Regulating Exploration on the Arctic OCS:

U.S. Federal Regulators Propose Rules for Oil and Gas Exploratory Drilling on the Arctic Outer Continental Shelf

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In recent years, the energy industry has expressed significant interest in investigating submerged lands on the U.S. Outer Continental Shelf (OCS) in the Arctic for commercial quantities of oil and natural gas. The challenging operational environment, distance from offshore infrastructure, and underdeveloped regulatory context have limited exploration and production (E&P) activities on the Arctic OCS to date. To further standardize regulatory requirements for operations on the Arctic OCS offshore Alaska, the U.S. Department of Interior’s Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) published a proposed rulemaking on February 20, 2015, entitled “Oil and Gas and Sulphur Operations on the Outer Continental Shelf - Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf” (Proposed Rulemaking).1

Describing the challenges facing Arctic OCS exploration and production as “severe,” and citing different environmental considerations and the relatively remote geographic location of the Arctic OCS, BOEM and BSEE propose several administrative and operational requirements that will be more stringent than those required for other OCS locations and will increase costs for E&P operations. In particular, the Proposed Rulemaking would require E&P operators to have a spare relief rig and other equipment available to respond to any well control incidents. Although the Proposed Rulemaking contemplates the likelihood that operators would pool their resources to make this equipment available to the operators’ fleet on the Arctic OCS, this requirement could add substantial additional costs to E&P operations and discourage significant E&P efforts in the current low-price oil and gas market.

However, BOEM and BSEE will accept comments from the public for sixty days following publication in the Federal Register, so industry and other interested stakeholders will have an opportunity to work with BOEM and BSEE to shape the final rulemaking.

Background

The Outer Continental Shelf Lands Act (OCSLA) was enacted in 1953, and significantly amended in 1978. Congress established a National policy of making the OCS “available for expeditious and orderly development, subject to environmental safeguards in a manner which is consistent with the maintenance of competition and other national needs.”2

1 Pending publication in the Federal Register, the Proposed Rulemaking is available here: http://www.bsee.gov/uploadedFiles/ Proposed%20Arctic%20Drilling%20Rule.pdf.

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Congress also emphasized that the development of the OCS needs to be done, “by well trained personnel using technology, precautions and techniques to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters, or other occurrences which may cause damage to the environment or to property, or endanger life or health.” Additional amendments to the OCSLA have included the creation of an oil spill liability trust fund and a system of distributing a portion of the leasing proceeds to coastal states.

Under the OCSLA, the Secretary of the Interior is responsible for the administration of mineral exploration and development of the OCS. OCSLA, as amended, offers guidelines for implementing the OCS oil and gas exploration and development program. The Secretary has delegated most of the administrative and regulatory duties for the OCS oil and gas program to BOEM and BSEE. BOEM reviews individual Exploration Plans and the BSEE reviews the Application for Permit to Drill to determine whether the operator’s proposed activities meet the OCSLA standards that govern offshore exploration and development.

The Department of Interior (DOI) stated that it consulted with multiple stakeholders during the formation of this proposed rule including Alaska Natives, various environmental organizations and individual oil and gas companies, and considered Shell’s recent experience with exploratory drilling in the Chukchi Sea. The Administration believes the Proposed Rulemaking will help achieve the goals of protecting the unique Arctic ecosystem, respecting the needs and culture of the Alaska Natives, and reducing the country’s reliance on foreign oil.

The Proposed Rulemaking

Against this backdrop, and with specific recognition of the significant economically recoverable reserves on the Arctic OCS, BOEM and BSEE published the Proposed Regulations on February 20, 2015. These proposals include adjustments to existing regulations as well as entirely new regulatory provisions. As noted above, the Proposed Rulemaking contains additional operational and administrative requirements, many of which likely will impose significant costs on operators. The Proposed Rulemaking would apply to exploration operations on the Arctic OCS only, defined as the Beaufort Sea and Chukchi Sea Planning Areas, and aim to address the short operational season (during the Summer through early Fall), geographical remoteness, and environmental conditions like sea ice encroachment unique to the Arctic OCS. The proposed regulations will not apply to actual Development drilling activities. The agency makes clear in the proposed rule that it will address the appropriate regulations for commercial development of oil and gas resources on the Arctic OCS after it has gained experience from the exploration activities that are the subject of this rulemaking.

A brief outline of the key operational and administrative components of the Proposed Rulemaking follows.

