

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—
Incorporate API RP 65 for Cementing Shallow Water Flow Zones**

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: MMS is incorporating by reference the First Edition of the American Petroleum Institute's Recommended Practice (RP) for Cementing Shallow Water Flow (SWF) Zones in Deep Water Wells (API RP 65) into MMS regulations. From 1987 to 2004, at least 113 Outer Continental Shelf (OCS) wells encountered SWF to varying degrees. While the majority of these wells experienced SWF to only a minor degree, there were instances of severe encounters resulting in abandonment of well sites and loss of wells. This action establishes best practices for cementing wells in deep water areas of the OCS that are prone to SWF.

EFFECTIVE DATE: March 30, 2007. The incorporation by reference of the publication listed in the regulation is approved by the Director of the Federal Register as of March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Kirk Malstrom, Office of Offshore Regulatory Programs, Regulations and Standards Branch at (703) 787-1751.

SUPPLEMENTARY INFORMATION:

Background: Since 1987, OCS operators have reported encountering SWF problems while drilling in specific areas of the Gulf of Mexico (GOM). Between 1987 and 2004, MMS is aware of at least 113 wells, drilled by approximately 25 different operators, that encountered problems with SWF. General information on SWFs, and maps showing the location of areas in the GOM that have had documented cases of SWF, can be viewed at our Web site: <http://www.gomr.mms.gov/homepg/offshore/safety/wtrflow.html>.

This final rule updates the requirements for cementing operations in 30 CFR Part 250 Subpart A—General, and Subpart D—Oil and Gas Drilling Operations. Subpart A is amended to incorporate by reference "API RP 65, Recommended Practice for Cementing SWF Zones in Deep Water Wells," First Edition, September 2002. Subpart D is amended by adding new subparagraph

(e) to § 250.415, detailing when API RP 65 is to be evaluated by an operator in designing a cementing program. Some of the key points of this final rulemaking include the following:

- Use of this standard is not warranted for every OCS well, or for all casing strings in a particular well. Its use is limited to situations where there is a risk of encountering a SWF based upon past drilling activity, seismic data or interpretation, or correlation of data from offset wells in water depths greater than 500 feet (SWF has not been encountered in wells in water depths less than 500 feet).
- The risk associated with encountering a SWF is characterized in one of two ways: (1) An area with an unknown SWF potential, or (2) an area known to contain a SWF hazard.
- For purposes of this final rule, these terms are defined as follows:
 - *An area with an unknown SWF potential* means a zone or geologic formation where neither the presence nor absence of potential for a SWF has been confirmed.
 - *An area known to contain a SWF hazard* means a zone or geologic formation for which drilling has confirmed the presence of SWF.
 - Use of this standard is limited to water depths greater than 500 feet for areas with an unknown SWF potential or areas known to contain a SWF hazard. Data available to the MMS on the 113 wells that have encountered SWF show that the water depths for these wells ranged from approximately 500 feet to 9,675 feet, with an average water depth of 3,560 feet.
 - As part of an operator's Application for Permit to Drill (Form MMS-123), a statement needs to be included concerning how API RP 65 was evaluated by the operator. The operator must also detail which of the cementing techniques from this standard were used as part of the cementing program for a well drilled in either "areas with an unknown SWF potential" or "areas known to contain a SWF hazard." This information will be evaluated by MMS during the review of the application for permit to drill, and discussed with the operator as appropriate.
 - Particular attention should be placed on evaluating, designing, and implementing the cementing programs of both the surface and conductor casing strings in wells requiring review under API RP 65. Data available to the MMS on the 113 wells that have encountered SWF show that the tops of the SWF zones ranged from approximately 450 feet below mud line to 3,005 feet below mud line, with an average depth of

encounter of 1,305 feet below mud line. These depths are typical of the setting depths of either conductor or surface casings.

