

DEPARTMENT OF THE INTERIOR**Bureau of Ocean Energy Management,
Regulation and Enforcement****30 CFR Part 250**

[Docket ID BOEM–2010–0046]

RIN 1010–AD15

**Oil and Gas and Sulphur Operations in
the Outer Continental Shelf—Safety
and Environmental Management
Systems**

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes a new subpart under the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) regulations to require operators to develop and implement Safety and Environmental Management Systems (SEMS) for oil and gas and sulphur operations in the Outer Continental Shelf (OCS). This rulemaking will incorporate in its entirety and make mandatory the American Petroleum Institute's Recommended Practice 75, Development of a Safety and Environmental Management Program for Offshore Operations and Facilities, with respect to operations and activities under the jurisdiction of BOEMRE. This final rule will apply to all OCS oil and gas and sulphur operations and the facilities under BOEMRE jurisdiction including drilling, production, construction, well workover, well completion, well servicing, and DOI pipeline activities. The importance of this final rule is highlighted by the Deepwater Horizon event on April 20, 2010. Although the cause of the event is presently under investigation, it further illustrates the importance of ensuring safe operations on the OCS. BOEMRE believes that requiring operators to implement SEMS will reduce the risk and number of accidents, injuries, and spills during OCS activities.

DATES: *Effective Date:* This rule becomes effective on November 15, 2010. The incorporation by reference of the publication listed in the regulation is approved by the Director of the Federal Register as of November 15, 2010.

FOR FURTHER INFORMATION CONTACT: David Nedorostek, (703) 787–1029.

SUPPLEMENTARY INFORMATION: On May 22, 2006, the former Minerals Management Service published an Advance Notice of Proposed Rulemaking (71 FR 29277), and then on June 17, 2009, BOEMRE (formerly

MMS) published a Notice of Proposed Rulemaking in the **Federal Register** entitled "Safety and Environmental Management Systems for Outer Continental Shelf Oil and Gas Operations" (74 FR 28639). The comment period for that proposed rule closed on September 15, 2009. In response to several requests, BOEMRE issued a National Notice to Lessees and Operators (NTL No. 2009–N05) on August 12, 2009, announcing a public meeting on September 2, 2009, in New Orleans, Louisiana, to discuss the proposed rule.

Summary of the Final Rule

BOEMRE is incorporating by reference, and making mandatory, the American Petroleum Institute's Recommended Practice for Development of a Safety and Environmental Management Program for Offshore Operations and Facilities (API RP 75), Third Edition, May 2004, reaffirmed May 2008. This recommended practice, including its appendices, constitutes a complete Safety and Environmental Management System (SEMS) program. On May 22, 2006, BOEMRE published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** (71 FR 29277) related to requiring a SEMS program. This was followed on June 17, 2009, by a Notice of Proposed Rulemaking (NPR).

The ANPR discussed several options for implementing a SEMS program. One of these options was a comprehensive safety and environmental management approach by addressing all elements of API RP 75. API RP 75 consists of 13 sections, one of which is a "General" section. This relates to the 12 elements identified in the ANPR and states the overall principles for the SEMS program and establishes management's general responsibilities for its success. This General element is critical to the successful implementation of the SEMS program in API RP 75, and BOEMRE is including it by incorporating by reference the entirety of API RP 75.

The NPR proposed regulatory text premised on the four critical elements of API RP 75 (hazards analysis, management of change, operating procedures, and mechanical integrity). BOEMRE noted all elements of API RP 75 in the proposed rule, stating that a SEMS program should be modeled after the requirements of API RP 75, but did not propose to incorporate all elements of API RP 75. However, several comments suggested that BOEMRE should incorporate by reference and require implementation of all elements of API RP 75. BOEMRE has determined that for the SEMS program to be most

effective, the entirety of API RP 75 needs to be included in the program and has required as much in the final rule. BOEMRE also believes that adoption of API RP 75 in its entirety is consistent with the direction of the National Technology Transfer and Advancement Act of 1996, which directs agencies, wherever possible, to adopt private standards.

This final rule will therefore require the operator (a lessee, the owner or holder of operating rights, or the designated operator) to integrate a comprehensive SEMS program into the management of their OCS operations, thereby providing for the prevention of waste and conservation of natural resources of the Outer Continental Shelf. In addition, BOEMRE is highlighting certain requirements from API RP 75 and further describing those requirements in the regulatory text to clarify compliance requirements. It is the intent of this rule to hold the operator accountable for the overall safety of the offshore facility, including ensuring that all contractors and subcontractors have safety policies and procedures in place that support the implementation of the operator's SEMS program and align with the principles of managing safety set forth in API RP 75. Nothing in this final rule shall affect the Coast Guard's authority and jurisdiction over vessels and offshore facilities. This final rule will require all elements of API RP 75 as follows:

- (1) General, with additional clarification in § 250.1909,
- (2) Safety and Environmental Information, with additional clarification in § 250.1910,
- (3) Hazards Analysis, with additional clarification in § 250.1911,
- (4) Management of Change, with additional clarification in § 250.1912,
- (5) Operating Procedures, with additional clarification in § 250.1913,
- (6) Safe Work Practices, with additional clarification in § 250.1914,
- (7) Training, with additional clarification in § 250.1915,
- (8) Assurance of Quality and Mechanical Integrity of Critical Equipment, (Mechanical Integrity), with additional clarification in § 250.1916,
- (9) Pre-startup Review, with additional clarification in § 250.1917,
- (10) Emergency Response and Control, with additional clarification in § 250.1918,
- (11) Investigation of Incidents, with additional clarification in § 250.1919,
- (12) Audit of Safety and Environmental Management Program Elements, (Auditing), with additional clarification in §§ 250.1920, 1924, and 1925, and

(13) Records and Documentation, (Recordkeeping and Documentation), with additional BOEMRE requirements in § 250.1928.

BOEMRE also carried over other provisions that were contained in the proposed rule. Therefore, in implementing a comprehensive SEMS program that incorporates all of API RP 75, the operator needs to include the following in its SEMS program:

(1) Recordkeeping and documentation regarding specification of the amount of time records are to be kept;

(2) Clarification of the differences between hazards analysis (facility level) and job safety analysis (task level);

(3) Procedures to verify that contractors are conducting their activities in accordance with the operator's SEMS program and an evaluation to ensure that contractors have the skills and knowledge to perform their assigned duties;

(4) An independent third-party or your designated and qualified personnel must conduct all SEMS audits;

(5) Audit documentation must be submitted to BOEMRE;

(6) Other documentation to be made available to BOEMRE upon request;

(7) OCS performance measures data (Form MMS-131).

The following table provides a summary of the individual provisions and their associated cost for implementation and annual maintenance of a SEMS program. No costs are identified for implementation of a SEMS program by high activity operators because all high activity operators currently have a SEMS program. Implementation costs for moderate and low activity operators that have a partial SEMS program are lower than those operators without a SEMS program.

Elements	Implementation (moderate)		Implementation (low)		Maintenance (high)	Maintenance (moderate)	Maintenance (low)
	Partial	Full	Partial	Full			
General	\$18,000	\$18,000	\$5,000	\$5,000	\$50,000	\$3,000	\$2,000
Safety and Environmental Information	0	22,000	0	8,000	75,000	12,000	3,000
Hazards Analysis	0	98,000	0	23,000	300,000	34,000	14,000
Management of Change	0	29,000	0	18,000	150,000	21,000	7,000
Operating Procedures	0	20,000	0	10,000	100,000	17,000	4,000
Safe Work Practices	0	28,000	0	12,000	125,000	17,000	5,000
Training	0	30,000	0	14,000	200,000	25,000	9,000
Mechanical Integrity	0	38,000	0	19,000	225,000	27,000	11,000
Pre-startup Review	25,000	25,000	8,000	8,000	125,000	16,000	5,000
Emergency Response and Control	28,000	28,000	14,000	14,000	175,000	24,000	7,000
Investigation of Incidents	20,000	20,000	10,000	10,000	95,000	17,000	3,000
Audits	3,000	3,000	2,000	2,000	15,000	6,000	6,000
Records and Documentation	6,000	6,000	4,000	4,000	30,000	6,000	4,000
Total	100,000	365,000	43,000	147,000	1,665,000	225,000	80,000

Total One-time Implementation: \$655,000.
Total Annual Maintenance: \$1,970,000.

BOEMRE may enforce non-compliance with any of the requirements of 30 CFR part 250 subpart S, in a variety of ways. BOEMRE may issue incidents of non-compliance (INCs) following an inspection where BOEMRE determines that a facility is conducting operations that do not comply with the requirements of subpart S, or after a BOEMRE directed independent third-party SEMS audit. If BOEMRE identifies non-compliance with subpart S as a result of a regularly scheduled SEMS audit and all deficiencies discovered during the course of the audit are sent to BOEMRE with a schedule for their correction, then BOEMRE will consider this in deciding whether to issue an INC. However, if the operator does not meet its schedule of corrections, BOEMRE will be more likely to issue an INC.

If non-compliance resulting from an inspection or BOEMRE-directed audit poses actual harm or threat to the human and marine environment, BOEMRE will proceed with a civil penalty review of that violation(s) subject to 30 CFR part 250, subpart N—

Outer Continental Shelf Civil Penalties. Should non-compliance with subpart S display serious and pervasive safety management concerns, BOEMRE may restrict or revoke the operator's privilege to operate on the OCS as a designated operator or lessee operator through probationary or disqualification actions as detailed in § 250.135.

Notice of Proposed Rulemaking Comments

In response to the proposed rule, BOEMRE received 61 sets of comments, of which 57 were from individual entities (companies, industry organizations, or private citizens). Some of the 61 comments were duplicates, not related to the proposed rule, or the same company submitting multiple comments. All of the comments received are posted on the BOEMRE Web site at: <http://www.BOEMRE.gov/federalregister/PublicComments/AD15SafetyEnvMgmtSysforOCSOilGasOperations.htm>.

Multiple comments stated that they do not support the proposed rule as written because it will eliminate the

flexibility needed for any safety management system to work effectively, including flexibility inherent in the API RP 75 approach.

Five comments received recommended that BOEMRE should move forward to implement its plan to require a SEMS for oil and gas and sulphur operations on the OCS and that the proposed rule should require that offshore operators implement all elements of API RP 75. Other comments suggested various combinations of the API RP 75 elements.

The majority of the comments received stated that SEMS should remain voluntary and the proposed rule, as written, would increase documentation and recordkeeping requirements and would not address human factors (*i.e.*, errors, behavior, etc.). Several comments recommended that BOEMRE incorporate the JSA into current 30 CFR part 250 regulations to address human factors as an alternative to incorporating the four elements.

Numerous comments received from drilling, production, and service contractors stated that BOEMRE already

has regulations in place to address employee training and competency assessments in 30 CFR part 250, subpart O—Well Control and Production Safety Training, and recommended that BOEMRE strike the section relating to contractors from the rule because it is redundant with the existing subpart O regulations.

A few comments received from industry trade organizations (API, International Association of Drilling Contractors (IADC), Offshore Operators Committee (OOC)) stated that the proposed rule as written will require lessees and operators to modify existing SEMS programs and that rewriting these programs would not prevent accidents or increase safety.

In response to the comments we address the general comments and those that pertain to several sections of the rule first. Following that, we have a section-by-section discussion of the specific comments received and our response to those comments, including any changes made to the final rule.

General Comments

Contractor Selection Criteria

Comment: Nearly every comment addressed contractor selection criteria. They stated that BOEMRE already has regulations in place (30 CFR part 250, subpart O—Well Control and Production Safety Training) that address training and competency assessment for contractors. In addition, they stated that BOEMRE was requiring contractors to have a SEMS program.

Response: We incorporated by reference API RP 75, Section 7, which addresses training. Subpart O addresses training and competency for contractors. The operator may use the training requirements in subpart O to meet part of the requirements of Section 7. As part of their SEMS program, operators must establish and implement training programs so that all personnel are trained to work safely and are aware of environmental considerations offshore, in accordance with their duties. The SEMS program must address contractor training to ensure and verify that contractors have their own written safe work practices and contractors may adopt appropriate sections of the operator's SEMS program. The operator must have a SEMS program and is responsible for obtaining and evaluating information regarding the contract employer's safety performance and safety programs to ensure that skilled, knowledgeable, and properly trained personnel are working on the OCS. In order to comply with this rule, an operator must ensure that its contractors

are conducting their operations in accordance with the operator's SEMS program. The operator must work with the contractor regarding appropriate contractor safety and environmental policies and practices before a contractor begins work at the operator's facilities.

Jurisdictional Authority

Comment: Most comments expressed concern that BOEMRE had overstepped its jurisdictional authority by imposing management safety system requirements in the proposed rule on mobile offshore drilling units (MODUs). Comments questioned BOEMRE's authority to require an operator to have a SEMS on a MODU.