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4 Proposed Rulemaking at 41.
5 Proposed Rulemaking at 42.
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Operational Requirements

As noted above, the key provisions in the Proposed Rulemaking, and the major driver of anticipated costs from this regulatory program, is the requirement that operators have a "relief rig" and other back-up equipment available on stand-by notice to assist in case of a loss of well control.\(^6\) Citing the response to the Gulf of Mexico Macondo oil spill of 2010, when the spill was ultimately stopped by the drilling of a relief well by another drilling rig, the Proposed Rulemaking would require operators to have a back-up or "relief rig" available to deploy in case of a similar loss of well control on the Arctic OCS.\(^7\) The Proposed Rulemaking would require operators to have a relief rig available to drill and complete a relief well within 45 days of a loss of well-control at an exploratory well site on the Arctic OCS.\(^8\)

In addition to the relief rig, the Proposed Rulemaking would also require operators to have Source Control and Containment Equipment ("SCCE") available for rapid deployment in case of a loss of well control. The SCCE required would include a capping stack, a cap and flow system, and a containment dome\(^9\) and is not currently required in other parts of the U.S. OCS. The capping stack technology advanced significantly in the aftermath of Macondo; many in the oil and gas industry believe that this should be adequate to address a loss-of-control event and that a separate requirement for a relief rig is unnecessary. DOI acknowledges in the proposed rulemaking that a relief rig is a redundancy but asserts that such a redundancy is necessary in light of the remote nature of the exploration activities and the lack of proximate infrastructure.

In an apparent effort to appease industry’s concerns, the proposed rule allows operators to request approval from the agency of alternative compliance measures as well, and specifically requests comments on such possible alternative technologies.

The proposed rule also imposes a requirement on operators to more frequently conduct pressure testing of the blowout preventer (BOP) system associated with the exploration activities. In particular, recognizing the concerns that industry has raised related to the efficacy of increasing the frequency of BOP testing, the agency concludes that given the challenging Arctic environment and the uncertainty of how the BOP equipment will perform in the Arctic conditions, it is prudent to require a BOP pressure test every 7 days, instead of the current standard 14 days. This was a significant issue in the aftermath of the 2010 Gulf of Mexico Macondo oil spill. DOI cites specifically to Shell’s 2012 proposal to DOI for Arctic operations, which include a 7-day pressure test cycle, for justifying this aspect of its proposed rule.

Finally, the Proposed Rulemaking includes a number of provisions to minimize environmental impacts of exploratory drilling activities, such as increased oil spill response testing,\(^10\) a requirement to capture all petroleum-based mud and associated cuttings from the drilling operations, and requirements to limit impacts on subsistence hunting activities.\(^11\)

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\(^6\) Proposed 30 C.F.R. § 250.472.
\(^7\) Proposed Rulemaking at 30, 36.
\(^8\) Proposed 30 C.F.R. § 250.472(b).
\(^9\) Proposed 30 C.F.R. § 250.471(a).
\(^10\) Proposed 30 C.F.R. § 250.90.
\(^11\) Proposed 30 C.F.R. § 250.300(b)(1).
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Administrative Changes

In addition to the Exploration Plan and the Application for Permit to Drill familiar to operators in other parts of the U.S. OCS, the Proposed Rulemaking would require an additional planning document, an Integrated Operations Plan (IOP), for E&P activities on the Arctic OCS. This document would require preliminary details for the proposed exploratory drilling program and would need to be filed with BOEM at least ninety days before submission of the Exploration Plan. BOEM will post all IOPs on its website to make them available to the public. By doing this in advance of an operator’s submission of an exploration plan (EP), which by law only affords the agency 30 days to review and either approve, disapprove, or modify an EP, it will provide the relevant agencies and the public greater opportunity to understand the proposed activities. Nonetheless, BOEM makes clear in the proposed rule that the IOP would be informational only and would not be subject to approval.

The Proposed Rulemaking contains other relatively minor changes to administrative requirements as well, including shorter reporting timelines for certain drilling incidents. Operators contemplating engaging in E&P operations on the Arctic OCS are encouraged to review these requirements carefully.

Implications

The timing and approach of the proposed regulations for Arctic OCS exploration activities appears to supplement other Obama Administration actions related to developmental activities in the Arctic region, in light of the increasing accessibility of the region due to melting ice cap. Recent announcements related to a National Arctic Strategy, commitments to reduce imports of foreign oil, and efforts to restrict some areas from oil and gas development, all appear to be designed by the White House to balance the competing interests of economic development in the region with national security interests and protection of the environment.

Recognizing not only the unique environmental conditions anticipated on the Arctic OCS but also the relative geographic remoteness of the Arctic OCS from traditional centers of offshore E&P infrastructure, the Proposed Rulemaking would require operators to have resources available for addressing potential environmental incidents that are similar to the resources available in more conventional production areas of the U.S. OCS. These requirements will demand operators to build up emergency response capacity and resources quickly, as opposed to a gradual increase in capacity seen in the Gulf of Mexico.

The requirements for relief rigs, as well as SCCE and oil spill response capabilities, likely will add significant costs to E&P operations. BOEM and BSEE recognize the efficacy of cooperative solutions, such as mutual aid agreements, to meet SCCE and relief rig capabilities of the Proposed Rulemaking. Developing these agreements and other cooperative programs will be critical to manage costs of compliance with the regulations in the Proposed Rulemaking.

The Proposed Rulemaking is open for comment, and stakeholders have an important opportunity to shape the final rule. BOEM and BSEE will accept comments for sixty days following publication of the Proposed Rulemaking in the Federal Register, and interested

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12 Proposed 30 C.F.R. § 550.204.
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parties are encouraged to engage in the rulemaking process to ensure their interests and concerns are fully appreciated by the regulators.

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