Comments on the Rule: On May 22, 2006, MMS published a proposed rule (71 FR 29280) to incorporate API RP 65. The public comment period ended on July 21, 2006. MMS received six comments on the proposed rule. All the comments came from companies or organizations working in the oil and gas industry, including ExxonMobil, BP, Devon, BJ Services Company, Schlumberger, and the Offshore Operators Committee (OOC). A majority of the comments addressed similar issues mostly on the bias toward using foam cement to address the SWF issue in sections of the RP. Other comments expressed concern that singling out a specific cementing technique hinders new methods and technology development, and that this RP is not appropriate for other cementing applications. You may view these comments on MMS' Public Connect on-line commenting system at: <http://www.mms.gov/federalregister/PublicComments/APIRP65.htm>.

Discussion of Comments:

Comment: Five out of the six comments wanted MMS to omit appendix F of API RP 65. The comments suggest omitting this appendix due to a perceived bias toward use of foam cementing. At the time the RP was developed, foam was the best available cement system for use in combating SWFs. Since development of this standard, new options have been developed that are similarly efficient, i.e., non-compressible systems. A few comments also recommend omitting appendices D and E due to bias toward foam cement.

Response: MMS agrees that there appears to be a bias toward the use of foam cement in appendices D, E, and F. However, under this final rulemaking, MMS does not require a company to comply with the provisions contained in these appendices or submit any information related to these appendices. MMS views the appendices in this RP as examples and background information. With specific reference to appendix F, even with the apparent bias towards use of foam cement, MMS still views the cementing matrix as a useful tool that can help a company evaluate the performance of their cement jobs and improve upon subsequent cement operations.

Comment: One comment provided further recommendations and alternate language to change sections 11.1, 11.2, and 11.3 of the RP to eliminate bias towards foam cement.

Response: MMS does not have the authority to change an API document. While MMS could elect not to incorporate by reference specified provisions of the document, it has instead opted to incorporate API RP 65, First Edition (September 2002) in its entirety. API updates these recommended practices periodically through a consensus-based process. MMS believes it best that the changes suggested by this commenter be proposed to the API review committee so that they can be considered by a cross-section of industry. If the proposals are adopted by API, and incorporated into a revised edition of this RP, MMS would then have the option to consider incorporating the revised edition into the regulations.

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This final rule is not a significant rule as determined by the Office of Management and Budget (OMB), and is not subject to review under E.O. 12866.

(1) The final rule will not have an annual effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The economic analysis prepared by the MMS indicates that, if the techniques included in API RP 65 are evaluated by operating companies in the planning phases of wells drilled in *Areas with an Unknown SWF Potential* or *Areas Known to Contain a SWF Hazard*, this process will increase the planning costs associated with these wells by no more than \$20,000 per well (industry estimate). This cost includes planning associated with a full range of SWF mitigation measures. The measures include casing centralization; pipe movement; use of light weight cements such as a foam system; use of non-compressible systems; proper mud circulation prior to cementing; site selection; the drilling of pilot holes; setting extra strings of casing; use of measurement while drilling technology; pressure while drilling technology; and use of a drilling riser for shallow sections of a deep water well. Today, most lessees conducting operations in SWF-prone areas already use most of these techniques. As a result, additional costs associated with implementing these techniques under this final rule will be negligible.

Based on information available to MMS, there have been a total of 1,275

wells drilled on the OCS in water depths of 500 feet or greater during the period 2000–2004. The cost to industry over the past 5 years for SWF mitigation would have been approximately \$25.5 million (\$20,000 per well × 1,275 wells = \$25.5 million) if the evaluations required for this final rule were conducted prior to drilling all of these wells. In reality, a significant number of the 1,275 wells would have been located in areas known to be free of SWF, and would not have required an operating company to implement the techniques included in API RP 65 as part of their well planning efforts, resulting in a significantly lower cost to the offshore industry.

