

**DEPARTMENT OF THE INTERIOR****Minerals Management Service****30 CFR Part 250**

RIN 1010-AD15

**Oil and Gas and Sulphur in the Outer Continental Shelf (OCS)—Safety and Environmental Management Systems****AGENCY:** Minerals Management Service (MMS), Interior.**ACTION:** Advance Notice of Proposed Rulemaking (ANPR).

**SUMMARY:** MMS is seeking comments on how to improve our regulatory approach to safety and environmental management systems (SEMS) for operations conducted in the OCS. The various approaches for SEMS include voluntary and mandatory implementation of partial and full SEMS. In addition, the MMS is seeking comments on a regulatory scheme that would allow companies with outstanding performance records to operate under an alternative compliance program. MMS is investigating ways to develop an improved regulatory program that is more efficient and responsive to evolving conditions.

**DATES:** MMS will consider all comments received by August 21, 2006. MMS will begin reviewing comments then and may not fully consider comments received after August 21, 2006.

**ADDRESSES:** You may submit comments on the notice by any of the following methods listed below. Please use 1010-AD15 as an identifier in your message. See also Public Comment Policy under **SUPPLEMENTARY INFORMATION.**

- MMS's Public Connect on-line commenting system, <https://occonnect.mms.gov>. Follow the instructions on the Web site for submitting comments.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions on the Web site for submitting comments.
- E-mail MMS at [rules.comments@mms.gov](mailto:rules.comments@mms.gov). Use the Regulatory Identifier Number (RIN) in the subject line.
- Fax: 703-787-1546. Identify with RIN.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference "Oil and Gas and Sulphur Operations in the OCS—Safety and Environmental Management Systems—AD15" in your comments.

**FOR FURTHER INFORMATION CONTACT:**

David Nedorostek, Safety and Enforcement Branch at (703) 787-1029 or William Hauser, Chief, Regulations and Standards Branch at (703) 787-1613.

**SUPPLEMENTARY INFORMATION:****Public Comment Procedures**

MMS's practice is to make comments, including names and addresses of respondents, available for public review. Individual respondents may request that we withhold their address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**Regulatory Background**

Under the OCS Lands Act, all activities conducted on the OCS must be in accordance with existing Federal statutes. MMS is responsible for implementing policies intended to maintain safety and environmental protection practiced by the industry while conducting operations in the OCS. The operator conducting the operation(s) is directly responsible for managing the performance of those operations safely and ensuring they prevent damage to the environment. This is the case whether the management of operations is through operator company personnel, contract personnel, or a mix of both.

**MMS Goal**

The MMS goal is twofold. MMS wants to improve upon the current regulatory approach to safety and environmental management systems to further minimize injuries, fatalities, accidents, fires, explosions, collisions, pollution incidents, or damage to the marine environment with respect to all oil and gas operations on the OCS. MMS is considering moving away from prescriptive regulations in areas where industry can demonstrate that a performance-based regulatory approach will increase the current level of safety and environmental protection. MMS also wants to improve the efficiency of the current regulatory system by making it more responsive to innovative

approaches and technological and environmental changes. MMS realizes the challenges in attaining such goals and recognizes the progress of industry as a whole in moving toward these goals.

**The Regulatory Program**

MMS's implementing regulations have both prescriptive and performance elements. MMS regulations require industry to submit various site-specific plans and permit requests for MMS approval before operations can begin. There are many engineering-based requirements for installing, maintaining, testing, and inspecting of safety control devices by the operator. MMS's operating regulations incorporates 95 referenced standards. The rate of technological change as operations move into increasingly challenging environments has made it difficult for MMS to promulgate regulations and participate in the development of industry standards in a timely manner. MMS's performance-based elements include safety, training, and broad-based environmental protections: Performance Standards, 30 CFR 250.106-124; Disqualification, 30 CFR 250.135 and 136; Subpart O, Well Control and Production Safety Training, 30 CFR 250.1500-1510; Best Available and Safest Technology, 30 CFR 250.105; the use of alternative technologies, 30 CFR 250.141 and 30 CFR 250.408; Pollution Prevention Control, 30 CFR 250.300(a); Drilling Operations, 30 CFR 250.401(e); Well Completions, 30 CFR 250.500; Workover Operations, 30 CFR 250.600; Production Safety Systems, 30 CFR 800; Sulfur Operations, 30 CFR 250.1600; and Decommissioning, 30 CFR 250.1703(f).

**SEMP and API RP 75 History**

For the past 15 years, MMS has been engaged in an effort to extend the use of performance-based regulations on the OCS. In 1991, MMS introduced the concept of a Safety and Environmental Management Program (SEMP) with the goal of having operators in the offshore industry voluntarily adopt an active safety and environmental management approach in conducting operations. The American Petroleum Institute (API) responded by developing API RP 75, "Recommended Practice for Development of a Safety and Environmental Management Program for Offshore Operations and Facilities" in collaboration with industry organizations and MMS.