Response: BOEMRE has jurisdictional authority to adopt and implement this rule. The final rule will require operators to have a SEMS for a MODU when it is under BOEMRE's jurisdiction such as during drilling, well workover, well completion, and servicing operations.

The U.S. Offshore Industry Safety Record

Comment: Most comments expressed the view that the safety and environmental protection record of the offshore industry is excellent, and that imposing these new requirements is not justified.

Response: BOEMRE disagrees that the final SEMS regulation is not justified in light of the available incident data and the trends identified through analyzing this data as discussed in the ANPR and preamble of the proposed SEMS rule. This analysis covers 10 years (from 2000 to 2009) of OCS oil and gas operations, including Incidents of Noncompliance (INCs), accident panel investigation reports, incident analysis, and OCS spill analysis. It shows that the majority of INCs and accidents during that period were related to human factors and not to equipment failure. Thus, additional regulations are needed to address how operators can reduce the risk of incidents during OCS activities.

The ANPR and the proposed rule describe numerous incidents that indicate the need for a comprehensive SEMS program. The recent Deepwater Horizon incident is a significant reminder of the risk of offshore operations and the need to regularly evaluate measures that help ensure safe operations. A SEMS program will augment existing safety requirements.

Root Cause

Comment: Most comments stated that BOEMRE's assertion that "root cause analysis" points to the need for

requiring the four proposed SEMS elements, is not supported by the BOEMRE's incident analysis.

Response: BOEMRE believes that the SEMS regulation is justified given the available incident data trends and associated analysis discussed in the ANPR and preamble of the proposed and final SEMS rule. As mentioned previously, the analysis covered over 10 years and demonstrates that requiring operators to implement a SEMS program is likely to improve OCS safety. BOEMRE incident analysis supports adopting all 13 elements. Voluntary data submitted by industry should not be construed as BOEMRE data as it is incomplete and unverified. BOEMRE data is the only source of industry-wide data available.

Job Safety Analysis/Job Hazards Analysis

Comment: Most comments claimed that the job safety analysis/job hazards analysis is the only significant portion of the proposed rule that could affect the behavioral issues related to an incident.

Response: BOEMRE agrees that a JSA/JHA does address behavioral change with the goal of minimizing accidents, but disagrees that it is the only portion of the rule that bears on behavior. In the final rule, BOEMRE is incorporating all elements of API RP 75, much of which addresses behavioral issues and additional regulatory requirements to clarify expectations for compliance.

Mandated SEMS Program

Comment: Most comments strongly disagree that a mandated SEMS program as proposed is needed. The comments stated that a mandated program will not reduce OCS incidents any more than a voluntary SEMS program. As such, they recommend BOEMRE keep SEMS voluntary.

Response: BOEMRE disagrees. In 1998, operators accounting for 98 percent of OCS production reported that they were covered under a SEMS. By 2006, this number decreased to approximately 60 percent (see API RP 75 implementation survey at: <http://www.BOEMRE.gov/semp/Reports/survey98.htm>). A voluntary SEMS program has not been adopted by all operators. The only way to ensure the adoption of a SEMS program by all operators is to require that all operators implement such a program.

Comment: The other option proposed by some comments was to mandate a program for those operators who have a historical record of poor performance.

Response: BOEMRE does not agree that this is the most effective approach.

The purpose of requiring a SEMS program is to reduce the risk and number of incidents during OCS activities, which is not solely based or determined by an operator's past record of poor performance.

Withdraw Proposed Rule

Comment: Many comments stated that BOEMRE should withdraw the proposed rule immediately and reevaluate the cost/benefits of mandating a program that, as recently as 2003, was determined by the agency to be performing well as a voluntary program.

Response: BOEMRE disagrees. The only way to ensure SEMS programs are used across the entire OCS is to require a program for all operators. As of 2009, only 54 percent of OCS operators had a SEMS program, and not all of the 54 percent include the entirety of APR RP 75 in their SEMS program.

Underestimated Cost

Comment: Most comments expressed that BOEMRE significantly underestimated the cost of developing, revising, and implementing the SEMS program. Comments also stated that BOEMRE dramatically underestimated the major new documentation and reporting burden that the rule will impose on offshore operators.

Response: BOEMRE re-evaluated the cost burden on industry by interviewing parties experienced in the development of SEMS programs, vendors that submit information for operators, and operators with designated personnel who work on SEMS issues. Based on this information, we have increased the non-hour cost and hour burdens. Should OCS companies have documented data that shows a higher cost to industry, they may submit comments at any time on the paperwork burden as stated in § 250.199(d).

New Reporting, Documentation, and Recordkeeping Requirements

Comment: Several comments claim that this proposed rule attempts to prescribe new reporting, documentation, and recordkeeping requirements far above current levels in API RP 75, that will adversely impact OCS operators' businesses, both operationally and financially, while bringing little benefit towards improving safety of offshore operations.

Response: BOEMRE changed the reporting and recordkeeping requirements from the proposed rule to the final rule. We are now incorporating all elements of API RP 75, with requirements in § 250.1928 to enhance documentation and recordkeeping. The

reporting and recordkeeping requirements in this final rule are primarily submissions of documents that are directed by the adoption of API RP 75 and used to comply with this recommended practice. The reporting to BOEMRE is necessary to ensure the bureau has the appropriate documentation to monitor compliance with this rule.

Comment: The operator can only supply the information on the Form MMS-131 by collecting and consolidating information from their contractors, suppliers, and vendors and, in turn, any subcontractors or other workers involved in OCS operations. This is not a current practice and it will require a significant amount of time to establish and maintain a reporting system. Further complications will arise since a significant portion of work may be contracted out as "lump sum" turnkey projects where individual worker hours are not provided to the operator.

Response: Such information is critical to the effective implementation of a SEMS program. While operators may not currently require contractors, suppliers, and vendors to submit this information, it is not unreasonable to expect them to provide it to the operator. Regarding "lump sum" turnkey projects, individual worker hours could be estimated as a normal practice. For example, a contractor may have workers who stay offshore for 2 weeks at a time and work 12 hour shifts. Therefore, a crew of 20 people, could be estimated to work a total of 240 hours per day for 14 continuous days (240 hours \times 14 days = 3,360 hours).

Comment: While most contractors on the OCS probably collect information regarding employee work hours and injuries/illnesses for their own use, they typically do so either on a quarterly or annual basis, not the per-contract basis which would be necessitated by the proposed action.

Response: Operators will need to work with their contractors to establish the best approach to provide the information required by this rule.

Comment: Collection and reporting of information that only becomes available post-contract is problematic. For example: Will the operator be expected to report days of continuing restricted work activity for a contractor's employee injured while working for the operator after the termination of the contract?

Response: Once the contract has been terminated, the contractor's employee is no longer working for the operating company in question. Form MMS-131 only requests that an operating company

provide information for contractors under their employment during the calendar year. Operating companies will only be required to provide information tallied for the portion of the year the contractor is under the operating company's employment, not for the entire year.

Comment: There is no consistent industry practice of collecting information regarding work hours and injuries/illnesses from sub-contractors and other (possibly occasional) workers. The proposed action would require the establishment of such an information collection and reporting system. The collection of such information regarding occasional workers (e.g., equipment repair specialists), particularly those providing services on a per-job (rather than hourly) basis will be particularly challenging.

Response: In § 250.1914(e)(2), BOEMRE requires the operator to keep an injury/illness log, retain it for 2 years, and include this information on Form MMS-131. The operating company is responsible for collecting and submitting this data and will need to work with their contractors to establish a process for doing so.

Comment: BOEMRE has not, with this proposed version of Form MMS-131, provided the necessary instructions and definitions for the user to understand the information collection and comply with the reporting requirement. The instructions and definitions should be made available, with the proposed form, for public comment. The information collection should not be authorized until clear and unambiguous instructions are provided.

Response: There is no need to make proposed Form MMS-131 available for public comment since it was previously made available for comment in the proposed rule. However, in light of your comment concerning the instructions, the BOEMRE is providing explicit instructions to guide respondents on completing the form. See Appendix 1 of the final rule.

Comment: Cost and time estimates are more in line with the printing of manuals and instructions and not actual or historical costs we have as operators experienced for the development, implementation, and long term support of a new program.

Response: BOEMRE re-evaluated the cost burden on industry by interviewing parties experienced in the development of SEMS programs, vendors that submit information for operators, and operators with designated personnel who work on SEMS issues. Based on this information, we have increased the non-hour cost and hour burdens. If OCS companies

have documented data that shows a higher cost to industry, they may submit comments at any time on the paperwork burden as stated in § 250.199(d).

Comment: The proposed rule does not take into consideration the impact that the requirements and administrative burden will force on small independent contractors and service suppliers who perform a large portion of the field work typically carried out on OCS facilities.

Response: The operators must submit Form MMS-131 to BOEMRE, not small independent contractors and service suppliers. BOEMRE foresees that the primary impact for these groups is that they are now expected to provide information on the man-hours. That task may be as simple as taking note of the time specific employees report in and out of a specific work site and tracking that data. Operators will need to work with their contractors to establish the best approach to provide the information required by this rule.

Comment: We ask that BOEMRE appropriately acknowledge the entire burden being imposed by this rulemaking on the industry and account for it within its information collection budget.

Response: This is discussed in more detail in the Procedural Matters of this rulemaking under the Regulatory Flexibility Act and Paperwork Reduction Act section. If OCS companies have documented data that shows a higher paperwork burden than what BOEMRE estimates, they may submit comments at any time on the paperwork burden as stated in § 250.199(d).

Unnecessary Burden on BOEMRE

Comment: Most comments claim that implementing this proposed rule will create an additional burden to regional BOEMRE staff that will require additional inspector/auditor training and increased workloads.

Response: While this is additional work, we consider this regulation critical to improve safety on the OCS. BOEMRE will adjust inspector training and workload as necessary to ensure effective implementation of the rule.

Where BOEMRE Believes the Industry Is Falling Short of Expectations

Comment: Several comments would like to know specifically where BOEMRE believes the industry is falling short of BOEMRE's expectations regarding safety and why the BOEMRE has not shared this information in the rulemaking.

Response: The proposed rule was developed based upon 33 accident panel investigations, 1,443 incident

analyses, and 3,132 INCs issued by the agency. Additional information about these items is publicly available at: <http://www.BOEMRE.gov/incidents/index.htm> and http://www.gomr.BOEMRE.gov/homepg/offshore/safety/acc_repo/accindex.html.

For the SEMS program to be most effective, the entirety of API RP 75 needs to be part of the program, which the final rule requires.

Remove Prescriptive Language

Comment: A few comments pointed out that if BOEMRE intends to require that each SEMS conform to API RP 75, then the highly prescriptive language should be removed and the final rule should simply reference the appropriate sections in API RP 75. They recommend that BOEMRE incorporate by reference API RP 75 into the regulations and require compliance with the existing recommended practice. In addition, the comments state that the proposed rule, as written, not only represents an abrupt change from past direction of the BOEMRE, but it also penalizes those operators that took the initiative and developed programs patterned after the API RP 75 model. For operators that implement API RP 75 and continue to evolve their systems to keep abreast of changing operations, having the BOEMRE implement a 4 element SEMS will require them to go back and modify or change those systems to comply with new BOEMRE prescriptive requirements. These changes to programs that are working effectively will add minimal if any added value.

Response: The final rule incorporates, and thus prescribes, all of API RP 75, as well as requirements as detailed in 30 CFR 250 subpart S for recordkeeping and documentation, JSAs for activities identified in the SEMS programs, contractor selection criteria, and audit requirements.

Implementation

Comment: A commenter pointed out that the rule calls for the program to be implemented within 1 year after the final rule becomes effective. For operators that do not already have a written SEMS program that covers all of the elements, it will be impossible to develop the SEMS program, conduct all of the hazards analyses (facility), complete job hazards analysis for every job, write complete operating procedures, establish a mechanical integrity program, and establish an audit program for everyone on their facilities. Even for those operators that have a SEMS in place, it is likely to take more than 1 year to compare their existing program to the prescriptive

requirements in this rulemaking and make all of the required modifications. Therefore, if a mandatory program is adopted, the commenter recommends that a phased-in approach to implementation be adopted.

Response: BOEMRE believes that 1 year is a sufficient amount of time for operators to develop their SEMS program, even if they do not already have a program in place. The final rule incorporates by reference, and thus prescribes, the entirety of API RP 75 together with related requirements for recordkeeping and documentation, JSAs for activities identified in the SEMS programs, and contractor selection criteria. BOEMRE believes that 1 year is a sufficient amount of time for operators to put these related requirements of the program in place.

