



May 14, 2026

VIA ELECTRONIC SUBMISSION

The Honorable Liz Klein
Director
Bureau of Ocean Energy Management
Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

**Re: Risk Management and Financial Assurance for OCS Lease and Grant Obligations,
Docket No. BOEM-2025-0042.**

Dear Director Klein:

On March 9, 2026, the Department of the Interior's Bureau of Ocean Energy Management (BOEM) published a proposed rule updating the risk management and financial assurance framework governing Outer Continental Shelf (OCS) lease and grant obligations¹. This letter constitutes the Office of Advocacy's (Advocacy) public comments on the proposed rule. Advocacy strongly urges BOEM to enact the proposed rule without amendment and commends BOEM for its efforts to provide regulatory relief for the small businesses who bear the brunt of the obligations under the current rule.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent voice within the executive branch that seeks to ensure small business concerns are heard in the federal regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The views expressed by Advocacy do not necessarily reflect the views of the Small Business Administration or the Administration.

¹ 91 Fed. Reg. 11212 (March 9, 2026).

The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.⁴ If a rule will not have a significant economic impact on a substantial number of small entities, agencies may certify the it as such and submit a statement of the factual basis for such a determination that adequately supports its certification.⁵

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁶ The agency must include a response to these written comments in any explanation or discussion accompanying the final rule’s publication in the *Federal Register*, unless the agency certifies that the public interest is not served by doing so.⁷

Advocacy’s comments are consistent with Congressional intent underlying the RFA, that “[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public.”⁸

B. The 2024 BOEM Final Rule and Advocacy’s Comments

In 2024, BOEM enacted a financial assurance rule that required less creditworthy lessees to post supplemental financial assurances, such as surety bonds, to cover offshore decommissioning costs. Advocacy submitted a public comment on the 2024 rule, noting that it effectively burdened small business lessees by forcing them to provide duplicative financial assurances.⁹ The 2024 rule largely ignored the fact that almost all such leases featured a well-capitalized predecessor lessee who remained jointly and severally liable for those decommissioning costs under the Department of Interior regulations and their lease terms.

As outlined in our previous comment letter, Advocacy argued that BOEM’s financial assurance framework disproportionately harmed small businesses by ignoring the joint and several liability of well-capitalized predecessor leaseholders. Advocacy explained that by failing to account for these predecessors, the rule effectively forced small lessees to pay twice for decommissioning liabilities – once during the private lease acquisition and again to the federal government – which effectively shifted the liability burden from initial leaseholders directly onto small businesses.

² Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

³ Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

⁴ 5 U.S.C. § 603.

⁵ *Id.* § 605(b).

⁶ Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

⁷ *Id.*

⁸ Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

⁹ U.S. Small Bus. Admin., Off. of Advoc., Comment Letter on Risk Management and Financial Assurance for OCS Lease and Grant Obligations (Aug. 28, 2023) <https://advocacy.sba.gov/2023/08/28/advocacy-comments-on-bureau-of-ocean-energy-management-proposed-rule-for-outer-continental-shelf-oil-and-gas-financial-assurance/>

Advocacy recommended that BOEM require financial assurance solely from the initial leaseholder to allow rational actors to allocate risk through private contracts and prevent this market distortion as a “first best” solution. Barring this, Advocacy recommended that BOEM institute a waiver for leases tied to creditworthy predecessors and narrowly tailor the rule to focus on the unfunded decommission liability of actual concern.¹⁰

C. The BOEM Proposed Rule Makes Key Changes that Meet the Concerns Raised in Advocacy’s 2023 Comments

The current proposed rule reexamines the framework established under the 2024 rule and makes three primary changes to reduce unnecessary burdens:

1. It ensures the consideration of predecessor lessee finances by instituting an exemption for cases involving a credit worthy predecessor.
2. It reduces the creditworthiness threshold rating for lessees from an investment grade risk rating of BBB- to a moderate risk rating of BB-.
3. It reduces the decommissioning cost estimate required to be covered by financial assurance from a P70 level (70 percent probability of meeting or exceeding the full cost of decommissioning) to a P50 level (50 percent probability).

BOEM estimates these changes will result in an approximate 90 percent reduction in financial assurance requirements, dropping the total maximum value of assurance to be committed from \$7 billion to roughly \$0.8 billion. Furthermore, BOEM estimates that the proposed rule will reduce the number of affected businesses from 52 to as few as 5.¹¹ Nearly all the estimated burden reductions from the proposed rule will benefit small businesses. Although the proposed rule maintains supplemental financial assurance requirements in some conditions, it offers complete relief from these obligations in the first two cases noted above. Under the proposed rule, when small businesses are required to secure financial assurance, their burden is reduced by the lower decommissioning cost estimate. The proposed P50 estimate recognizes the risk that the method statistically assessing decommissioning costs may overestimate and therefore overburden those businesses.