The SEMP concept in API RP 75 includes the following 12 elements:

1. Safety and Environmental Information,

- 2. Hazards Analysis,
- 3. Management of Change,
- 4. Operating Procedures,
- 5. Safe Work Practices,
- 6. Training,
- 7. Assurance of Quality and Mechanical Integrity of Critical Equipment,
- 8. Pre-Startup Review,
- 9. Emergency Response and Control.
- 10. Investigation of Incidents,
- 11. Audit of Safety and Environmental Management Program Elements, and
- 12. Documentation and Record Keeping.

After development of API RP 75, MMS worked with the offshore industry to develop tools that would assist the industry in voluntarily moving toward use of this management-based approach, including: (1) Development of a prototype SEMP program through a Department of Energy funded contract; (2) development of SEMP Auditing Protocols through work with the Offshore Operators Committee (OOC) and API; and (3) participation in a series of six performance measures workshops (1998–2000) focused on continual improvement of safety and environmental management performance.

In 1994, MMS committed to monitor industry implementation of SEMP for 2 years to decide whether voluntary use of API RP 75 was adequately embraced by industry and to determine if SEMP would need to be formally incorporated into our regulations to assure industry’s

use of this program. In June 1996, MMS extended the observation period. Since that time MMS has continued to observe industry implementation. During 1994–1998, the API developed and distributed surveys to assist the MMS in gauging the degree of industry adoption and implementation of API RP 75.

In 1997, MMS began conducting annual performance reviews of each operator. These annual reviews examine the operator’s compliance history as it relates to the MMS Inspection Program, actions MMS has forwarded for civil penalty review or that have resulted in a civil penalty, the operator’s safety record as it relates to accidents and incidents, and the operator’s progress in implementing SEMP.

In 2002, at the request of MMS, members of API and OOC joined with the agency and formed a Steering Committee to address our concern with enhancing the environmental component of API RP 75. In response, the Steering Committee rewrote API RP 75 to incorporate concepts from the International Organization for Standardization (ISO) 14001—Environmental Management Systems.

**Rationale for Changes in the Regulatory Program**

The overall objective is to improve our regulatory system and industry performance by requiring all operators to manage safety and environmental performance in an integrated system.

Based on incident investigation findings and performance reviews with operators, MMS identified a need for performance improvement in the following areas at a minimum: hazards analysis, operating procedures, mechanical integrity, and management of change. These areas are part of what MMS and industry have recognized as an effective safety management system. Requiring operators to implement these critical elements of an integrated safety management system could address MMS’s concerns with performance and ultimately improve safety and environmental compliance on the OCS.

MMS believes that the effective use of SEMS would improve safety and environmental performance on the OCS. MMS evaluated several areas of statistics listed below. In summary, these areas are: panel investigation reports, incident analysis, and incidents of noncompliance (INCs).

Accident panel investigation reports show major accidents that occurred from 2000 to 2005. An analysis of the panel reports reveals that many fatalities and injuries occurred while performing routine tasks. In addition, most of these panel reports made recommendations that relate to one of the following four SEMS elements: hazards analysis, management of change, mechanical integrity, and operating procedures. The panel reports can be viewed by typing in the following address: [http://www.gomr.mms.gov/homepg/offshore/safety/acc\\_repo/accindex.html](http://www.gomr.mms.gov/homepg/offshore/safety/acc_repo/accindex.html).

**CONTRIBUTING CAUSES**

MMS report	Hazard analysis	Operating procedures	Mechanical integrity	Management of change	Injury No.	Fatality No.
MMS 2005–027		X	X	X		
MMS 2005–007		X	X			
MMS 2004–078	X	X		X		1
MMS 2004–075	X	X	X			
MMS 2004–048						
MMS 2004–046	X	X		X	3	
MMS 2004–004	X					1
MMS 2003–068		X				
MMS 2003–046		X		X		
MMS 2003–023				X		
MMS 2002–076	X		X	X		1
MMS 2002–075	X					1
MMS 2002–062				X	2	1
MMS 2002–059	X		X		1	1
MMS 2002–040			X			
MMS 2001–084				X		
MMS 2001–045		X	X			1
MMS 2001–042	X		X	X		1
MMS 2001–010	X			X	1	
MMS 2001–009		X		X		
MMS 2001–005	X			X		
MMS 2000–089	X		X			1
Total = 22	Total = 11	Total = 9	Total = 9	Total = 12	Total = 7	Total = 9

It is evident from the above table that the accidents covered by 11 of the 22 panel reports resulted in a combined 16 fatalities and injuries. The analysis done on the accidents identified six primary contributing causes: (1) A lack of communication between operator and contractor(s), (2) lack of understanding job hazards analysis (JHA) prior to beginning work or lack of JHA written procedures, (3) onsite supervision not enforcing existing procedures or practices, (4) lack of written safe work procedural guidelines, (5) integrity of the facilities and equipment not maintained according to recommended practices, and (6) workplace hazards not identified and corrected. MMS maintains that these incidents could have been minimized or even prevented if the operator had implemented the four identified SEMS elements.