Three Alternatives for Consideration

Comment: A comment suggested that in lieu of pursuing the rulemaking in its current form, the BOEMRE should consider the following three alternatives:

1. Suspend the rulemaking and continue with the voluntary program currently in place.
2. Suspend the rulemaking and return to the Advance Notice of Proposed Rulemaking.
3. Abandon the concept of a new prescriptive section in the regulation and simply include the following language in § 250.107:

(e) You must have a safety and environmental management program in accordance with the American Petroleum Institute's Recommended Practice for Development of a Safety and Environmental Management Program for Offshore Operations and Facilities (API RP 75), incorporated by reference as specified in § 250.198.

(1) At a minimum, your safety and environmental management program must include:

(i) Hazards Analysis. You must perform a hazards analysis for all OCS facilities to identify, evaluate, and, where unacceptable, reduce the likelihood and minimize the consequences of uncontrolled releases and other safety or environmental incidents. This includes having a job safety analysis process. Human factors should be considered in this analysis,

(ii) Management of Change. You must establish procedures to identify and control hazards associated with change and maintain the accuracy of safety information,

(iii) Operating Procedures. You must have written facility operating procedures designed to enhance

efficient, safe, and environmentally sound operations.

(iv) Mechanical Integrity. You must ensure that procedures are in place and implemented so that critical equipment for any facility subject to this recommended practice is designed, fabricated, installed, tested, inspected, monitored, and maintained in a manner consistent with appropriate service requirements, manufacturer's recommendations, BOEMRE requirements, or industry standards, and

(v) Documentation. You must establish a documentation system to ensure that records and documents are maintained in a manner sufficient to implement your safety and environmental management program. Records or documentation may be in either paper or electronic form. You must make this documentation available for BOEMRE inspection upon request.

* * *

Response: BOEMRE disagrees with all three of the proposed alternatives. Not all operators on the OCS voluntarily submit Form MMS-131. A comprehensive SEMS program is important. The final rule incorporates, and thus prescribes, API RP 75, and requirements for recordkeeping and documentation necessary to implement API RP 75, JSAs for activities identified in the SEMS programs, contractor selection criteria and the option of utilizing either an independent third party or your designated and qualified personnel to conduct audits on your behalf.

Potential Adverse Impacts to Drilling Contractors

Comment: A commenter expressed concern that any prescriptive imposition of mandatory SEMS elements upon operators has the potential to adversely impact drilling contractors' SEMS, if a careful balance between the operators' perceived need to impose those SEMS elements against the contractors' need to manage their own SEMS is not achieved. Clearly the goal should be that a drilling contractor should move between operators with little, if any, modification to the contractor's SEMS.

Response: The final rule does not require that a contractor have a SEMS program. The final rule requires operators to ensure that contractors have their own written safe work practices and provides that they may adopt appropriate sections of the operator's SEMS program. The operator must have a SEMS program and is responsible for obtaining and evaluating information regarding the contractor's safety

performance and programs. An operator and contractor should agree on appropriate contractor's safety and environmental policies and practices before the contractor begins work at the operator's facilities.

BOEMRE Meetings With Industry

Comment: Several comments state that BOEMRE should have held meetings with industry so that industry comments and views could have been placed on the record. An informal "workshop" without public recording of industry views is insufficient to reflect the depth of concern held by exploration and production companies operating on the OCS and the numerous other companies that support their activities. Even though BOEMRE held a public meeting in September 2009, it did not have official recording of comments.

Response: BOEMRE disagrees. BOEMRE has publicized its views that a SEMS rule is needed since 1993 at a variety of industry conferences and meetings. At these meetings, BOEMRE explained that the agency supported implementation of a comprehensive SEMS program. These meetings presented the industry with numerous opportunities for dialog with BOEMRE regarding this type of program. In 1994, API RP 75 was developed with input from industry. In addition, the BOEMRE published its views in an ANPR in 2006, which discussed BOEMRE's consideration of a comprehensive API RP 75-based program, and an NPR in 2009. At the September 2009 meeting, attendees were encouraged to submit written comments.

Rule Lacks Specifics

Comment: Several comments stated that the proposed rule lacks specificity in some areas, as well as in the discussion on hazard/safety analyses. It is the commenters' concern that without specifics, there will be inconsistency with regard to interpretation, which will be difficult on the industry, as well as BOEMRE, to implement and enforce.

Response: The final rule incorporates, at an appropriate level of detail, requirements necessary for recordkeeping and documentation to implement API RP 75, JSAs for activities identified in the SEMS programs, contractor selection criteria and the option of utilizing either an independent third party or your designated and qualified personnel to conduct audits on your behalf.

Agency Jurisdiction

Comment: Several comments stated that it is not clear that BOEMRE is

expanding its reach into other agencies' jurisdiction, and do not understand how this will help safety. BOEMRE's proposal to handle enforcement issues on MODUs, where the USCG has jurisdiction and has done a very good job over the years with their limited resources, is a duplication of efforts and a power grab by BOEMRE. Requiring mandatory reporting to BOEMRE when Occupational Safety and Health Administration (OSHA) is the appropriate agency is another area of duplication and another power grab by BOEMRE. The comments stated that they may be misreading the information, but it also appeared that BOEMRE is attempting to take over jurisdiction of Department of Transportation (DOT) regulated pipelines. If this is the case, here is another attempt at duplication or a power grab by BOEMRE.

Response: BOEMRE disagrees. A SEMS will and should apply to MODUs when they are under BOEMRE's jurisdiction (*i.e.*, drilling, well workover, well completion, servicing operations). The final rule clarifies that the SEMS program must address DOI regulated pipelines only. BOEMRE, DOT, and USCG establish the requirements for workplace safety on the OCS with requirements that pertain to personal protection equipment, tripping and slipping hazards, deck openings, means of escape, fire extinguishers, and other workplace safety items. The OSHA requirements do not apply to OCS operations.

Support for the Proposed Rule

Comment: Some comments supported BOEMRE in requiring OCS oil and gas operators to implement SEMS rules, which are intended to reduce human error and organizational failures. The analysis summarized in the proposed rule indicates that the elements are associated with contributing causes of most incidents, hence the rationale for focusing on them. Comments requested that this regulation require, rather than simply encourage, that offshore operators implement all elements of the API RP 75, as identified in the rulemaking notice.

Response: Upon review of all the comments and the requirements of API RP 75, BOEMRE agrees that a SEMS program should be comprehensive to reduce human error and organizational failures. Therefore, BOEMRE incorporated all elements of API RP 75 with requirements necessary to implement API RP 75 and regulatory language to clarify expectations for compliance.

Comment Period

Comment: The comment period to such a significant, formal rule, was not long enough and it is recommended that further discussions with industry be carried out prior to any final rulemaking.

Response: BOEMRE disagrees. BOEMRE published an ANPR in 2006 notifying industry that we were considering requiring a comprehensive SEMS program and seeking comment. The proposed rule was published on June 17, 2009, with a 90-day comment period. BOEMRE also held a workshop on September 2, 2009 at which attendees were encouraged to submit written comments on the proposed rule. This comment period is consistent with comment periods for other rules of this magnitude. Thus, sufficient response time was afforded for interested parties to submit comments.

General Comments

Comment: A SEMS approach is more applicable to production facilities; MODU, liftboat, and coiled tubing operations are inherently more hazardous than production facility operations, and lead to more well control incidents.

Response: BOEMRE believes that SEMS has merit for all OCS operations including, but not limited to, production, drilling, well completion, well workover, well servicing, and coiled tubing. For SEMS to be properly implemented, it needs to address all OCS operations. Liftboats are under the jurisdiction of the USCG and are not covered by this regulation.

Comment: Support a more focused SEMS program for production facility management (excluding MODU operations), preferably one that is voluntary. Such a program, with elements of hazards analysis and management of change, probably could be helpful especially for smaller operators.

Response: BOEMRE disagrees. A SEMS should apply to MODUs and all other facilities under BOEMRE's jurisdiction. The final rule will require operators to have a SEMS for operations and activities onboard a MODU when it is under BOEMRE's jurisdiction such as drilling, well workover, well completion, and servicing operations.

Comment: Does the definition of facility in this section apply to all the sections in subpart S?

Response: BOEMRE is incorporating by reference API RP 75, including the definitions from Appendix D of API RP 75, except as revised in the final rule.

Comment: How does BOEMRE perceive the difference between a Job

Hazards Analysis (JHA) and a Job Safety Analysis (JSA)?

Response: A JSA is one form of hazards analysis. Hazards analysis is performed to identify and evaluate hazards for the purpose of their elimination or control. A JSA is a process used to review site-specific detailed job steps and uncover hazards associated with the specific job undertaken. To alleviate any confusion, BOEMRE replaced the term JHA with JSA in the final rule.

Comment: Is the JHA for each general operation or for the immediate task at hand?

Response: BOEMRE removed the term JHA from the final rule. In the final rulemaking, JSAs are required for the immediate tasks at hand and are not required for general operations.

Comment: What is BOEMRE's expectation for what triggers an internal audit and updating a facility hazards analysis?

Response: The final rule requires operators to have their SEMS program audited by either an independent third party or your designated and qualified personnel, according to the requirements of this subpart and API RP 75, Section 12. The first audit must be within 2 years of the initial implementation of the SEMS program and at least once every 3 years thereafter. However, BOEMRE may issue additional guidance on this after the final rule is implemented. BOEMRE may direct specific operators to conduct additional independent third-party audits or BOEMRE may conduct an audit, if we identify safety or non-compliance concerns based on the results of inspections and evaluations, or as a result of an event.

The operator must update the appropriate elements of their SEMS program, if there are deficiencies identified in the audit. For updating a hazards analysis for a facility, we incorporated by reference the requirements of API RP 75, Section 4.4, which requires that if a management of change is conducted due to changes in personnel, facility and operating conditions, then the operator must conduct a hazard analysis on those changes. For simple and nearly identical facilities, such as well jackets and single well caissons, the operator may use the same single hazards analysis after verifying that any site-specific deviations have been identified and addressed (*see* § 250.1911).

Comment: Recommend in proposed section § 250.1907 "What criteria for Mechanical Integrity must my SEMS program meet?" that "manufacturer's recommended limits" should be

changed to manufacturers and/or engineering design limits.

Response: We disagree; we believe that the manufacturers recommended limits are the most appropriate guidance to use.

Comment: What are BOEMRE's definitions of temporary operations, personnel change, and facility?

Response: See the scope of "facilities" addressed in § 250.1911 and Appendix D of API RP 75, incorporated by reference, which includes a definition of "facility." As to personnel change, we are now incorporating by reference API RP 75, Section 4, which defines "personnel change" in Section 4.3. The term "temporary operations" was removed from the final rule. It is the operator's responsibility to ensure all contractors subscribe to basic safety workplace principles that meet the spirit and intent of the operator's SEMS program.

Comment: Does BOEMRE support API RP 75 guidance on MOC as being sufficient to direct operators in developing an effective MOC process?

Response: The guidance provided in API RP 75, Section 4, which we incorporated by reference in the final rule, along with the requirement in § 250.1912 of the final rule provides sufficient guidelines and procedures on when and how to develop a MOC process.

Comment: How does BOEMRE perceive the difference between documenting the inspection and tests that have been performed, and verification that inspections and tests are being performed?

Response: BOEMRE will evaluate all of the documentation provided to verify that the inspections and tests were performed and that the operator continues to perform the inspections and tests, as described in their SEMS. BOEMRE is vigilant about operator documentation and may use a variety of tools to determine the validity of operator records and that the operator is conducting all prescribed and appropriate tests, as identified in their SEMS.

Comment: Are there contractor groups that BOEMRE believes are not being addressed by existing subpart O requirements—identify. We believe this is redundant with the existing subpart O program.

Response: BOEMRE does not regulate contractors; we regulate operators. Subpart O applies to well control and production safety, whereas this SEMS final rule applies to operators who are performing or who have contractors performing maintenance or repair, turnaround, major renovation, or

specialty work on or adjacent to a covered process. The training requirements of subpart O may be used to partially meet the SEMS requirements.

Comment: Can you provide detailed instructions and examples for filling out Form MMS-131?

Response: The form and instructions are in Appendix 1 which is incorporated by reference into the rule and is also set forth in the preamble of the final rule.

Comment: BOEMRE fails to recognize that our voluntary safety and environmental programs are effective.

Response: The voluntary programs may be effective for those who follow the guidance completely. However, more needs to be done to promote safety of the environment and the personnel working on the OCS by ensuring that everyone complies with API RP 75 and the requirements of this final rule.

Comment: BOEMRE fails to understand that our safety record is good and is only getting better.

Response: The record of incidents that cause injuries, fatalities, fires, collisions, loss of well control, or explosions demonstrates the need for regular evaluation and improvement of safety standards.

Comment: BOEMRE fails to understand that the prescriptive SEMS program will not address many of the incidents/accidents that the regulation is based on.