Certain other changes, such as the explicit recognition of dual-obligee instruments (*e.g.*, bonds that name both the predecessor lessee and the federal government as beneficiary), removal of the required appeal bond, and as allowance of the BOEM Regional Director to accept a third-party decommissioning contract or schedule in lieu of supplemental financial assurance – permit small entities the room to ensure that financial assurance obligations are right-sized to their actual costs for decommissioning.

¹⁰ *See id.*, page 5.

¹¹ *See* Bureau of Ocean Energy Mgmt., Risk Management, Financial Assurance and Loss Prevention: Initial Regulatory Impact Analysis, pages 47-50, <https://www.regulations.gov/document/BOEM-2025-0042-0003>.

II. BOEM’s 2024 Final Rule Created Unnecessary Compliance Costs for Small Businesses.

A. By Ignoring the Financial Strength of Jointly Liable Predecessor Lessees, the 2024 Rule Distorted the Market and Forced Small Businesses to Pay Twice for Decommissioning Liabilities.

In our previous comment letter, Advocacy argued that the financial assurance framework disproportionately harmed small businesses by ignoring a fundamental characteristic of OCS leases: the joint and several liability of well-capitalized predecessor leaseholders. Because predecessors remain legally responsible for decommissioning obligations accrued during their tenure, the secondary market already accounted for this risk. Sophisticated sellers perform due diligence and often require private financial assurances from small business buyers during the sale of leases. According to affected small entities contacted by Advocacy during the comment period for both the 2024 rule and current proposed rule, buyers and sellers negotiate the distribution of decommissioning liabilities between them by connecting the amount of the financial assurance purchased by buyers to the purchase price (higher purchase prices commanded lower financial assurance obligations).¹²

By refusing to consider the financial capacity of these predecessor lessees, the 2024 rule effectively set aside these agreements and forced small lessees to purchase duplicative assurance bonds. The 2024 rule was notably silent on the question of whether previously negotiated bonds were eligible for use in meeting the supplemental financial assurance obligations, even though the purpose of those bonds was to provide financial assurance to a jointly and severally liable party that a large share of the decommissioning costs would be covered. This framework insulated predecessor leaseholders from their liabilities, removed the market-driven incentive for those sellers to perform due diligence, and shifted the financial burden of ensuring taxpayer protection from large predecessors onto small businesses.

B. The 2024 Rule Established an Overly Stringent Creditworthiness Threshold that Trapped Small Businesses in Costly Bonding Requirements, Despite Negligible Default Risks

The 2024 rule set the creditworthiness threshold for avoiding supplemental financial assurance at an investment-grade rating of BBB- (S&P) or equivalent. As Advocacy cautioned in 2023, this metric was poorly tailored to the actual financial risk posed to the taxpayer and disproportionately captured small businesses. By drawing the line at BBB-, BOEM penalized small businesses that lacked top-tier credit ratings. According to BOEM’s Regulatory Impact Analysis (RIA) for the 2024 rule, an estimated 44 of 407 (10.8%) of small businesses operating in the Outer Continental Shelf as of 2021 qualified as Tier 1 (BBB- or better), compared to 109 of 129 (84.5%) of large businesses.¹³ The current RIA shows that substantially fewer companies continue to operate leases, but that the number of small businesses achieving a Tier 1 credit

¹² See *id.*, page 3.

¹³ Bureau of Ocean Energy Mgmt., Risk Management, Financial Assurance and Loss Prevention: Initial Regulatory Impact Analysis Table 31 (June 2023), <https://www.boem.gov/sites/default/files/documents/about-boem/BOEM-2023-0027-0002.pdf>.

rating is only 40 compared to 79 large businesses.¹⁴ Extraction and development industries are highly capital intensive and inherently risky activities in which the large majority of companies do not warrant investment grade credit worthiness. As BOEM's data shows, few small businesses are able to achieve the ratings threshold set under the 2024 rule and thereby avoid paying for supplemental financial assurance.

The severe compliance costs imposed on these small entities were wildly disproportionate to the actual risk they presented, needlessly draining capital from small offshore operators that had excellent track records of meeting their obligations. As noted in the Regulatory Impact Analysis (RIA) for this proposed rule, BOEM has found that the historical one-year default rate for BB-rated companies has been a mere 0.87 percent, compared to 0.21 percent for the previous BBB-threshold.¹⁵ This demonstrates that BB- rated entities have remained highly reliable and that the previous threshold unnecessarily captured financially stable operators.

C. The 2024 Rule's Reliance on Highly Conservative P70 Decommissioning Estimates Unnecessarily Locked Up Small Business Capital without Meaningfully Increasing Taxpayer Protection

The 2024 rule required lessees to provide supplemental financial assurance based on a P70 probabilistic estimate, representing a 70 percent probability that the estimate would fully cover the decommissioning costs. Consistent with Advocacy's 2023 observation that BOEM was demanding assurances far exceeding the actual financial risk to the United States, this mandate over-collateralized decommissioning obligations. Because operators are legally required to complete decommissioning regardless of the final cost, and because existing assets and proven reserves provide a baseline of security, demanding collateral at the P70 level forced small businesses to guard against especially low probability cost overruns. This requirement trapped critical small business capital in unnecessary and excessive protection, preventing those funds from being reinvested into active offshore exploration, development, and eventual decommissioning operations. Further, this financial squeeze likely increased the probability of default by reducing lessee's available assets to pay real liabilities.

D. Affected Small Businesses Reported Difficulty Obtaining Appropriately Sized Supplemental Financial Assurance under the 2024 Rule

Advocacy reached out to small, independent operators who had previously commented on the 2024 rule to learn more about its small business impacts. The following comments made to Advocacy are reflective of the key issues raised above that the proposed rule alleviates:

- One of the largest affected small entities had already purchased between \$1 and 1.5 billion in surety bonds to satisfy predecessor liability on behalf of sellers. These bonds do not relieve the predecessor beneficiaries of their legal obligations to the government,

¹⁴ Bureau of Ocean Energy Mgmt., Risk Management, Financial Assurance and Loss Prevention: Initial Regulatory Impact Analysis Table 23 (March 2026), <https://www.regulations.gov/document/BOEM-2025-0042-0003>.

¹⁵ *Id.* at page 13.

meaning that the bonds ultimately exist to satisfy decommissioning cost obligations without being recognized under the 2024 rule. This entity under the 2024 rule could have been required to purchase a duplicate set of bonds to cover the same leases.

- All small entities who met with Advocacy agreed that the market to supply bonds meant to satisfy the 2024 rule was minimal to nonexistent. Instead of selling bonds to cover these obligations for a fee (premium), surety companies have overwhelmingly demanded significant collateral as a condition of issuing the bonds. In effect, these small entities were asked to prepay a large proportion of uncertain future decommissioning costs to a third party rather than pay for insurance against a low-likelihood risk.
- One small entity engaged in both shallow and deepwater operations noted that the financial obligation estimates, made by the Bureau of Safety and Environmental Enforcement (BSEE) based on statistical analysis of industry-wide decommissioning costs, had the potential to be wildly overstated. In one recent case, the BSEE estimated the decommissioning cost of one of the company's oil wells at \$38 million. The company was able to complete the decommissioning for \$4 million.

Taken together, these experiences suggest that the 2024 rule created substantial unnecessary costs, which burdened affected small businesses without any indication that these burdens ultimately benefitted American taxpayers from exposure to real risks of loss.

III. BOEM's Proposed Rule Creates the Right Balance for Protecting the Public While Empowering Small Businesses

A. Small Businesses Support the Proposed Rule

When Advocacy conducted outreach to small independent operators that provided comments on the proposal that became the 2024 rule, one of the questions we asked is whether they would want to see any changes in the current proposed rule.

All respondents endorsed the proposed rule without reservation. One small entity respondent who endorsed the proposed rule confirmed that it expected to be required to pay for supplemental financial assurance obligations under the proposed rule. This is a strong indication that the proposed rule is narrowly tailored to address the unfunded decommission liability of actual concern.

B. BOEM's Proposed Rule Will Reduce Regulatory Burdens for Small Entities and Enable Small Businesses to Continue to Operate in the Outer Continental Shelf

The 2024 rule ignored widespread joint and several liability for decommissioning costs involving highly creditworthy predecessor lessees, set an overly-conservative threshold for the probability of default in its selection of credit scores, and established a coverage level that required the small entities who typically purchased leases on the secondary market to set aside considerably greater

resources than necessary to protect the public from unreasonable risks of default. This proposed rule repairs each of these flaws.

A comparison of BOEM's RIA data from the 2024 rule and the current proposed rule indicate that over three hundred small businesses may have exited from ownership of Outer Continental Shelf leases. While many conditions likely contributed to this shift, the prospect of billions of dollars in supplemental financial assurance obligations cannot be ignored as a significant disincentive for small businesses to continue operations.

Advocacy urged in its 2023 comments that BOEM consider limiting financial assurance obligations to the first lessee but conceded that that supplemental financial assurance may be appropriate in certain circumstances. Based on input received from affected small entities, Advocacy believes that the proposed rule is narrowly tailored to cover those risks.

IV. Conclusion

Advocacy supports BOEM's proposed revisions to the financial assurance framework. By acknowledging the financial strength of predecessor lessees, recalibrating the required creditworthiness thresholds, and utilizing the P50 cost estimate, BOEM has relieved small businesses of billions of dollars in duplicative bonding requirements. Advocacy commends BOEM for striking the appropriate balance to protect the public while providing small businesses with significant relief.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Jeffrey Frank at (202) 769-0362 or by email at jeffrey.frank@sba.gov.

Sincerely,

/s/

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/s/

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Copy to: Mr. Mark Paoletta, Acting Administrator
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