The MMS also conducted a study of 310 incidents that occurred in OCS waters in 2003 and 2004, to determine if the events were associated with any of the four SEMS elements. The events reviewed included: fatalities, injuries, loss of well control, collisions, fires, pollution, and crane events. This study revealed that there were 13 fatalities and 97 injuries in the 310 incidents. A majority of the incidents had at least one of the following four factors as a contributing reason for the event occurring.

SEMS element	Number of occurrence(s)
Hazard Analysis .....	20
Management of Change ...	13
Mechanical Integrity .....	124
Operating Procedures .....	159

MMS inspectors issue three primary Incidents of Noncompliance (INCs) that address four key elements of a SEMS program. These INCs are as follows:

- G-110 (Operations conducted in a safe and workmanlike manner),
- G-111 (Equipment maintained in a safe condition), and
- G-112 (Safety of personnel and are all necessary precautions taken to correct and remove any hazards).

MMS issued 1,381 of these types of INCs during 2003–2004 for drilling and production activities. Of these 1,381 INCs, 1,376 or 99.6 percent are directly related to one or more of the following four SEMS elements: hazard analysis, operating procedures, mechanical integrity, and management of change. The following table depicts these G-INCs written for drilling activities and production activities.

Operational INCs Issued in 2003–2004		
	Drilling	Production
SEMS elements	Percentage	Percentage
Hazard Analysis.	6	3
Management Of Change. ....	19	5
Mechanical Integrity. ....	42	46
Operating Procedures. ....	33	46

**Environmental Compliance**

MMS also reviewed its Environmental Potential Incidents of Noncompliance (PINCs) and Performance Standards. The review of our environmental performance standards and our environmental PINCs indicates that the PINCs do not fully address the range of environmental safeguards covered under our performance standards as they relate to compliance with State and Federal statutes. The environmental PINCs issued by MMS inspectors focus on water quality as it relates to mud/oil spills and marine debris (E-100 thru E-202); flaring and venting violations (P-107 thru P-111); and broad-based noncompliance with lease stipulations and “approved plans/” applications (G-114 thru G-116). MMS has limited methods to verify and document industry compliance with the regulatory performance standards.

MMS issues hundreds of environmental (E-INCs) every year. There is no discernible trend of improvement by industry over the past 5 years. The number of INCs issued concerning maintenance of pollution inspection records have continually increased from 2000–2005. MMS realizes that our current approach to environmental protection does not allow us to ascertain the level of industry compliance with all applicable environmental laws, regulations, and lease stipulations. We believe that industry’s SEMS plan should contain processes and protocols for detailing their compliance with these requirements. MMS is aware that industry may be documenting compliance in ways that MMS does not currently verify and track, and that industry may be investigating ways to better demonstrate environmental compliance. MMS is considering a range of options for ensuring industry compliance with environmental regulations and is seeking comment on how industry can demonstrate to MMS their compliance with these requirements.

**Possible Options for Implementing SEMS**

There are a number of approaches MMS could adopt in moving to a SEMS requirement. We request your views on the following approaches and any others that you would like us to consider for implementing a SEMS program.

1. *Keep the Current Regulatory Program*—the current program is largely based on overarching performance-based regulations supplemented by specific prescriptive safety and environmental regulations and requirements where necessary. The use of API RP 75, while encouraged, is strictly voluntary.

2. *A Mandatory Limited SEMS Approach*—continue the current regulatory regime and add the four critical SEMS elements—hazard analysis, management of change, operating procedures, and mechanical integrity.

3. *A Complete SEMS Approach*—a new performance-based comprehensive safety and environmental management approach. The MMS would develop performance-based regulations that address the 12 elements from API RP 75 and elements similar in nature to those detailed in Section 4 of ISO 14001.

**Enforcement of SEMS Requirement**

A template available to MMS for enforcing a performance-based regulation has been developed as part of our 30 CFR Part 250 Subpart O Well Control and Production Safety Training regulations. Under subpart O, an operator is required to develop and implement a training plan that complies with the provisions of our regulations. These regulations set out broad goals and leave the operator the flexibility to determine how best to comply. Under this system, MMS does not approve the plan, but expects the operator to show us how they have complied with the provisions in their plan when asked. To evaluate an operator’s performance under the subpart O regulations, MMS has the following tools available:

1. Informal employee interviews,
2. Audits:
  - Formal interviews
  - Training plan reviews
  - Records review
  - Course content evaluations
3. Testing:
  - Written
  - Verbal
  - Hands-on.