Response: BOEMRE does not agree that the voluntary program has been as effective as it could be. Industry wide adoption of SEMS is crucial to enhancing safety in the OCS.

Comment: BOEMRE wrote prescriptive requirements for all or part of 8 of the 12 SEMS elements in lieu of just following API RP 75.

Response: BOEMRE is incorporating all elements of API RP 75 in the final rule, with clarification of the proposed rule's requirements for JSA, recordkeeping and documentation requirements, contractor selection criteria, and the option of utilizing either an independent third party or your designated and qualified personnel to conduct audits on your behalf.

Comment: The proposed rule changes the wording and expands on API RP 75, Section 5, dealing with environmental and occupation safety and health considerations. These requirements overlap with hazardous materials regulations, OPA 90, RCRA, NPDES, etc. How does BOEMRE think the addition of these requirements will impact safety performance more than the existing regulations of other agencies?

Response: SEMS is a safety management system that will enhance the effectiveness of other laws and regulations.

Comment: BOEMRE should use an alternative compliance approach, i.e., those operator/lessees that have established Safety and Environmental Management Program (SEMP) (identified by BOEMRE as 56 percent or 73 of the 130 operators) and are within the BOEMRE standard of compliance as recognized in the annual Safe Award program that would be exempt from the proposed rule.

Response: We believe that there are varying degrees of commitment and compliance with the voluntary SEMP program and that a mandatory program is the best way to ensure that operators implement a comprehensive approach to safety. Operators that have a comprehensive SEMS program in place addressing all of API RP 75 are already addressing many of the requirements in this final rule.

Comment: Some operators have existing processes that address changes. Consideration should be given to these existing processes and not develop a prescribed MOC process for changes that are already covered.

Response: BOEMRE changed the final rule by incorporating by reference API RP 75, Section 4, to address MOCs. You may use your existing MOC process if it meets the requirements of API RP 75 and § 250.1912.

Comment: We believe that the one size fits all approach to this rule does not take into account the diversity of operations that exists in the OCS.

Response: SEMS is not a one size fits all program. In fact, SEMS encourages operators to consider unique circumstances and conditions. BOEMRE changed the final rule by incorporating all elements of API RP 75 and requirements for recordkeeping and documentation necessary to implement API RP 75, JSAs for activities identified in the SEMS programs, contractor selection criteria, and the option of utilizing either an independent third party or your designated and qualified personnel to conduct audits on your behalf to allow for the diversity of operations that exists on the OCS and within the company/operation.

Comment: Please clarify if the parts of the proposed elements can be accomplished through other management systems; in other words, a comprehensive SEMS program can cover each of the proposed items without these necessarily being part of a single system.

Response: In the final rule, we are requiring all operators to follow the

elements of API RP 75 and requirements for recordkeeping and documentation, JSAs for activities identified in the SEMS programs, contractor selection criteria, and the option of utilizing either an independent third party or your designated and qualified personnel to conduct audits on your behalf. As recognized in API RP 75, Section 1.3.1.1, some systems may have been developed using other guidelines. If a system was developed using other guidelines, when that system is assessed, the operator should focus on assuring that all the program elements from API RP 75 and this final rule are addressed.

Comment: What data will be made available to the public? What measures will be in place to protect sensitive company data from being made public?

Response: BOEMRE requires a copy of Form MMS-131 from an operator. The information on the Form MMS-131 is not protected from disclosure and is subject to the Freedom of Information Act (FOIA), should a member of the public request this information. BOEMRE may request a copy of the operator's SEMS and audits. BOEMRE will protect proprietary information under the Freedom of Information Act (5 U.S.C. 522) and its implementing regulations (43 CFR part 2); and 30 CFR 250.197.

Comment: We further believe that the record retention requirements for the JSA and related index are unduly burdensome and contrary to BOEMRE's stated intent that the programs not become a paperwork exercise. The proposed rule also creates concern regarding "ownership" of the JSA/index once a MODU is no longer under contract for the operator under whose contract they were developed.

Response: The retention in the final rule for the JSAs is now 30 days on-site and up to 2 years at a location of the operator's discretion. The JSA/index has been removed.

Comment: A commenter believes that BOEMRE should have a separate section in the rulemaking that pertains only to hazards analysis for MODUs.

Response: BOEMRE disagrees; the final rulemaking does not need a separate section for hazards analysis for MODUs. We incorporated by reference API RP 75, Section 3, for hazards analysis requirements, with requirements necessary to implement API RP 75 in § 250.1901 and § 250.1911.

Comment: How do we overcome human error?

Response: The intent of this rule is to reduce human error by focusing on a comprehensive SEMS program and JSAs. One result of an effectively

implemented SEMS will be to reduce human error.

Comment: If BOEMRE intends to require that each SEMS conform to API RP 75, then the highly prescriptive language should be removed and the final rule should simply reference the appropriate sections in API RP 75. Any exception or additions could be listed, similar to the approach taken in § 250.804.

Response: BOEMRE is incorporating by reference API RP 75 and requirements for recordkeeping and documentation necessary to implement API RP 75, JSAs for activities identified in the SEMS programs, contractor selection criteria and the option of utilizing either an independent third party or your designated and qualified personnel to conduct audits on your behalf.

Comment: The rulemaking is confusing with respect to the 4 types of contractor requirements, e.g., MODUs; contractors brought onto platforms for

painting/cleaning, etc.; contract operating companies; individuals working side by side with employees under head company rules. The word “employee” needs to be clarified—just the operator’s actual employees or whom?

Response: We are replacing “employees” with “personnel” and defining “personnel” in § 250.1903 in the final rule. The term “Personnel” means direct employee(s) of the operator and contracted workers who are involved with or affected by specific jobs or tasks. All personnel involved with or affected by a SEMS specific task must be trained by skilled and knowledgeable personnel to perform their assigned duties.

Comment: A comment expressed the concern that we are accepting duplicated work that is already required by DOT, OSHA, and USCG—killing trees with all the paperwork submissions.

Response: A number of federal agencies, including DOT, USCG, and BOEMRE have various responsibilities and authorities under a variety of statutes related to OCS matters. BOEMRE is not asking for duplication of paperwork that is already submitted to another government agency. Most of the information may be submitted electronically.

Section-by-Section Discussion

The industry trade organizations (Offshore Operators Committee, American Petroleum Institute, International Association of Drilling Contractors) and OCS operators submitted extensive lists of specific comments for most sections of the proposed rule. We responded to those comments in the “General Comments” section. The following table addresses more specific comments not already addressed.

Proposed rule citation	Comment received on proposed rule	BOEMRE response to comment
250.1903(b)	Note that, at § 250.1903(b), BOEMRE holds up ISO 14001 as an example of other standards or guidelines that meet or exceed API RP 75, seemingly encouraging such an approach as ours. However, a certified, active ISO 14001 program will not comply with the proposed regulation.	As recognized in API RP 75, Section 1.3.1.1, some systems may have been developed using other guidelines. If an operator has already developed a system using other guidelines, when the system is assessed, the focus should be on assuring that the necessary program elements from API RP 75 and the requirements necessary to implement API RP 75 in this final rule are addressed.
250.1905	Do DOI pipelines require separate hazards analyses, or is it acceptable to combine with the facility with which it is associated?	It is up to the operator to decide to combine or do a separate hazard analysis for the DOI pipelines and associated facility. However, the analysis must comply with the API RP 75 and the requirements necessary to implement API RP 75 in this final rule.
250.1905	The regulated community has varying degrees of understanding of the terms JHA and JSA. The JSAs are typically viewed as a tool to perform the OSHA required JHA. Does BOEMRE consider these terms the same? If not, please explain the difference from your understanding. The regulated community commonly understands JHA to be a broad analysis of the hazards for an overall operating procedure. A JSA is a review of a specific task at hand where the steps and hazards associated with a specific task are reviewed. To effect behavior change, we believe that a JSA is the more effective methodology than a JHA. However, it is not clear in the rulemaking which methodology BOEMRE is mandating. We note that BOEMRE Safety Alerts 276 and 282 have good descriptions of the difference between JHA and JSA. Recommendation: Please state the correlation to the appropriate section within API RP 75 such as “You must develop and implement a hazards analysis (facility level) as described in Section 3 of API RP 75.” For clarity, we recommend that job hazards analysis be changed to job safety analysis in all places in the regulation.	The terms JSA and JHA are different; therefore, in this final rulemaking we will require only JSAs. We have defined JSA in the general comments section of the preamble.
250.1905	MODU, coiled tubing, and liftboat operations are contracted. Subpart O already requires operators to verify well-control certification of contractor employees. Few operators possess specialized knowledge that would trump the certification of contractor employees.	BOEMRE agrees with this comment pertaining to the current Subpart O regulation, in part. The operator is the responsible party for all well control activities and operations, whether or not using contract personnel. If contractors are used, the operator is responsible for verifying that its contractors have the skills and knowledge to perform these operations in a safe manner.

Proposed rule citation	Comment received on proposed rule	BOEMRE response to comment
250.1905	If a company contracts a MODU, the contractor would have to provide and support its own hazards analyses (and SEMS program) vs. the operator for which it is working. The MODUs should not be included in the list of facilities covered by this rule. The MODU operator should have a mechanical integrity and JSA program to cover operations on the rig.	BOEMRE disagrees. The operator must have a SEMS program. BOEMRE's intent is to have a hazards analysis as detailed in API RP 75, Section 3 and the requirements in §205.1911 of this final rule, of any MODU under BOEMRE's jurisdiction. The MODUs are considered facilities when they are used for exploration, development, production, and transportation activities for oil and gas and sulphur from areas leased in the OCS.
250.1905	We do not understand the reference to internal audit and know of no facility specific audits that are required. We noted that proposed §250.1910 refers to a SEMS audit, but that is on the overall program. Periodic analyses should be conducted as described in Section 3.4 of API RP 75. Does this mean hazards analyses must be updated (or revalidated) every 3 years in conjunction with the SEMS Audit? API RP 75 allows hazards analysis updates to be made at 5–10 year intervals based on risk. Recommendation: Change the last sentence to: The hazards analyses (facility level) must be reviewed periodically and updated as appropriate when changes are warranted to verify that it is consistent with the current operations on the facility, consistent with the requirements in Section 3.4 of API RP 75.	We are incorporating by reference API RP 75, Section 3, which includes periodic analysis, to update the hazards analysis for compliance. You must update your hazards analysis as appropriate with typical review periods. The final rule requires the first audit within 2 years of implementation of the SEMS program and every 3 years thereafter, however, BOEMRE may require additional independent third party audits or BOEMRE may conduct our own audits based on poor operator performance or accidents.
250.1905	We see no purpose in maintaining the hazards analysis on the facility. In many cases, the facility may be an unmanned facility with no storage capability. Does BOEMRE really expect a MODU to store a hazards analysis onboard the MODU from each and every operator who has performed such an analysis? As in API RP 75, the hazard report (facility level) should be kept on file for the life of the facility. It is most appropriate that this file be kept in the operator's office where design and other facility related information is kept since this data will need to be referred to in conjunction with the hazards analysis. For job hazards analysis (commonly referred to as Job Safety Analysis-JSA), this should be kept where it is readily accessible to the personnel actually reviewing the analysis prior to performing the job it covers. Recommendation: The requirement for documentation should be changed to the following: You must document and maintain current analyses for each operation covered by this section for the life of the operation. Hazards analysis (facility level) should be retained in the operator's records where the facility design information is located. The JHA (operations/task level) should be kept in a location where it is readily accessible to personnel for review prior to conducting the operation or task the analysis covers.	The operator is responsible for deciding where to keep the hazards analysis for the life of the facility. BOEMRE is removing the requirement to maintain a hazards analysis on a facility. The JHAs were removed from the final rule and replaced with JSAs. The JSAs must be retained for 30 days on the facility for BOEMRE inspection and must be made available to BOEMRE upon request for 2 years. You must maintain a copy of all SEMS program documents at an onshore location for 6 years. BOEMRE disagrees with the recommendation. Please see previous response.
250.1905	We suggest deleting "property damage" from the potential consequences included in the purpose of the facility level hazards analysis in §250.1905. The philosophy adopted with respect to property damage, also referred to as "asset protection" should be at the operator's discretion, provided that the property damage does not subsequently lead to worker injuries, fatalities, or coastal or marine environmental impacts.	This specific reference to "property damage" is not in the final rule. BOEMRE is incorporating by reference API RP 75, which speaks to this issue.
250.1905	We recommend the language in §250.1905 be modified to state "You must ensure a hazards analysis (facility level) and a JHA (operations/task level) is developed and implemented for all your facilities" rather than "You must develop." The reason for this recommendation is that since MODUs are included as facilities in this subpart, it will then be clear that operators are only responsible to ensure the third-party contractors have performed a hazards analysis prior to conducting operations on the operator's lease.	The final rule requires the operator to ensure the development and implementation of a hazards analysis in accordance with API RP 75 and to perform a JSA at the task level in accordance with §250.1911. These must be included in the SEMS program. In order to comply with this rule, an operator and its contractors need to agree on appropriate contractor safety and environmental policies and practices before a contractor begins work at the operator's facilities.

