



July 15, 2021

The Honorable Rosa L. DeLauro  
Chair  
House Committee on Appropriations  
H-307, The Capitol  
Washington, D.C. 20515

The Honorable Chellie Pingree  
Chair  
House Subcommittee Interior, Environment,  
and Related Agencies  
H-307, The Capitol  
Washington, D.C. 20515

The Honorable Kay Granger  
Ranking Member  
House Committee on Appropriations  
1036 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Dave Joyce  
Ranking Member  
House Subcommittee Interior, Environment,  
and Related Agencies  
1036 Longworth House Office Building  
Washington, D.C. 20515

Dear Chairwoman DeLauro, Ranking Member Granger, Chairwoman Pingree, and Ranking Member Joyce,

I write on behalf of the National Ocean Industries Association, or NOIA. An almost 50-year-old organization, NOIA represents all segments of the offshore energy industry. This includes traditional fossil fuels such as oil and natural gas, primarily in the Gulf of Mexico, as well as important new sources of energy like offshore wind. Further, our members include energy developers and, just as importantly, the businesses - large and small - who do the work of building, supplying, and servicing these projects.

As you know, Section 115 of the Fiscal Year 2022 Department of Interior, Environment and Related Agencies package deals with the matter offshore safety and the Department of Interior's handling of approvals of requests for "departures" and "alternative compliance".

In general, alternative compliance is utilized by nearly every agency across the Executive Branch, as it allows the government to keep pace with improving technologies and practices that outpace highly prescriptive regulatory requirements. With respect to the offshore energy sector specifically, BOEM and BSEE's alternative compliance authorities, when exercised, grant companies that produce energy from federal waters to perform only alternative activities the agencies believe are equal to or exceed the safety levels set out in their respective regulations (i.e., "as safe or safer"). These approvals are critical to promote an optimal design and adequate approach to safe operations because no two oil wells are identical—in fact they can have remarkably different water pressures, temperatures, depths, and even basic geology, and a "one size fits all" approach actually decreases safety by requiring operators – who could otherwise perform a safer operations – to put workers at the unnecessarily higher risk of incident while

performing these complex operations. Importantly, these are by no means “waivers”—they are instead a way of managing safety risk while complying with the intent of the regulations.

Therefore it is unnecessary to require BOEM and BSEE to publish online alternative compliance approvals, as required by Section 115. With this provision having now been enacted in two consecutive fiscal cycles, there has been no demonstrable added benefit from a safety standpoint. Companies necessarily design the operations on a project-by-project basis and best incorporate a variety of factors to ensure the highest levels of safety including, among other things, the water depths, pressures, temperatures, geology, engineering design and technologies. Section 115 is not something that factors into the design and engineering of offshore projects. On the other hand, this provision has caused the agencies to delay and even avoid approving requests (including those that would have been safer) simply because of the reporting burden created by this provision.

For these reasons, this provision should be removed from the package.

However, short of removing Section 115 outright, the current language stating that “b) The head of each bureau *may* exclude confidential business information” (emphasis added) creates unwarranted and unfair exposure to the energy industry. There is a no public interest in requiring, by default, the disclosure of confidential information—information that is otherwise protected by multiple federal statutes<sup>1</sup> and generated in a highly competitive industry already beholden to *significant* government regulation and oversight. At the very least, this section should read “The head of each bureau ~~may~~ **shall** exclude confidential business information.”

This language would avoid inconsistency with the exemption from the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and provide the regulated community with the assurances essential to companies who would provide confidential business information. *See Food Marketing Inst. v. Argus Leader Media*, 139 S.Ct. 915 (2019). This change would emphasize the government’s long standing and universal recognition of the importance of protecting confidential business information without undercutting the intent – however poorly it has manifested – of the language.

At the same time, we would also like to call your attention to another section of the bill. With regard to Section 107 related to inspection fees, BSEE actually generates a *surplus* from the fees it collects from operators for its offshore inspections at the current rates. This surplus is due to a number of factors, including: (i) higher-than-cost inspection fees as BSEE continuously improves its execution efficiency; (ii) more year-on-year inspections (21.5 percent increase in 2018 compared to 2016<sup>2</sup>); and (iii) BSEE performing more documentation inspections *onshore* (i.e., not flying offshore just to look at paperwork that’s also located onshore) and utilizing the remote technology capabilities of advanced offshore assets<sup>3</sup>. Inspections are a critical component of the government’s offshore safety program, but it is important to align the rates with the actual costs and BSEE’s own requests. Therefore, Congress should maintain offshore inspection fees at the levels

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<sup>1</sup> For example, 5 U.S.C. § 552 and 18 U.S.C. § 1905

<sup>2</sup> *Id.* at 9.

<sup>3</sup> *Id.* at 41.

appropriated by Congress in FY21, being the same levels appropriated by Congress in the multiple preceding fiscal years and requested by BSEE for FY22.

NOIA members and the offshore oil and gas community are committed to the safe and responsible development of American energy sources and we stand ready to work with Congressional leaders to help ensure safety is advanced and improved while we continue to provide the American energy that is relied upon for modern society.

Respectfully,

A handwritten signature in black ink, appearing to read "Erik Milito". The signature is fluid and cursive, with a prominent initial "E" and a long, sweeping tail.

Erik Milito  
President  
National Ocean Industries Association

//Delivered Electronically