

**MAY 24, 2018**

For more information,
contact:

Jim Vines

+1 404 572 4822

+1 202 383 8921

jvines@kslaw.com

Andrew Stakelum

+1 713 276 7378

astakelum@kslaw.com

Brian Stansbury

+1 202 626 9118

bstansbury@kslaw.com

Kayla Carrick

+1 713 751 3254

kcarrick@kslaw.com

Erich Almonte

+1 713 276 7378

ealmonte@kslaw.com

King & Spalding

Houston

1100 Louisiana Street

Suite 4000

Houston, Texas 77002-5213

Tel: +1 713 751 3200

Washington, D.C.

1700 Pennsylvania Avenue, NW

Washington, D.C. 20006-4707

Tel: +1 202 737 0500

BSEE Proposes Revisions to 2016 Well Control Rule

Public Comment Period Open Until Early July

On May 11, 2018, the Bureau of Safety and Environmental Enforcement (BSEE) announced proposed revisions to the *Oil and Gas and Sulfur Operations in the Outer Continental Shelf – Blowout Preventer Systems and Well Control Rule* (commonly referred to as the “Well Control Rule”).¹ Industry objected that the 2016 Well Control Rule failed to account for best available, economically feasible safety technologies and that certain proposed requirements were neutral in benefit but would render some wells uneconomical. Indeed, certain of the 2016 proposals failed to follow consensus industry standards that BSEE participated in creating and could have led to unintended reductions in safety. The new proposal amends regulations concerning well design, well control, casing, cementing, real-time monitoring, and subsea containment that were implemented in 2016 in response to the Deepwater Horizon/Macondo incident. The deadline for interested parties to comment to BSEE on the proposed regulations is **July 10, 2018**. It is not known whether the comment period will be extended.

The oil and gas offshore industry undertook a number of initiatives to improve deep water drilling safety in the wake of the Macondo incident, resulting in new and effective industry standards for deep water drilling such as those contained in American Petroleum Institute (“API”) standards on well control and blowout preventer systems. BSEE’s Well Control Rule incorporated some of these technical standards, but adopted others that did not take into account best available and economically feasible technologies. At the time the Well Control Rule was enacted, operators and other stakeholders vigorously expressed a variety of concerns about some of the regulations that contradicted existing technical expertise without enhancing safety and environmental protection.

BSEE addressed some of the concerns prior to finalizing the final Well Control Rule in 2016, but the majority, and some of the most important, were passed over. BSEE made changes to some regulations, for instance



revising its casing requirements and the production safety systems used for flow capture. BSEE also met industry halfway in some instances, such as applying API Standard 53 to certain Blow Out Preventer (BOP) requirements, but not to others.

But the final rule failed to address several critical concerns raised by industry. For example, industry advocated against a set 0.5 ppg drilling margin that did not readily allow for needed variances and against incorporating real time monitoring (RTM) requirements (that actually create data security vulnerabilities).²

BSEE's new proposed revisions to the Well Control Rule now address a number of issues raised by industry during the comment period in 2016. In announcing the proposed rule BSEE stated it will correct errors and reduce certain unnecessary regulatory burdens imposed under the existing regulations. The proposed revisions clarify several requirements, and update others based on new practices and technology. Key proposed amendments include:

- clarifying rig movement reporting requirements;
- eliminating redundant and unnecessary reporting;
- removing many of the prescriptive real-time monitoring requirements to move towards a more performance-based approach;
- better aligning the rule with API Standard 53, including revisions to accumulator system requirements and accumulator bottle requirements and allowing the combination of shear rams to comply with shearing capability requirements;
- incorporating the latest edition of API Standard 17H on remotely operated vehicles to eliminate conflict with API Standard 53;
- removing smaller lift boats from the types of vessels requiring well shut-in when they approach within 500 feet;
- revising the control station and pod testing schedules; and
- codifying certain BSEE policies and including others that were inadvertently omitted from the current rule, such as coiled tubing and snubbing requirements to be included in Subpart G.

On several of the proposals, BSEE specifically seeks public comment to help shape the final rule. Industry should focus comments on the following areas where BSEE has specifically requested assistance:

- *Drilling margin requirements:* BSEE's current proposal keeps the drilling margin requirement at 0.5 ppg despite its being inappropriate for deep water and certain other wells. BSEE has approved the use of drilling margins less than 0.5 ppg on 32 of 305 wells drilled since the Well Control Rule went into effect, 31 of those in deep water. BSEE considers this 10% variance history significant enough to consider revising this regulation. BSEE is specifically soliciting comments on both (1) the process to deviate from the 0.5 ppg drilling margin, and (2) whether the 0.5 ppg drilling margin in the proposed rule should be revised or removed. BSEE has asked for specific alternatives to the 0.5 ppg drilling margin, including whether it should be replaced with a more performance-based standard where the approved safe drilling margin is established on criteria applicable to each well, or whether it should be replaced with multiple or different drilling margins specific to well conditions. BSEE requests comment on the criteria BSEE could use to apply alternative approaches, including what specific documentation operators would need to submit.
- In conjunction with its other requests concerning the drilling margin requirements described above, BSEE also proposes amending drilling prognosis rules (what information must be submitted with the Application for Permit to Drill (APD)) to ensure that operators use data from wells with similar conditions to the well being drilled when determining pore pressure and fracture gradient to establish a drilling margin. The proposed rule change tweaks the obligation to



consider related off-set well behavior observations when determining the pore pressure and lowest estimated fracture gradient by requiring consideration of “analogous” well behavior observations “if available.” The current rule imposes an obligation on operators to evaluate all related data when determining whether it is maintaining a safe drilling margin. In 2016, commentators asked for a similar revision, and now BSEE is specifically soliciting comments about the effectiveness of the use of related analogous data and how the pore pressure and fracture gradient are determined without related analogous data.

- *Real-time monitoring requirements:* BSEE proposes removing many of the prescriptive RTM requirements and moving towards a more performance-based approach. While the proposed rule still requires the ability to collect real-time data, BSEE is considering changes to how that data is handled. BSEE is specifically soliciting comments about the appropriateness of utilizing RTM for workover, completion, and decommissioning operations, or whether RTM requirements should be limited to drilling operations.
- *API Standard 53 addendum:* BSEE specifically asked for comments on whether the API Standard 53 addendum should be included within the documents incorporated by reference.

Industry groups like API are tracking the proposed regulation changes and preparing comments. In addition to the work of industry groups, individual offshore operators should add their comments on the rule. Each has its unique perspective, including on-the-ground experience, geography, and business interests, which BSEE needs in order to promulgate an efficient and effective rule. When drafting comments, companies should encourage collaboration among their operations, governmental affairs and legal teams.



ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,000 lawyers in 20 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising."

ABU DHABI	CHICAGO	HOUSTON	NEW YORK	SILICON VALLEY
ATLANTA	DUBAI	LONDON	PARIS	SINGAPORE
AUSTIN	FRANKFURT	LOS ANGELES	RIYADH	TOKYO
CHARLOTTE	GENEVA	MOSCOW	SAN FRANCISCO	WASHINGTON, D.C.

¹ 83 FR 22128-01.

² BSEE ignored industry's concerns despite a massive attack on Saudi Aramco in 2012 that took weeks to recover from.