Proposed rule citation	Comment received on proposed rule	BOEMRE response to comment
250.1905	Production contractor can have a Lockout/Tagout (LOTO) Standard that outlines the general guidelines on how to perform proper LOTO; but to generate a Hazard Assessment of a facility, the contractor would need to have access to the drawings and/or facility to address site specific equipment and issues. In some cases, contractors merely provide a resource. This resource is supervised by the client onsite.	The operator must develop and implement a hazards analysis for all of their operations in accordance with the Section 3, Hazards Analysis and §250.1911. In order to comply with this rule, an operator and its contractors need to agree on appropriate contractor safety and environmental policies and practices before a contractor begins work at the operator's facilities.
250.1905	We urge BOEMRE to revise §250.1905 to make clear that drilling vessels or utility vessels are not required to be managed under our SEMS.	BOEMRE disagrees. When a drilling vessel is under BOEMRE's jurisdiction, it is the operator's responsibility to have a SEMS program. In order to comply with this rule, an operator and its contractors need to agree on appropriate contractor safety and environmental policies and practices before a contractor begins work at the operator's facilities.
250.1905(a)	Language in §250.1905(a) should be revised to state: "You must ensure an initial hazards analysis (facility level) is or has been performed on each facility on or before (THE DATE 1 YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE)".	Proposed §250.1905 is reflected in the final rule at §250.1911. The requirement to perform a hazards analysis for each facility within 1 year of the effective date of the final rule was retained. A previous hazards analysis may be used as long as it meets the requirements of API RP 75 and §250.1911 in the final rule.
250.1905(a)	If an operator has not previously conducted a hazards analysis on all of his platforms, it may be impossible to complete a hazards analysis of all of his platforms within 1 year of the effective date of the final rule. A provision should be included for providing a prioritized list of facilities to the Regional Supervisor along with the date that each hazards analysis will be completed. This could be either in the rulemaking or a companion NTL.	BOEMRE disagrees. The final rule requires the operator to have its SEMS program in place within 1 year of the effective date of the rule. The hazards analysis requirement must be in accordance with the provisions of API RP 75, Section 3 and the requirements in this final rule under §250.1911, and included in the SEMS program.
250.1905(a)	According to §250.1905(a), we must do a separate Hazards Analysis for every platform that we operate. Under our IMS, we get to the same place by doing a comprehensive hazards analysis (actually a more rigorous "risk assessment") of all of our operations, with evaluation and ranking of risks and planned mitigations.	There is nothing in the rule that prevents an operator from using the same hazards analysis for similar platforms. However, if one or more facilities are similar but have distinct differences that require discrete policies and procedures for safe operations meeting the SEMS elements, then you must develop a separate SEMS for each of those facilities.
250.1905(a)	Element 1, "Hazards Analysis at the facility level" is already being achieved by following API RP 14C as a guideline for Analysis, Design, Installation, and Testing of Surface Safety Systems. The JSA/JHA along with the "Stop Work Authority" is already being utilized Gulf-wide. Furthermore, egress is identified in the platform submission process; chemicals and flammables kept on the facility are identified as part of the MSDS requirements; and mitigation of possible safety and health effects on employees are also already being performed.	BOEMRE agrees. The API RP 14C is a good guideline for conducting a hazards analysis for a production facility and it is referenced in API RP 75. However, the hazards analyses must follow API RP 75, Section 3, with clarification in §250.1911.
250.1905(a)(1)(ii)	We do not understand the requirement that special attention should be given to any incident in which you were issued an INC, civil or criminal penalty; nor do we understand what "special attention" should cover; nor do we understand what length of time we should consider. Further, we have no idea how the enforcement action of a regulatory agency relates to hazards analysis. We agree that previous incidents related to the operation, to the extent known by the operator, should be evaluated regardless of whether or not they resulted in an enforcement action. It should be noted that in many cases, a facility may have had multiple previous operators and a complete history of previous incidents may not have been provided to the current operator. Recommendation: Strike the sentence "Special * * * penalty".	BOEMRE is incorporating by reference API RP 75. The operator must follow the guidelines under API RP 75, Section 3, as clarified in §250.1911. If BOEMRE evaluates a SEMS program, the operator must submit to BOEMRE a revised SEMS program that addresses any identified deficiencies. This provision was amended, striking "special attention" while requiring the hazard analysis to address previous incidents.

Proposed rule citation	Comment received on proposed rule	BOEMRE response to comment
250.1905(a)(1)(iv)	It is not clear what BOEMRE's expectations are for a hazard review to cover coastal and marine environmental impact. These potential impacts are already covered in the environmental analysis conducted by BOEMRE for lease sales and exploration and development plans. The operator addresses these impacts in their EP, DOCD, and OSRPs. This requirement is duplicative of analysis already conducted in accordance with the BOEMRE regulations in 30 CFR Part 250, subpart B, and 30 CFR Part 254. Recommendation: Strike coastal and marine environmental impacts from the accident scenarios list.	The requirements for a hazards analysis are in API RP 75, Section 3 with clarification in § 250.1911. The rule was changed to say "human and marine environment."
250.1905(a)(2)	Based on experience, a hazards analysis team is composed of (at least) individual(s) with experience in the operations being evaluated, and individual(s) who are experienced in the hazards analysis methodology. The rule states that these individuals need to have experience with both. That may be an impractical requirement. Recommendation: Change the second sentence to: "at least one person needs to be experienced".	The hazards analysis team must meet the requirements included in API RP 75, Section 3 and requirements necessary to implement API RP 75 in the final rule under § 250.1911. BOEMRE agrees and has made the change to the final rule.
250.1905(b)	There should be some prioritization in jobs/tasks to be evaluated. Everything an operator does is primarily a job/task. Routine jobs/tasks may be covered under operating procedures and the hazards analysis may be included in those procedures; therefore, a JSA may not be necessary. Jobs/tasks that are not routinely done and not covered by operating procedures should have a JSA. Jobs/tasks should be selected for analysis in priority order. We suggest the following prioritization: 1. Jobs with highest rate of accidents or greatest potential for injuries 2. New jobs or non-routine jobs 3. Changes in process and procedures	BOEMRE agrees that an operator can prioritize its JSA to maximize safety as long as it meets the provisions of the final rule. BOEMRE removed JHA from the final rule. In the final rulemaking, JSAs are done for the immediate tasks at hand (not used for administrative or domestic services). If the particular activity is conducted on a recurring basis, and the parameters do not change, the person in charge of the activity may decide that a JSA for each individual activity is not required.
250.1905(b)	Recommendation: Remove section (b)(2) The rulemaking also seems to envision that a "book" of JHAs/JSAs is maintained at the job site. While this may be true for jobs/tasks that are routinely performed, in many cases a JSA is completed for a non-routine task (e.g., an unusual lifting operation). The best JSAs are prepared by the workers on location and are handwritten. They should be kept in a manner that the workers can easily access them. The real value in the JSA is the "process" of the workers involved in the specific task actually discussing the hazards, agreeing on the individual roles and responsibilities and completing the JSA document. While it is important that JSAs for both routine and non-routine tasks be available for review by the workers until the job is completed, they may not be in a nice, neat, properly indexed book. We have no idea how the prescriptive documentation details in (b)(2) relate to keeping workers safe. They should be allowed to use whatever documentation technique works for them.	The requirement for an index was removed. We removed the requirement to maintain a book/index, but we require operators to keep a copy of the JSA for 30 days onsite and for 2 years at a location of the operator discretion and make them available to BOEMRE upon request. The requirements for JSAs are in the final rule, § 250.1911. Recordkeeping and Documentation requirements are in § 250.1928.

Proposed rule citation	Comment received on proposed rule	BOEMRE response to comment
250.1905(b)	The only element in the proposed regulation that attempts to address worker behavior is the task-specific “hazards analysis.” However, there is a lot of confusion throughout the regulated community about the terms “JHA” and “JSA.” We typically use the term “JHA” to mean a broad analysis of the hazards associated with a job or process. Such analysis is typically done by a diverse team and may be done in an office setting or at the job site. Many times, this analysis is included with a facility-level hazards analysis or operating procedures and in many cases covers routine tasks. We typically use the term “JSA” to be the analysis done by onsite workers immediately prior to performing a task, many times a non-routine task. Some workers start with a “go-by” and mark it up for the specific task at hand and others start with a blank piece of paper or form. We believe that the application of JSA has the best opportunity to impact worker behavior since it is the workers themselves that are identifying the hazards and developing plans, procedures, safeguards, etc., to avoid an incident.	The final rule distinguishes between a broad facility-based hazards analysis conducted in accordance with API RP 75, Section 3 and a task level JSA, §250.1911, as required in the final rule.
250.1905(b)	Specific examples of practices within our IMS would be unacceptable under the proposed SEMS regulations: We presently conduct JSAs for work with at least some level of risk, but not for every work project and activity.	The operator is required to follow API RP 75 as incorporated by reference and perform JSA's for those activities identified in its SEMS program, as addressed in §250.1911. There are routine tasks performed in the offshore environment that may meet the requirements of SEMS under the Safe Work Practices and Operating Procedures elements. However, for such activities that deviate from their norm due to a change in environment, personnel, or equipment-related factors, or other activities that are non-routine procedures, a JSA must be conducted that identifies and accounts for routine variations or the uniqueness of the activity.
250.1905(b)	A commenter is concerned by the proposed requirement for a task-level JHA. While we understand that this may be more correctly described as a JSA, we believe that there needs to be a better understanding of both what constitutes a JSA, and for what tasks a JSA should be developed. Does BOEMRE expect a JSA for operation of a copy machine?	BOEMRE replaced the term JHA with JSA in the final rule. In the final rulemaking, JSAs are done for the immediate tasks at hand (not used for administrative or domestic services).
250.1905(b)	Section 250.1905(b) states that a JHA must be performed for “each” work project and activity. BOEMRE must clarify this paragraph. There are many projects and activities that are considered “routine.” Our company wholeheartedly agrees that a thorough analysis should always be performed on all “non-routine” projects and activities. Our only concern is that a requirement for a JHA on all projects and activities would be overwhelming. The way the rule is written an operator would be required to perform a JHA for a simple activity such as obtaining tubing pressures or adjusting a level in a vessel.	There is nothing in the rule that prevents an operator from using the same JSA for a particular activity that is conducted on a recurring basis as long as the parameters of the activity do not change.
250.1905(b)(2)	We further believe that the record retention requirements for the JSA and related index are unduly burdensome and contrary to BOEMRE's stated intent that the programs not become a paperwork exercise. The proposal also creates concern regarding “ownership” of the JSAs/index once a MODU is no longer under contract for the operator under whose contract they were developed Recommended: Strike this section.	The operator may use programs already in existence to comply with provisions of this final rule, as long as your SEMS program addresses all the elements in API RP 75 and the requirements in the final rule.
250.1906(a)	We assume that the 13 requirements for procedures can be covered collectively by other management systems, especially with regards to chemicals and materials. The scope of these requirements (7, 9–13) goes beyond API RP 75, as well as OSHA PSM and EPA RMP.	The operator may use programs already in existence to comply with provisions of this final rule. BOEMRE is incorporating by reference API RP 75, Section 5 with requirements necessary to implement API RP 75 in §250.1913 to address operating procedures.