Using the well data trends from 2000–2004, in water depths greater than 500 feet, MMS estimates an average of 200 wells will be drilled per year. Using the average of 200 wells, the estimated annual cost to industry will be approximately \$4 million (\$20,000 per well × 200 wells = \$4 million). Based on actual drilling figures, estimated total well costs are in excess of \$40 million per well. Industry estimates of \$20,000 per well for SWF mitigation represents only 0.05 percent of total well costs. The possible consequences of SWF, well abandonment, or well loss are far more severe than the 0.05 percent of well costs for SWF mitigation.

For the above reasons, the final rule will have a minor economic effect on the offshore oil and gas industry.

(2) The final rule will not create a serious inconsistency or otherwise interfere with action taken or planned by another agency. It will not change the relationships of the OCS oil and gas leasing program with other agencies' actions.

(3) This final rule will not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients. The changes proposed in this rule are strictly planning requirements for specific well cementing processes to prevent accidents and environmental pollution on the OCS.

(4) This final rule will not raise novel legal or policy issues.

Regulatory Flexibility Act (RFA)

The Department certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

The changes in the final rule will affect lessees and operators of leases on the OCS. This could include about 130 active Federal oil and gas lessees. Small lessees that operate under this rule fall under the Small Business

Administration's (SBA) North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 70 percent of these companies are considered small. This final rule will therefore affect a substantial number of small entities.

As previously stated, there have been a total of 1,275 wells drilled on the OCS in water depths of 500 feet or greater during the period 2000–2004. Of the total 1,275 wells drilled, 1,107 were drilled by large businesses and 168 by small businesses. The 168 wells were drilled by a total of 15 small businesses. The 1,107 large business wells correspond to 87 percent of all wells drilled, leaving 13 percent as small business wells.

The final rule will have a minor economic effect on the oil and gas offshore lessees and operators on the OCS, regardless of company size. This is due to the relatively small SWF mitigation costs in relation to the high drilling costs. Because of the high potential costs of SWF, well abandonment, or well loss, in the overwhelming majority of cases operators choose to perform improved and safer well cementing procedures on their own initiative, not because of MMS safety requirements. The final rule will add relatively little to the cost of a well cementing procedure. Thus, there will not be a significant impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). The final rule will not cause the business practices of any of these companies to change.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1-888-734-3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

The final rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This final rule:

- a. Will not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Leasing on the OCS is limited to residents of the U.S. or companies incorporated in the U.S. This final rule will not change that requirement.

Unfunded Mandates Reform Act (UMRA)

This final rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (Executive Order 12630)

This final rule is not a governmental action capable of interference with constitutionally protected property rights. Thus, MMS did not need to prepare a Takings Implication Assessment according to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Federalism (Executive Order 13132)

With respect to E.O. 13132, this final rule will not have federalism implications. This final rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this final rule will not affect that role.

Civil Justice Reform (Executive Order 12988)

With respect to E.O. 12988, the Office of the Solicitor has determined that the final rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act (PRA)

The revisions to 30 CFR 250 refer to, but do not change, information collection requirements in current regulations. They impose no new reporting or recordkeeping requirements and a submission to OMB under § 3507(d) of the PRA is not required. The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a number, you are not required to respond. OMB approved the referenced information collection requirements for 30 CFR part 250 under OMB Control Numbers 1010-0114 (22,538 burden hours), expiration October 31, 2007, and 1010-0141 (163,714 burden hours), expiration August 31, 2008.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. MMS has analyzed this rule under the criteria of the NEPA and 516 Departmental Manual 6, Appendix 10.4C(1). MMS completed a Categorical Exclusion Review for this action and concluded that "the rulemaking does not represent an exception to the established criteria for categorical exclusion; therefore, preparation of an environmental analysis or environmental impact statement will not be required."

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires the agency to prepare a Statement of Energy Effects when it takes a regulatory action that is identified as a significant energy

action. This final rule is not a significant energy action; and therefore, will not require a Statement of Energy Effects because it:

- a. Is not a significant regulatory action under E.O. 12866,
- b. Is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and
- c. Has not been designated by the Administrator of the Office of Information and Regulatory Affairs, OMB, as a significant energy action.

Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in E.O. 13175, we have evaluated this final rule and determined that it has no potential effects on federally recognized Indian tribes. There are no Indian or tribal lands on the OCS.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental protection, Incorporation by reference, Oil and gas exploration, and Reporting and recordkeeping requirements.

Dated: January 31, 2007.

C. Stephan Allred,
Assistant Secretary—Land and Minerals Management.

■ For the reasons stated in the preamble, the MMS amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*, 31 U.S.C. 9701.

■ 2. In § 250.198, the following document incorporated by reference is added to the table in paragraph (e) in alphanumeric order.

§ 250.198 Documents incorporated by reference.

* * * * *
(e) * * *

Title of documents	Incorporated by reference at
API RP 65, Recommended Practice for Cementing Shallow Water Flow Zones in Deep Water Wells, First Edition, September 2002, Product No. G56001	§ 250.415(e)

■ 3. In § 250.415, add a new paragraph (e) as set forth below.

§ 250.415 What must my casing and cementing programs include?

* * * * *

(e) a statement of how you evaluated the best practices included in API RP 65, Recommended Practice for Cementing Shallow Water Flow Zones in Deep Water Wells (incorporated by reference as specified in § 250.198), if you drill a well in water depths greater than 500 feet and are in either of the following two areas:

- (1) An "area with an unknown shallow water flow potential" is a zone or geologic formation where neither the presence nor absence of potential for a shallow water flow has been confirmed.
- (2) An "area known to contain a shallow water flow hazard" is a zone or geologic formation for which drilling has confirmed the presence of shallow water flow.

[FR Doc. E7-3426 Filed 2-27-07; 8:45 am]
BILLING CODE 4310-MR-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV101-6038; FRL-8273-7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Notice of administrative change.

SUMMARY: EPA is updating the materials submitted by West Virginia that are incorporated by reference (IBR) into the State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the West Virginia Department of Environmental Protection and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the Regional Office.

EFFECTIVE DATE: This action is effective February 28, 2007.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection

Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Room Number 3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: (202) 566-1742; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FOR FURTHER INFORMATION CONTACT:

Harold A. Frankford, (215) 814-2108 or by e-mail at frankford.harold@epa.gov.

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State revises as necessary to address the unique air pollution problems. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997 *Federal Register* document. On February 10, 2005 (70 FR 7024), EPA published a *Federal Register* beginning the new IBR procedure for West Virginia. In this document, EPA is doing the following:

1. Announcing the update to the IBR material as of December 15, 2006.
2. Making corrections to the following entries listed in the paragraph 52.2520(c) chart, as described below:
 - a. 45 CSR 14, "State citation [Chapter 16-20 or 45 CSR]" column—revising the entries for the regulation citation and Sections 45-14-2, 45-14-3, and 45-14-19.
 - b. 45 CSR 14, "Title/subject" column—revising the entry for Section 45-14-25.
 - c. 45 CSR 14, "State effective date" column, all entries—revising the effective date from "6/2/05" to "6/1/05."
 - d. 45 CSR 19—Adding entries for Tables 45-19A and 45-19B. These tables were part of the regulatory text of 45 CSR 19 which EPA approved as a

revision of the West Virginia SIP on November 2, 2006 (71 FR 64668), but were inadvertently omitted from the amended rule for 40 CFR 52.2520(c) published at 71 FR 64670.

e. 45 CSR 19, "State citation [Chapter 16-20 or 45 CSR]" column—revising the entries for the regulation citation and Sections 45-14-2, 45-14-3, and 45-14-17.

f. 45 CSR 19, "Title/subject" column—revising the entry for Section 45-19-23.

g. 45 CSR 19, "State effective date" column, all entries—revising the effective date from "6/2/05" to "6/1/05."

h. 45 CSR 14 and 45 CSR 19, "Additional explanation at 40 CFR 52.2565" column, all entries—adding the SIP effective date for each entry.

3. Making corrections to the title of the "Additional information" column in the paragraph 52.2520(d) chart.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation, and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect chart entries.

Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule