

November 22, 2010

Via Electronic Submission

Department of the Interior
Bureau of Ocean Energy Management, Regulation and Enforcement
Attention: Regulations and Standards Branch
381 Elden Street, MS-4024
Herndon, Virginia 20170-4817

Re: Oil and Gas and Sulphur Operations in the Outer Continental Shelf-Increased Safety Measures for Energy Development on the Outer Continental Shelf, RIN 1010-AD68¹

The Office of Advocacy (Advocacy) of the U.S. Small Business Administration submits these comments to the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) regarding its interim final rule which establishes certain drilling regulations relating to well control on the Outer Continental Shelf. Advocacy recognizes the importance of improving the safety of offshore oil and gas drilling operations in Federal waters, and encourages BOEMRE to continue examining ways to accomplish that goal while limiting disproportionate impacts on small businesses. Advocacy commends BOEMRE for committing to publishing a supplemental Initial Regulatory Flexibility Analysis (IRFA) for its interim final rule, and is providing these comments in order to assist BOEMRE in complying with its obligations under the Regulatory Flexibility Act.²

The Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA), 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, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.⁴

¹ *Oil and Gas and Sulphur Operations in the Outer Continental Shelf-Increased Safety measures for Energy Development on the Outer Continental Shelf; Interim Final Rule*, 75 Fed. Reg. 63346 (October 14, 2010).

² 5 U.S.C. §601 et. seq.

³ Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.) (SBREFA).

⁴ *Id.*

Background

As a result of the Deepwater Horizon explosion and subsequent oil spill, the Department of Interior developed certain recommendations regarding safety measures for deepwater drilling which were released in the report entitled “Increased Safety Measures for Energy Development on the Outer Continental Shelf” (the Report). The Report recommended that certain measures be implemented to ensure sufficient redundancy in blowout preventers, promote well integrity and enhance well control. On June 8, 2010, BOEMRE issued a Notice to Lessees and Operators (NTL) that immediately implemented certain recommendations in the Report. The interim final rule codifies the requirements listed in the NTL as well as other recommendations identified in the Report as suitable for implementation through emergency rulemaking. The interim rule includes a limited discussion of the impact of the rule on small businesses and BOEMRE has committed to publishing a supplemental IRFA with a more detailed analysis.

Comments

Advocacy appreciates BOEMRE’s decision to publish a supplemental IRFA. In its notice, BOEMRE included certain information regarding the composition of the oil and gas industry and the small business entities - lessees, operators, and drilling contractors - that will be most affected by this interim rule. BOEMRE estimates that \$29 million dollars or 15.8% of the interim final rule’s total cost of \$183 million will be borne by small businesses. This cost would comprise about 0.36% of these small businesses’ fiscal year 2009 revenue.

However, BOEMRE does not discuss how these costs would be distributed among small businesses. Advocacy is concerned that these costs will impact certain small businesses more heavily than others. Advocacy encourages BOEMRE to include additional information regarding how the industry functions and which small entities are most likely to incur increased costs as a result of this interim final rule. Advocacy also recommends that BOEMRE include a more detailed discussion of the distribution of costs among the small entities identified in the IRFA in order to accurately determine whether some small entities will incur disproportionate impacts as a result of this rule.

The RFA requires agencies to include in their IRFA a description of any significant alternatives to the proposed rule that minimize significant economic impacts on small entities while still accomplishing the agency’s objectives.⁵ While BOEMRE did note a few alternatives in the interim rule, Advocacy recommends that BOEMRE include a more detailed discussion of the alternatives and their effects on small business and the reasons for or against adopting those alternatives. Advocacy further recommends that BOEMRE continue to conduct outreach with small entities affected by this rule and any future safety rules to develop alternatives that minimize disproportionate impacts on small entities.

⁵ 5 U.S.C. §603(c).

Conclusion

Advocacy is pleased that BOEMRE recognizes its dual obligations to insure the safety and soundness of offshore drilling practices and to comply with the RFA. Advocacy requests that full consideration be given to the comments listed herein and would be happy to further assist BOEMRE in preparing its IRFA. Please contact me or Kia Dennis at 202-205-6936 should you have any questions.

Best regards,

//signed//

Winslow L. Sargeant, Ph.D.
Chief Counsel for Advocacy

//signed//

Kia Dennis
Assistant Chief Counsel for Advocacy

Cc: The Honorable Cass Sunstein, Administrator, Office of Information and Regulatory Affairs