Proposed rule citation	Comment received on proposed rule	BOEMRE response to comment
250.1906(a)	<p>Coupled with the requirement in §250.1905 to develop a SEMS for MODUs, §250.1906(a)(1) and (a)(5) would now require the operator to develop procedures for some drilling facilities that we neither own nor operate. This would significantly add to the documentation burden on the operators. We do not believe this would benefit the operator, the owner of the facility, or the personnel on the rig. Operators hire contractors that have safety programs in place and are in compliance with applicable laws, but do not dictate to them how to achieve that. The MODUs already have operations manuals developed in conformance with flag State requirements and/or IMO MODU Code and fall under the jurisdiction of the USCG. The proposed rule duplicates these requirements. Most operators do not have the resources or the expertise to develop operational procedures for drilling operations and depend on the contracted company who are the experts to develop their own procedures and safety systems.</p> <p>Recommendation: Change to “implement written production facility operating procedures”.</p>	BOEMRE requires operating procedures for a MODU under BOEMRE's jurisdiction. The operator's operating procedures need to include provisions for evaluating operating procedures in their contractor plans. Under §250.1914 of the final rule operators must ensure that contractors have their own written safe work practices. Contractors may adopt appropriate sections of the operator's SEMS program. Operator and contractor must document their agreement on appropriate contractor safety and environmental policies and practices before the contractor begins work at the operator's facilities.
250.1906(a)	It is easier to have site specific procedures that the operator can provide training to the contractor (preferably before the contractor employees begin work), and verify competency so that once the contractor's employees reach the facility, there exists a clear understanding of what is to be done, and how to do it.	The operator is responsible for developing and implementing all operating procedures. Procedures should be site-specific for the task at hand e.g., drilling, cementing, coiled tubing. How operators decide to implement such operating procedures is up to them, as long as they are in compliance with API RP 75, Section 5, and the requirements in §250.1913 of the final rule.
250.1906(a)	Our company agrees that operating procedures are a valuable tool in regards to paragraphs (1) through (13). Our only concern is that a written procedure for paragraphs (1) through (13) must be site specific. For example, a written procedure for paragraph (1) (initial startup) could only be followed for the facility that it was written for.	BOEMRE understands that standardizing procedures with respect to safe operations makes good sense where appropriate. An operator may do so regarding like facilities but it is the operator's responsibility to identify any differences existing among similar facilities and identify those differences within their SEMS program. BOEMRE may require the operator to submit a complete SEMS for a particular facility should it deem the impact of the differences outweighs the similarities of the facilities.
250.1906(a)(1)	Initial startup, startup following a turnaround, or startup after an emergency shutdown are redundant and encompass the same elements. We suggest they be combined.	BOEMRE disagrees and retained this paragraph in the final rule. We incorporated by reference API RP 75, Section 5 to address these terms.
250.1906(a)(3)	What does BOEMRE envision as “temporary operations?” Please define or explain.	This paragraph was deleted from the final rule. Section 5 of API RP 75 does not define “temporary operations.”
250.1906(a)(4)	Does the BOEMRE mean Emergency Shutdown Operations in (4)? If not, then please define “emergency operations”.	BOEMRE agrees that it should be addressed as “emergency shutdown operations”.
250.1906(a)(7)	Bypassing and flagging should be included in the individual operating procedure; it is not a separate operating procedure in and of itself.	BOEMRE disagrees that “bypassing and flagging out of service” should be a separate operating procedure in and of itself.
250.1906(a)(7)	We recommend the wording in §250.1906(a)(7) be changed from “bypassing and flagging” to “bypassing and flagging out of service”.	BOEMRE agrees that it should be addressed as “bypassing and flagging out of service.”
250.1906(a)(8)	<p>“Safety and environmental consequences of deviating from your equipment operating limits and steps required to correct or avoid this deviation,” is already covered by API RP 14C and is included in the individual operating procedures and is not a separate operating procedure in and of itself.</p> <p>Recommendation: Strike (a)(8)</p>	BOEMRE disagrees with this comment and the operator must comply with the provisions of operating procedures listed in §250.1913(a)(8) and API RP 75, Section 5.
250.1906(a)(8–12)	The intent of API RP 75 is to take environmental factors into consideration during startup, normal operations, temporary operations * * * not developing procedures specific to these issues. Specific environmental issues are covered under and or overlap with Hazardous Material Regulations, CERCLA, RCRA, H ₂ S regulations, and NPDES. These sections should be removed.	BOEMRE disagrees with this comment and the operator must comply with the provisions of operating procedures listed in §250.1913(a)(8) and API RP 75, Section 5. BOEMRE is incorporating by reference API RP 75. However, operators still must comply with other Federal laws and regulations.

Proposed rule citation	Comment received on proposed rule	BOEMRE response to comment
250.1906(a)(13)	"Coastal and marine environmental impacts identified through your hazards analysis" is taken into account in the operating procedures themselves, they are not a separate operating procedure. Environmental impact identification is also covered in NPDES, air permit, and oil spill regulations and response plans. This section should be removed.	The overriding goal of SEMS is to protect the human and marine environment.
250.1906(b)	Reword § 250.1906(b) to read, "Employees will have access to the appropriate procedures for their specific job/role in the operations." This is subtle, but procedures for specific roles should be available to those specific employees, rather than all employees having access to all procedures.	BOEMRE disagrees and is keeping this and is incorporating by reference API RP 75, Section 5.
250.1906(b)	We assume that procedures maintained electronically are considered accessible.	See API RP 75, Section 13 and § 250.1928.
250.1906(b)	Please state what you mean as "accessible." The facility where the work is conducted may be manned or unmanned. We suggest that the operating procedures be kept at the nearest manned facility.	The API RP 75 does not address this issue and the operator should define, in their SEMS, where operating procedures are to be kept. However, you must be able to provide your SEMS to BOEMRE upon request in a timely fashion.
250.1906(d)	What specifically is meant by, "develop and implement safe and environmentally sound work practices for identified hazards during operations?" Is this meant to be Safe Work Practices (e.g., Hot Work, Confined Space, SIMOPS, etc.), or some other processes? This seems to be the intent of this whole element, if not all of the SEMS rule.	The intent of the SEMS rule is to ensure safe work practices for all operations on an OCS facility.
250.1907	Is the intent of the mechanical integrity element to cover critical equipment as referred to in API RP 75? The way it is worded this element may cover more: "Your mechanical integrity program must encompass all equipment and systems used to prevent or mitigate uncontrolled releases of hydrocarbons, toxic substances, or other materials that may cause environmental or safety consequences." What are the types or severity of such consequences?	The final rule incorporates by reference API RP 75, Section 8 that addresses critical equipment and includes requirements necessary to implement API RP 75 in § 250.1916. It is the operator's responsibility to meet the intent of SEMS as well as its requirements. The overriding goal of SEMS is to protect the human and marine environment. The inventory of harmful substances on offshore facilities is well known but will also evolve over time so it is incumbent upon the operator to keep all harmful substances controlled and contained.
250.1907	Does BOEMRE expect each operator to implement a mechanical integrity program for each MODU that we contract to work on our lease that we neither own nor operate? The MODU operator should have a mechanical integrity program for his equipment. The operator should verify that the MODU operator has such a program. Recommendation: You must develop and implement written procedures that provide instructions to ensure the mechanical integrity and safe operation of equipment through inspection, testing, and quality assurance for equipment on your facility used to prevent or mitigate uncontrolled releases of hydrocarbons, toxic substances, or other materials that may cause environmental or safety consequences. For MODUs operating on your lease, you must verify that the MODU operator has a mechanical integrity program that meets the requirement in this subpart. These procedures must address the following:	BOEMRE requires operating procedures for a MODU under BOEMRE's jurisdiction. The operator's operating procedures need to include provisions for evaluating operating procedures in their contractor plans. Under § 250.1914 of the final rule operators must ensure that contractors have their own written safe work practices. Contractors may adopt appropriate sections of the operator's SEMS program. Operator and contractor must document their agreement on appropriate contractor safety and environmental policies and practices before the contractor begins work at the operator's facilities.
250.1907	Include the requirements in § 250.1907(i) in § 250.1907(a)	BOEMRE disagrees and in the final rule will keep both sets of requirements separate.
250.1907	A contractor can have a mechanical integrity program for contractor owned equipment (tools, vehicles, etc.), but to address the operator's equipment, again, it is more practical for the operator to develop this program, then train the contractor in implementation.	BOEMRE agrees. The operator must have a mechanical integrity program in accordance with the requirements of API RP 75, Section 8 and § 250.1916.
250.1907	This entire element is already being addressed. Paragraph (a) is already addressed by API RP 14C. Paragraph (b) (training) is already being addressed as part of the subpart O requirement. Paragraphs (c) through (i) is being addressed through the requirements of API RP 14C along with the monthly, quarterly, semi-annual, and annual testing of the surface and sub-surface safety system.	BOEMRE disagrees. Subpart O addresses training related to well control and production safety. We incorporated by reference API RP 75, Section 8 and § 250.1916 to address mechanical integrity.

Proposed rule citation	Comment received on proposed rule	BOEMRE response to comment
250.1907(a)	We suggest replacing “manufacturers design and material specifications” with “applicable design and material specifications.” The design, procurement, fabrication, etc., of equipment are not necessarily just based on manufacturers’ specifications but could be based on API, company, or other applicable design and material specifications.	We disagree; we believe that the manufacturer’s design and material specifications are the most appropriate guidance to use.
250.1907(b)	Please note that there are typically no manufacturers recommended inspection intervals for fixed equipment (pressure vessels, piping, pipelines). Maintenance intervals should be allowed to be extended based on component history, operating experience, and risk-based decision making.	BOEMRE is incorporating by reference API RP 75, Section 8 and §250.1916 to address mechanical integrity. The operator’s maintenance program must be structured to enhance safety and protect the environment and must sustain ongoing mechanical integrity. Testing and inspection procedures must follow commonly accepted standards and codes, such as API 510 and the manufacturer’s recommendations.
250.1907(b)	Equipment may be maintained by employees, contractors, or a mix. Some specialized equipment is actually maintained by the manufacturer’s representatives who periodically travel to offshore facilities to perform required maintenance. Therefore, our employees do not need to be trained to do the actual maintenance work for all equipment in the mechanical integrity program. Recommended: Replace (b) with the following: The training of maintenance workers in the application of the procedures, relevant hazards, and safe work practices.	The operator must have mechanical integrity in accordance with API RP 75, Section 8 and §250.1916, in their SEMS program. Your contractors must conduct operations in accordance with your SEMS program.
250.1907(c)	We recommend deleting the language “meet the manufacturer’s recommendations” in §250.1907(c). Many of our inspection and testing requirements, while meeting regulations, are risk-based in approach.	We disagree, we believe that the manufacturer’s recommendations are appropriate to use.
250.1907(c)	Specific examples of practices within our IMS would be unacceptable under the proposed SEMS regulations: We presently feel free to inspect or test some equipment more frequently than necessary to gain some extra level of comfort, but we do not expect to be locked into a greater frequency.	The operator is required to meet or exceed the inspection frequencies in 30 CFR part 250.
250.1907(d)	Is electronic documentation of the person performing the inspection or test acceptable? Electronic work order systems are often used to schedule and document inspections and tests.	To address recordkeeping and documentation, we incorporated by reference API RP 75, Section 13, and additional reporting and documentation requirements in §250.1928. Electronic records are acceptable to BOEMRE for most records.
250.1907(d)	We recommend adding, “Electronic documentation of the same information will suffice to meet this requirement” to §250.1907(d). The requirement for “signature” on inspection or test documentation should be modified to encompass operators’ use of electronic work management systems. Work orders, assigned to and completed by individuals within the software should be acceptable.	BOEMRE kept this paragraph in the final rule. The final rule will also address mechanical integrity documentation as described in API RP 75, Section 8. Electronic records are acceptable to BOEMRE for most records, including electronic signatures.
250.1907(d)	The last sentence in §250.1907(d) should be modified to place an “or” between inspection and test, therefore changing the language to read “and the results of the inspection or test”.	BOEMRE agrees with this comment and made the text change in new §250.1916(d).
250.1907(e)	Correction of deficiencies before further use will prevent use of risk-based decision making, and the subsequent shut-in of operations may present additional hazards. Would this apply in the case of waiting on parts and while mitigation measures are put in place? Does it cover deficiencies that may not affect operations integrity? Run to failure should be a viable option for some components. Suggest this requirement be based on risk. This is not a requirement in API RP 75.	Deficiencies are addressed in API RP 75, Section 8 and §250.1916(e). Under the final rule, the procedures for Mechanical Integrity must address the correction of deficiencies associated with equipment and systems that are outside the manufacturer’s recommended limits before further use.