MMS views the subpart O approach as a viable option for enforcing additional performance-based regulations, such as SEMS, but welcomes any suggestions and

information concerning other techniques.

### Alternative Compliance Program

The MMS is considering a SEMS pilot program under which a limited number of companies with outstanding performance records, as demonstrated by incident and compliance data, would manage their operations under a comprehensive SEMS program. For the duration of the pilot program, these companies would operate under a separate regulatory program with far fewer prescriptive requirements.

The intention of the pilot program is threefold:

1. Determine whether SEMS should be expanded beyond a voluntary regulatory program;
2. Provide MMS with experience in auditing and using SEMS as a regulatory program vehicle to ensure safe and clean operations; and
3. Determine if SEMS is practical for the oil and gas industry as a whole or only specific companies. MMS envisions that any company qualifying for the SEMS pilot program would operate according to their SEMS plan and would be relieved from information submissions, certain applications and discrete MMS approval actions except those specifically required by law. If a company is found to be out of compliance with their SEMS plan, then incidents of noncompliance and possibly civil penalties could result. It is projected that the pilot program will operate with companies needing to qualify on a periodic basis. Companies interested in the pilot program should have a fully functioning SEMS program with a verifiable history showing how their program has had a positive impact on the safety of their operations.

### Questions

The purpose of this ANPR is to seek input from industry and other interested parties on the three SEMS approaches described above. In addition to receiving input on the approaches identified in this ANPR, this process will also allow MMS to evaluate alternative ideas. MMS invites specific comments on the following:

#### *SEMS Approaches*

- Which of the three identified approaches do you consider most responsive to MMS's stated goals and why?
- Are there other safety and environmental management systems or programs that MMS should review? Please provide as much detail as possible.

- Does the subpart O model using audits, informal employee interviews, and testing described above, provide a suitable model for verifying the implementation of a performance-based safety and environmental management program? Are there alternative approaches to the subpart O model that the MMS should consider?

- Should MMS or a third party verify that a performance-based safety and environmental management program is working? Should audits be periodic or should they be triggered by events or indicators?

- Should MMS review the SEMS plan, review and approve the SEMS plan, or have an independent third party verify, review, and approve the SEMS plan?

- Should SEMS plans be in addition to the current prescriptive regulations or should the SEMS plan be in lieu of certain prescriptive regulations?

- What standards should a SEMS plan include to provide consistent and credible approaches to offshore operational safety and environmental performance?

—Would these documents, standards, or guidelines be domestic or international?

—Would these documents, standards, or guidelines be accepted industry best practices or internal company policies and procedures?

- What criteria should the MMS use to determine whether an operator has a viable SEMS plan?

- Is API RP 75 a sufficient model for addressing all the factors associated with offshore industry practices? If not, please provide the MMS with your suggestions on an appropriate model.

- Are there existing programs or initiatives industry is currently using that can further our ability to verify and track environmental compliance, such as ISO 14001:2004, SempCheck, European Eco-Management and Audit Scheme, or Global Environmental Management Initiative.

- How can MMS improve its current regulatory model to incorporate environmental performance measurement systems?

- What are the most appropriate compliance measures that are responsive to our broad environmental performance standards referenced in the "The Regulatory Program" section above?

#### *Alternative Compliance Program*

Should MMS consider developing a "pilot program" to assess an alternative compliance program for outstanding operators?

- What measure(s) should we use to determine who is allowed to participate?

- How should MMS judge prospective "pilot program" applicants? Should an applicant be required to submit a complete SEMS program or plan to MMS for evaluation? Should MMS approve such a program?

- Should a pilot program be for a fixed period of time? How long?
- Should performance issues trigger a premature end to an operator's participation in a pilot program?

- What measures should be considered?

- What type of MMS regulatory regime do you recommend for companies in a pilot program?

- What prescriptive regulations and permitting requirements should be excluded from this alternative regulatory program?

- What advantages does a SEMS regulatory approach have for companies compared to prescriptive approach?

- What disadvantage does a SEMS regulatory approach have for companies as compared to a prescriptive approach?

- Should the SEMS pilot program include only four elements as mentioned above or should it be for all 12 elements?

MMS seeks responses to the above questions, an assessment of which option industry considers the most effective and efficient, and any other information deemed relevant that is not specifically asked for. After analyzing the comments received from this notice, MMS will determine the need for a public workshop to further exchange ideas. MMS encourages all interested parties to respond to these questions and to provide comments on the various options.

Dated: May 3, 2006.

**R.M. Johnnie Burton,**

*Director, Minerals Management Service.*

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### 30 CFR Part 250

RIN 1010-AD19

#### Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS)—Incorporate API RP 65 for Cementing Shallow Water Flow Zones

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Proposed rule.