



Interior Releases Proposed Arctic Drilling Rule

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On February 24, 2015, the U.S. Department of the Interior (“DOI”) proposed new, more stringent planning requirements and safety standards for exploratory drilling operations in the Beaufort and Chukchi Sea Planning Areas in the Arctic Outer Continental Shelf (“OCS”). The proposed rule, “Oil and Gas and Sulphur Operations on the Outer Continental Shelf –Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf,” issued by the Bureau of Ocean Energy Management (“BOEM”) and the Bureau of Safety and Environmental Enforcement (“BSEE”), is designed “to ensure safe, effective, and responsible exploration of Arctic OCS oil and gas resources, while protecting the marine, coastal, and human environments, and Alaska Natives’ cultural traditions and access to subsistence resources.” The proposed requirements and standards, which would formalize key elements of Shell’s 2012 exploratory drilling program in the Chukchi Sea, as well as additional requirements DOI imposed upon Shell’s activities in the area, have the potential to substantially increase the cost and complexity of doing business in this frontier area. This alert provides a brief overview of some of the most significant provisions of the proposed Arctic Standards Rule and a short assessment of the major implications of the proposed rule.

Introduction

The Beaufort Sea and Chukchi Sea Planning Areas have experienced renewed commercial interest in recent years as the region is projected to contain sizeable quantities of commercially recoverable oil and gas resources. To BOEM and BSEE, recent efforts at commercial exploration, combined with the unique meteorological conditions and geographic remoteness of the Arctic OCS, underscore the need for more stringent regulations.

Overview of the Proposed Rule

As a threshold matter, the proposed Arctic Standards Rule would apply to all exploratory drilling activities on the Arctic OCS for which a mobile offshore drilling unit is used. The proposed rule is intended to provide supplemental requirements for operators, meaning that existing BOEM and BSEE regulations would continue to apply to Arctic OCS operations unless expressly stated otherwise.

The additional requirements mandated by the proposed rule can generally be divided into three categories: (1) ensuring adequate pre-operation planning; (2) enhancing operational safety and environmental quality during exploration activities; and (3) augmenting oil spill response planning for activities on the Arctic OCS.

1. *Ensuring adequate pre-operation planning*

The proposed rule would require those seeking to engage in exploratory drilling on the Arctic OCS to develop and submit to BOEM an “integrated operations plan” (“IOP”) at least 90 days prior to the operator filing its exploration plan (“EP”). According to BOEM, the IOP would serve as a conceptual document aimed at giving both the agency and the public a better and earlier understanding of the entire spectrum of an operator’s proposed actions on the Arctic OCS, including vessels and equipment used, drilling schedule, weather forecasting capabilities, and oil spill response capacity. BOEM would make IOPs available to the public by posting them on its website.

BOEM also would require that an operator’s EP build on the foundational information included in the IOP to include preliminary information on Source Control and Containment Equipment (“SCCE”) – such as capping stacks and containment domes – that would be on hand during drilling operations. Additionally,

BSEE would require that the application for permit to drill (“APD”) further build on the information provided in the EP to include particulars on drilling objectives, ice management capabilities, and relief rig requirements.

2. *Enhancing operational safety and environmental quality during exploration activities*

BSEE proposes a number of new provisions aimed at enhancing operational safety during exploration activities. Among other things, BSEE proposes to increase the frequency by which operators on the Arctic OCS must conduct pressure testing of the blow out preventer (“BOP”) system from every 14 to every seven days. BSEE also would require that, in the event of a spill, operators have the ability to deploy the capping stack within 24 hours after a loss of well control, while the containment dome would need to arrive at the well within seven days after a loss of well control.

The proposed rule also would require operators to have available a separate relief rig that could drill a relief well within 45 days. This scenario assumes that it would take 20 days for a relief rig to transit from Dutch Harbor to the furthest lease located in the Beaufort Sea, 20 days to drill the relief well, and five days to plug and test the uncontrolled well.

In addition, the proposed rule would require operators to capture all petroleum-based mud and associated cuttings. With respect to water-based mud and cuttings, the proposed rule would give BSEE’s Alaska Regional Supervisor the discretion to require operators to capture these by-products based upon consideration of “the proximity of [the] exploratory drilling operation to subsistence hunting and fishing locations; . . . [t]he extent to which discharged mud may cause marine mammals to alter their migratory patterns in a manner that impedes subsistence users’ access to, or use of, those resources, or increases the risk of injury to subsistence users; or . . . [t]he extent to which discharged mud may adversely affect marine mammals, fish, or their habitats.”

3. *Augmenting oil spill response planning for activities in the Arctic OCS*

The proposed rule would require that oil spill response plans (“OSRPs”) be “designed and executed in a manner suitable for the unique Arctic OCS operating environment and have the necessary equipment, training, and personnel for oil spill response.” BSEE would require operators to provide a description of how oil spill response assets would be maintained “in close proximity to exploratory drilling operations to ensure that adequate response times would be achievable and response operations would be sustainable.”

Implications

The proposed rule has potentially important implications for oil and gas exploration and development in the Arctic OCS:

A higher cost of compliance than is currently projected: As part of the proposed rule process, BOEM and BSEE undertook a Regulatory Impact Analysis (“RIA”). The RIA projects that the proposed rule would cost operators \$1.1 to 1.2 billion over ten years. However, this projection is highly speculative, particularly since the costs were based on an assumption of modest growth in the number of operators in the region during the next decade. Any number of economic and political reasons could cause companies to rethink plans to conduct exploratory drilling operations on the Arctic OCS. If fewer companies seek to operate on the Arctic OCS, there will also be fewer opportunities for companies to enter into contractual agreements to share relief rigs and other oil spill response equipment. If that is the case, then companies will need to furnish their own relief rigs and associated infrastructure, thereby driving up operating costs.

A shortened drilling season: The 45-day requirement to drill a relief well could require operators to artificially shorten their drilling season in order to build in at least 45 days at the end of the season to account for potential relief well drilling operations.

A compromise in the integrity of BOP systems: There is also some worry that increased testing requirements for BOPs could ultimately compromise the integrity of those systems. BSEE has specifically asked commenters to weigh in on this issue.

A lack of clarity as to public engagement: Although BOEM argues that the IOP process is intended to provide the public with a better and earlier understanding of proposed drilling operations, the proposed rule does not explain whether or how the public will be able to influence a company's proposed drilling plans. Moreover, the agency does not seem to distinguish between public review of an IOP and Alaska Native consultation on the IOP. It is unclear whether BOEM intends to provide affected Alaska Native groups with any enhanced opportunities to comment on proposed drilling operations.

For more information

Comments on the proposed Arctic Standards Rule are due by April 27, 2015. Van Ness Feldman LLP is available to assist clients who wish to submit comments on the proposed rule. If you have any questions on the Arctic Standards Rule, please contact [Jonathan Simon](#), [Andrew VanderJack](#), [Scott Nuzum](#), or anyone else in our [Natural Resources](#) Practice Group.

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