Proposed rule citation	Comment received on proposed rule	BOEMRE response to comment
250.1907(e)	Specific examples of practices within our IMS that would be unacceptable under the proposed SEMS regulations: We presently decide whether to take a piece of equipment out of service based upon our judgment of actual risk (likelihood and consequence of failure).	Under §250.1916(e) of the final rule the operator must document the procedures to correct critical equipment deficiencies or operations. The operator may continue to use an IMS, if it meets the requirements of API RP 75 and the final rule and the operator addresses any deficiencies. We cannot accept <i>only</i> “judgment” as a means of the operator determining risk. The operator must account for what factors were considered in taking equipment out of service. This does not have to be an exhaustive analysis but it does need to reflect that all relevant SEMS elements were considered. Documenting the “likelihood and consequence of failure” comports with the intent of SEMS.
250.1907(f)–(i)	How is this requirement different from (a), nor how it is to be implemented. Recommendation: Strike (f). How is this requirement different from (a), nor how it is to be implemented. Recommendation: Strike (g). Since BOEMRE has outlined prescriptive requirements for the inspection and testing and the documentation of those inspections and tests, we do not understand what the requirement in (h) is and how it is different from (c) and (d) above or how to implement it. Recommendation: Strike (h). We suggest this be included under (a). Recommendation: Strike (i) and include under (a).	BOEMRE disagrees with this comment and is incorporating by reference API RP 75 and requirements necessary to implement API RP 75 in the final rule. The operator must follow the requirements of API RP 75, Section 8 and the requirements in §250.1916 for mechanical integrity. Paragraph (a) of §250.1916 provides an overview of the requirements, while the subsequent paragraphs provide more details.
250.1908	There is no mention if the MOC is for either permanent and temporary changes or just permanent changes. Please clarify.	The operator must follow the requirements of API RP 75, Section 4 and §250.1912 of the final rule for MOC, which requires procedures for any changes related to equipment, operating procedures, personnel changes, materials, and operating conditions, except for replacement in kind. This applies to permanent and temporary changes.
250.1908	A production contractor can have a MOC process, but in order for the process to work, the operator (client) must be part of the process. The scenario of the lessee/operator having a MOC process that the contractor can be a part of is a better model.	The operator is responsible for developing and implementing a MOC in accordance with API RP 75, Section 4 and §250.1912 of the final rule. The operator is responsible for coordinating with the contractor regarding MOC. The operator must ensure that their contractor embraces safety principles that support their SEMS program. The MOC is a cooperative activity that makes all parties responsible for its success.
250.1908(a)(2)	A process for changing operating procedures has already been established in §250.1906(c). The MOC process should simply identify that operating procedures either need to be changed (or don't) as a result of changes to the facility. The actual change to the operating procedures should not have to go through the MOC process.	BOEMRE is incorporating by reference API RP 75, Section 4 for MOCs and Section 5 for Operating Procedures and requirements under §§250.1912 and 250.1913 of the final rule. Under §§250.1912 and 250.1913, the operator must address MOC for operating procedures.
250.1908(a)(3)	Section 250.1908 proposes issuing MOCs for personnel changes, but does not define which personnel that encompasses. It would be quite onerous if a MOC was required for every single individual that was changed out on a facility. To provide clarity as to those personnel changes that would require a MOC, we propose adding the following language to §250.1908(3): “Personnel with specific knowledge or experience who supervise or operate, or support operations of a facility which would lead to a loss of knowledge or experience”.	BOEMRE disagrees with this comment and it is the operator's responsibility to address personnel changes. BOEMRE is incorporating by reference API RP 75, Section 4 and requirements under §250.1912, to address MOCs for changes in personnel. API RP 75, Section 4 includes the suggested language. The definition of contractors in §250.1914(a) does not include those providing domestic services.
250.1908(a)(4)	What does BOEMRE envision as a change in material that requires a MOC that is not already covered under equipment?	BOEMRE is incorporating by reference API RP 75, Section 4 and requirements under §250.1912 to address MOCs. The operator must adopt these requirements in the SEMS. Materials that are not covered under equipment could include process chemicals and maintenance materials; these are mentioned in API RP 75.
250.1908(a)(5)	We assume that changes in operating conditions include such things as changes to the operating envelope (pressure, temperature, flow rates, material chemistry, etc.) as described in the facility design basis or a change in the chemistry of the product that was not considered in the equipment specification. If our assumption is not correct, please clarify.	BOEMRE is incorporating by reference API RP 75, Section 4 and requirements under §250.1912 to address MOCs. API RP 4.2e addresses changes in operating conditions. The operator must adopt these requirements in the SEMS.

Proposed rule citation	Comment received on proposed rule	BOEMRE response to comment
250.1908(c)	What does BOEMRE envision by the following requirement: "You must review all changes prior to their implementation?"	BOEMRE is incorporating by reference API RP 75, Section 4, and requirements under §250.1912 to address MOCs. Section 250.1912(c) requires the operator to review all changes prior to their implementation and API RP 75 section 4.3 addresses this review related to changes in personnel. This review is required to ensure the safety of personnel.
250.1908(c)	Specific examples of practices within our IMS that would be unacceptable under the proposed SEMS regulations: We presently allow immediate approval of work considered to be for emergency situations without prior MOC review and approval, subsequently working through MOC as a follow-up.	BOEMRE is incorporating by reference API RP 75, Section 4 and requirements under §250.1912 to address MOCs. The operator may continue to use an IMS, if it meets the requirements of API RP 75 and the final regulation. Emergency situations are addressed in the final rule under §250.1918 and requires the operator to have emergency response and control plans in place and ready for immediate implementation.
250.1908(f)	We assume that the documentation for this step will be under §250.1906(c).	If the management of change results in change in the operating procedure, this change must be documented as provide in §250.1912(f) in the final rule.
250.1909	The final rule must distinguish between "contractor employees" and "contracted employees".	While BOEMRE does not directly regulate the operator/contractor relationship, it is the responsibility of both the operator and contractor to conduct activities so that they comport with the operator's SEMS.
250.1909	1. How does this part relate to subpart O?	1. Subpart O specifically applies to personnel involved in well control and production safety system operations, while subpart S applies to all aspects of OCS operations under BOEMRE jurisdiction.
	2. This section could conflict with subpart O and become detrimental to operators.	2. BOEMRE disagrees. Subpart O complements a SEMS program. The operator may use the training requirements of subpart O to meet the SEMS requirements in API RP 75 Section 7 as incorporated by reference and the requirements in §250.1915.
250.1909	BOEMRE already has regulations in place to address training and competency assessments for both operator employees and contractors. 30 CFR Part 250, subpart O, Well Control and Production Safety Training, clearly states that operators must ensure that both employees and contract personnel understand and can properly perform their duties; §250.1503(b)(3) requires operators to have procedures "for verifying that all employees and contractor personnel engaged in well control or production safety operations can perform their assigned duties." In fact, BOEMRE periodically assesses the Subpart O program by auditing and testing as described in §250.1507(d), which states "BOEMRE or its authorized representative may conduct testing at either onshore or offshore locations. Tests will be designed to evaluate the competency of your employees or contract personnel in performing their assigned well control and production safety duties. You are responsible for the costs associated with this testing, excluding salary and travel costs for BOEMRE personnel". We find that the proposed language in §250.1909 is redundant with existing regulations under 30 CFR Part 250, subpart O, and therefore, should be eliminated from the proposed rule. If you do not agree, then please clarify the relationship between this proposed rule and the requirements in subpart O and identify what contractor groups have otherwise not been addressed by the existing subpart O requirements. If BOEMRE has concerns regarding contractor selection or competency, then the appropriate regulation to address such concerns is within the subpart O program. Recommendation: Strike §250.1909 in its entirety.	BOEMRE disagrees. The SEMS rule applies to contractors performing maintenance or repair, turnaround, major renovation, or specialty work on or adjacent to a covered process. This section was renumbered as §250.1914 in the final rule. The operator is responsible for obtaining and evaluating information regarding the contract employer's safety performance and programs and informs contract employers of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process. The operator may use the training requirements of subpart O to meet the SEMS requirements in API RP 75, Section 7, as incorporated by reference and §250.1915. BOEMRE disagrees. Subpart O complements a SEMS program. All personnel with the operator's SEMS program need to be trained to competently perform their assigned duties. The operator may use the training requirements of subpart O to meet the SEMS requirements in API RP 75, Section 7, as incorporated by reference and §250.1915 in the final rule.

Proposed rule citation	Comment received on proposed rule	BOEMRE response to comment
250.1909	The current BOEMRE regulations under subpart O at §250.1500 require operators to ensure and document that their company and contract employees are competent to perform their assigned jobs. Therefore, the section on contractor selection and competency in the proposed rule is redundant and not needed. If BOEMRE felt it necessary, subpart O could be expanded to include any worker groups not already covered in the current rule. In the event BOEMRE proceeds with an entirely new rulemaking, we recommend a performance-based rule be written (like subpart O) to allow operators to utilize their existing safety and environmental management programs instead of a detailed, prescriptive program as proposed in this rulemaking. Companies could then certify to BOEMRE that their programs include the required elements and use their documentation and audit systems that are already in place and working.	Subpart O specifically applies to personnel involved in well control and production safety system operations. The SEMS rule applies to contractors performing maintenance or repair, turnaround, major renovation, or specialty work on, or adjacent to, a covered process. This section was renumbered as §250.1914 in the final rule. The operator is responsible for obtaining and evaluating information regarding the contract employer's safety performance and programs and informing contract employers of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process. The operator may use the training requirements of subpart O to substantially meet the SEMS requirements in API RP 75, Section 7, as incorporated by reference and the requirements necessary to implement API RP 75 in §250.1915. The contractor must ensure that all personnel not mentioned in subpart O are also competent in conducting their job and subscribe to safe work practices as identified in the operator's SEMS program.
250.1909	While the proposed rule states the required SEMS program must include each of the 4 elements described, we believe the §250.1909 "What criteria must be documented in my SEMS program for contractor selection?" is actually a 5th element that has been added without the justification and rationale used to validate inclusion of the other 4 elements.	BOEMRE disagrees; SEMS must include everyone working on a facility; criteria for contractor selection are an important part of that. Contractor criteria are addressed in Section 6.4 and Appendix A of API RP 75 as incorporated by reference. We included this in the final rule with requirements necessary to implement API RP 75 in §250.1914.
250.1909	If contractors are to be "accountable" for SEMS activities, their scale, complexity and scope of work should also be taken into account. Example: Contractor services vary from "Labor" (i.e., production operators), "Equipment" (i.e., Generators, machinery rentals) or both "Labor and Equipment" (i.e., drilling rig, welding machine, and welder), etc. A contractor supplying "Labor" services should not be required to have a SEMS program, but the competency to work within the clients program (i.e., perform JSAs, initiate MOC process, utilize Operating Procedures in performance of duties, perform level one visual Mechanical Integrity inspections in accordance with a lessee's SEMS program). A contractor only supplying "Equipment" should have a Mechanical Integrity Plan and Operating Procedures that accompany the equipment and limited hazards analysis pertaining to his equipment. A contractor supplying "Labor and Equipment" should have a SEMS program that covers his equipment and the operation thereof.	The operator is responsible for having a SEMS program in place. The operator is responsible for coordinating with the contractor regarding their SEMS program. The operator must ensure that their contractor embraces safety principles that support their SEMS program.
250.1909	There is no indication in the data used for the proposed rule that "Contractor Selection" contributed to the incidents analyzed by the BOEMRE.	Contractors perform a majority of the work on the OCS and the selection of skilled, knowledgeable, and trained contractor personnel by the operator is an important part of ensuring that the SEMS program works.
250.1909	The proposed rule would require the lessee/operator to develop a SEMS. However, §250.1909 states that the lessee must document that their contractors have policies and practices that are consistent with the lessee's plan. Furthermore, it states that a copy of the contractor's SEMS program must be kept by the operator and the contractor at each facility where contract operations are being performed. Our company has 50 to 60 customers. To strive for consistency with 50 to 60 individual programs is unrealistic and places an unnecessary burden on all contract operators. Our company either manages or operates over 600 platforms in the GOM. The paperwork burden of supplying and maintaining a SEMS program for each facility (again, consistent with that individual customer) could only be done at a tremendous cost of not only man hours but monetary investment that may not be recoverable.	The operator is responsible for having a SEMS program in place. The operator is responsible for coordinating with the contractor regarding their SEMS program. The operator must ensure that their contractor embraces safety principles that support their SEMS program. Under §250.1914 in the final rule the operators must obtain and evaluate information regarding the contractor's safety and environmental performance when selecting a contractor. Operators must ensure that contractors have their own written safe work practices. Contractors may adopt appropriate sections of the operator's SEMS program. Operator and contractor must document their agreement on appropriate contractor safety and environmental policies and practices before the contractor begins work at the operator's facilities.

