirements of subsection 8(p) of the OCS Lands Act, other applicable laws and regulations, and the terms of [the] lease, ROW grant, RUE grant, or Alternate Use RUE grant.”³ These include requirements for Safety Management Systems and self-inspections, as well

¹ See Memorandum of Understanding Between the U.S. Department of the Interior and Federal Energy Regulatory Commission, Apr. 9, 2009.

² 43 U.S.C. § 1337(p)(8).

³ 30 CFR § 585.101(c).

as provisions for agency-conducted inspections, incident reporting, investigations, and enforcement.

DOI Regulatory Requirements Regarding Workplace Safety and Health

Under 30 C.F.R. Part 585 subpart H, regulated entities⁴ must implement a Safety Management System (SMS) for activities conducted on OCS renewable energy leases.⁵ An SMS provides a structured approach for the identification of hazards and risks, management of risks through identified methods, implementation of policies and procedures to ensure safety, and periodic assessment of conformance to expectations. An SMS addresses the management of both occupational and process safety risks associated with construction, operation, maintenance, and decommissioning of renewable energy facilities.

In addition to SMS requirements, DOI has promulgated regulations requiring self- and agency-conducted inspections, incident and equipment failure reporting, and providing a range of enforcement tools.⁶

If a regulated entity fails to design projects or conduct activities in a manner that ensures safety, or otherwise fails to comply with all applicable laws and regulations, DOI's available enforcement actions include issuing noncompliance notices, ordering cessation of activities, cancelling a lease or grant, and assessing civil or criminal penalties.⁷

Role of DOI

DOI will act as the principal federal agency for the regulation and enforcement of safety and health requirements for OCS renewable energy facilities.⁸ DOI considers its regulatory program, described in part above, to occupy the field of workplace safety and health for personnel and others on OCS renewable energy facilities, and will preempt the applicability of Occupational Safety and Health Administration (OSHA) regulations. *See* 29 U.S.C. § 653(b)(1).

In carrying out its responsibilities on the OCS, DOI will maintain a working relationship with OSHA, including collaboration and consultation on the applicability and appropriateness of workplace safety and health standards for the offshore wind industry and other offshore renewable energy industries.

⁴ The requirements are applicable to "You," which is defined to include "an applicant, lessee, the operator, or designated operator, ROW grant holder, RUE grant holder, or Alternate Use RUE grant holder under this part, or the designated agent of any of these, or the possessive of each, depending on the context," as well as "contractors and subcontractors of the entities" listed previously. 30 CFR § 585.112.

⁵ 30 CFR § 585.810.

⁶ 30 CFR §§ 585.400–402, 585.813–833.

⁷ 30 CFR §§ 585.400–402.

⁸ DOI notes that the USCG regulations do not extend to workplace safety on OCS renewable energy facilities.

In addition, DOI will continue to maintain a collaborative working relationship with the USCG to share relevant safety and training information and promote safety on the OCS.

In implementing this policy statement, DOI may amend its regulations or issue guidance related to the workplace health or safety of employees on renewable energy facilities on the OCS.