Proposed rule citation	Comment received on proposed rule	BOEMRE response to comment
250.1909	There is absolutely no need for further expansion of contractor selection and contractor documentation in any SEMS program. Subpart O already addresses contractor evaluations and contractor selection. This portion of the proposed rule is redundant and attempts to expand once again on the definition of "Production Operations".	Subpart O applies to personnel involved in well control and production safety system operations. Section 250.1914 of the final rule applies to contractors performing maintenance or repair, turnaround, major renovation, or specialty work on, or adjacent to, a covered process, as well as Appendix A of API RP 75. The operator is responsible for verifying that contractor personnel can perform their assigned duties and informs contract employers of all hazards related to the contractor's work and the process. The operator may use the training requirements of Subpart O to meet the SEMS requirements in API RP 75 Section 7 as incorporated by reference and § 250.1915 of the final rule.
250.1909	BOEMRE cannot expect the operator or lessee to evaluate, test, and document the competency of these hired professionals as they are by name certified to perform their tasks and possess unique knowledge. Additionally, contractor selection does not affect human factors.	BOEMRE disagrees. The operator is accountable for contractor personnel activities and equipment. BOEMRE does not expect the operator to test their contractors. BOEMRE does expect the operator to evaluate their contractor's ability to perform the job that they are hired to do and to document that they have done so. Under § 250.1914 in the final rule the operators must obtain and evaluate information regarding the contractor's safety and environmental performance when selecting a contractor. Operators must ensure that contractors have their own written safe work practices. Contractors may adopt appropriate sections of the operator's SEMS program. Operator and contractor must document their agreement on appropriate contractor safety and environmental policies and practices before the contractor begins work at the operator's facilities.
250.1909	We are concerned with the ambiguous language related to contractors and contracted personnel. BOEMRE fails to clearly distinguish between contracted individuals acting in the same capacity as an employee, and companies contracted to perform specialized services for a lessee, leading to perhaps unintended applications. For example, § 250.1909(a) of the proposed rule states, "A contractor is anyone performing work for the lessee." This could be construed as including emergency response operations even though these are not integral to oil and gas exploration and production operations. We support the OOC comment that the section relating to contractors be stricken from the rule, as redundant with existing subpart O regulations. In the alternative, we request that the currently overbroad language be clarified to define contractors, and contracted personnel, and to confirm that the rule does not apply to emergency response contractors even though they are contracted to perform work for a lessee in the OCS.	BOEMRE disagrees. Subpart O applies to personnel involved in well control and production safety system operations. Section 250.1914 of the final rule applies to contractors performing maintenance or repair, turnaround, major renovation, or specialty work on, or adjacent to, a covered process and Appendix A of API RP 75. The operator is responsible for obtaining and evaluating information regarding the contract employer's safety performance and safety programs and informs contract employers of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process. The operator may use the training requirements of subpart O to meet the SEMS requirements in API RP 75, Section 7 as incorporated by reference. The API RP 75 defines contractor as "The individual, partnership, firm, or corporation retained by the owner or operator to perform work or provide supplies or equipment. The term contractor must also include sub-contractors".
250.1909	The data used in the proposed rule makes no mention of problems regarding contractor competency, training, MOC, mechanical integrity, etc.	Contractors perform the majority of the work on the OCS and as such, selecting skilled, knowledgeable, and trained contractor personnel by the operator will help achieve safe OCS operations. Under § 250.1914 in the final rule the operators must obtain and evaluate information regarding the contractor's safety and environmental performance when selecting a contractor. Operators must ensure that contractors have their own written safe work practices. Contractors may adopt appropriate sections of the operator's SEMS program. Operator and contractor must document their agreement on appropriate contractor safety and environmental policies and practices before the contractor begins work at the operator's facilities.
250.1909(b)	1. Are electronic copies of contractor's competencies and SEMS programs acceptable?	1. Electronic copies of contractor's competencies and SEMS programs are acceptable. See API RP 75, Section 13 and § 250.1928.

Proposed rule citation	Comment received on proposed rule	BOEMRE response to comment
	2. Do we need to keep competencies for each individual contractor?	2. In § 250.1914 of the final rule, the SEMS must include procedures and verification that the operator's contractor and employees understand and can perform their assigned duties, as well as Appendix A of API RP 75, which addresses contractor selection criteria. The operator is responsible for ensuring and validating the competency of their contractors; the method for doing so must be detailed in their SEMS program. The operator may request specific performance information from contractors.
250.1910	We recommend that the prescriptive language be replaced with the following: "You must audit your SEMS program in accordance with API RP 75, Section 12, Audit of Safety and Environmental Management Program Elements".	BOEMRE incorporated by reference API RP 75, Section 12 and requirements necessary to implement API RP 75 in the final rule under § 250.1920 to address audits and documentation. The final rule gives the option of utilizing either an independent third party or your designated and qualified personnel to conduct audits on your behalf.
250.1910(a)	We believe timing for audits should be based on performance and risk rather than a prescribed schedule as described in § 250.1910(a).	BOEMRE incorporated by reference API RP 75. Audit frequency is addressed in § 250.1920 of the final rule. The operators must have their SEMS programs audited by either an independent third party or your designated and qualified personnel to conduct audits on your behalf according to the requirements of this subpart and API RP 75, Section 12 within 2 years of the initial implementation of the SEMS program and at least once every 3 years thereafter.
250.1910(b)	As part of our SEMS program, we audit all facilities (off-shore and on) on a 3–5 year basis and roll up results of audits from each year to evaluate our program as a whole. We assume this is acceptable in accordance with this section.	Audit frequency is addressed in § 250.1920 of the final rule. The operators must have their SEMS programs audited by either an independent third party or your designated and qualified personnel to conduct audits on your behalf according to the requirements of this subpart and API RP 75, Section 12 within 2 years of the initial implementation of the SEMS program and at least once every 3 years thereafter.
	Which part of this audit process would the BOEMRE want to be invited to participate/observe?	In § 250.1920(b), the operator must notify the BOEMRE 30 days in advance to allow BOEMRE to participate in/observe the operators SEMS audit. BOEMRE may participate or observe the audit of any of the elements in the final rule.
250.1910(b)	We recommend deleting language at § 250.1910(b) requiring notification to BOEMRE prior to conducting an audit.	BOEMRE disagrees; we maintained this requirement in the final rule, so that BOEMRE may observe SEMS audits under § 250.1924(c).
250.1910(b)	How does BOEMRE envision participating in an audit as just as an observer? These seem to be contradictory terms. If BOEMRE is merely going to observe and not do or say anything, then perhaps better wording would be "Representatives from BOEMRE may observe your SEMS audit." Further, if BOEMRE is going to simply observe, what is the purpose of observing the audit?	If BOEMRE decides to participate in a SEMS audit, our activities may include one or more of the following: <ul style="list-style-type: none"> • Observation. • Requesting documentation. • Revising SEMS program. • Other duties as needed.
250.1910(b)	The wording in this section also seems to indicate that the SEMS audit will be conducted in a meeting style; otherwise, how will BOEMRE observe the audit?	BOEMRE may participate as observers to verify compliance. BOEMRE may issue warnings, PINCs, or INCs, under § 250.1927. BOEMRE disagrees. In the final rule BOEMRE may participate in the audit in the field and office locations as needed. How BOEMRE participates in the audit will be based on how the operator conducts its audit.
250.1910(b) and (c) ...	Will the BOEMRE write INCs on the issues self-discovered on audits (either as a participant or following review of the audit report)?	BOEMRE may write INCs based on the severity of the issues discovered during an audit (either as a participant or following the review of the audit report). If the BOEMRE discovers an issue when reviewing the audit report, we will consider whether the extent to which the operator has addressed the issue when deciding if we should write an INC. BOEMRE will consider all relevant factors when considering issuing an INC, including the fact that the operator self-discovered the deficiency. BOEMRE encourages operators to identify deficiencies during their audits and looks favorably on audits detailing such, before deciding if a self-discovered deficiency warrants receiving an INC. BOEMRE recognizes the intent of the operator's audit is to find deficiencies and make the necessary corrections to enhance safety and BOEMRE does not intend for audits to be used as a punitive exercise.

Proposed rule citation	Comment received on proposed rule	BOEMRE response to comment
250.1910(c)	When does BOEMRE consider the audit to be completed? We consider the audit to be completed when the final audit report is issued.	The audit is complete when any deficiencies in a SEMS program are corrected and documented. If there are no deficiencies, the audit is complete when the final audit report is issued and submitted to BOEMRE.
250.1910(c)	Given the language in §250.1910(d), it appears that BOEMRE does not envision receiving the actual SEMS audit report. Recommendation: You must submit a report to the BOEMRE within 30 days after the issuance of the final SEMS report by your designated and qualified personnel or your independent third-party. The report need not be the full SEMS report but must outline * * *.	In §250.1920 of the final rule, the operator must require the Independent Third Party to submit an audit report of the findings and conclusions of the audit to BOEMRE within 30 days of the audit completion date. The report must outline the results of the audit, including deficiencies identified.
250.1910(c)	We agree with the BOEMRE proposal to periodically review the results of SEMS audits based on operator performance through unannounced or announced inspections. However, we are not supportive of the language at §250.1910(c) that requires producing a separate report solely for BOEMRE purposes within 30 days of the completion of an audit. This is an administrative burden and does not meet the intent of the proposed regulation that the rule not be a paperwork exercise. We suggest adding language to §250.1910(c) that BOEMRE could review audit reports during inspections or upon request that would provide BOEMRE unimpeded access to any audit findings at their discretion.	The audit reports are critical documents that BOEMRE needs to ensure that your audit protocols are true to the intent of this subpart and that any deficiencies have been addressed appropriately and in a timely manner. In §250.1920 of the final rule, the operator must require the Independent Third Party or your designated and qualified personnel to submit an audit report of the findings and conclusions of the audit to BOEMRE within 30 days of the audit completion date. The report must outline the results of the audit, including deficiencies identified.
250.1910(d)	What does BOEMRE envision as the difference between verifying corrective actions from an audit in §250.1910(d) and §250.1913?	There is not a significant difference between the two sections in regards to verifying corrective actions.
250.1910(e)	What is the purpose of retaining copies of the audit for 5 years, when the program has to be audited every 3 years? Recommendation: You must retain copies of either the independent third-party's SEMS records or self audit for a minimum period of 3 years or until the completion of the next audit.	BOEMRE is incorporating by reference API RP 75, Section 12 and §250.1920 of the final rule will require independent Third Party or your designated and qualified personnel to conduct audits on your behalf. The final rule has additional recordkeeping requirements that are not in API RP 75. In §250.1920 of the final rule, the operator must require the Independent Third Party or your designated and qualified personnel to submit an audit report of the findings and conclusions of the audit to BOEMRE within 30 days of the audit completion date and to keep copies of the audits for 6 years. Requiring the operators to keep the audits for 6 years ensures that they have copies of audits for at least 2 audit cycles for reference.
250.1911	We recommend that the prescriptive language be replaced with the following: "Your SEMS program procedures and documents must be maintained in accordance with API RP 75, Section 13, Records and Documentation".	BOEMRE incorporated by reference API RP 75, Section 13, and additional recordkeeping and documentation requirements in §250.1928.
250.1911	Which records need to be kept to comply with this part? Which records need to be signed and dated? Only those records specifically referred to in this proposed rule? API RP 75 provides guidance and examples for this section.	The response to these questions are addressed in API RP 75, which BOEMRE incorporated by reference, and additional recordkeeping and documentation requirements in §250.1928.
250.1911	The proposed regulation has exhaustive prescriptive documentation and recordkeeping requirements imbedded throughout the rule. Existing programs will have to be rewritten by all operators to incorporate these prescriptive requirements. We do not believe that this level of prescriptive documentation and recordkeeping will increase safety. The API RP 75 has a records and documentation section. If BOEMRE is going to require documentation and recordkeeping, then again, we strongly recommend that Section 13 of API RP 75 be adopted in the final rulemaking.	BOEMRE incorporated by reference API RP 75, Section 13, and additional recordkeeping and documentation requirements in §250.1928.
250.1912(c)	When will BOEMRE evaluate the independent third-party? Before or after they are used for a SEMS audit? What is the evaluation criterion? If BOEMRE finds deficiencies in the third-party and they have already performed a SEMS audit, does that put the audit results in jeopardy or require a new audit be performed?	The operator must use an independent third-party or your designated and qualified personnel performing independent third party functions. BOEMRE will not approve, but will evaluate, the independent third-party or your designated and qualified personnel; however, if there are deficiencies in the audit, we will take appropriate action. The independent third-party or your designated and qualified personnel must meet the requirements of §250.1926.

Proposed rule citation	Comment received on proposed rule	BOEMRE response to comment
250.1913(a)	<p>“Adequate” and “effective” are very subjective terms. What criteria will BOEMRE utilize to determine if a program is adequate and/or effective? Many operators currently have well-developed programs, but may still have injuries and incidents. Would these programs be deemed adequate and effective?</p> <p>Recommendation: (a) BOEMRE or its authorized representative may evaluate or visit your facility to determine whether your SEMS program is in place and being followed. These evaluations or visits may be random or based upon the OCS lease operator’s or contractor’s performance.</p>	In the final rule, BOEMRE removed the term “adequate” and adopted most of the recommended language. This is now in § 250.1924.
250.1913(a)	<p>BOEMRE is in a much better position, than a third-party company to approve the lessee’s SEMS Programs for the following reasons:</p> <ol style="list-style-type: none"> 1. BOEMRE is a government agency and therefore does not have a conflict of interest. Whereas a third-party company is a for-profit entity and would be subject to the pressures of financial interest. Additionally, third-party companies could be approving programs that they have produced. 2. BOEMRE has ready access to all offshore leases. 	<p>The final rule will require operators to use an independent third-party or designated and qualified personnel performing independent third party functions to audit a SEMS program. BOEMRE will not approve SEMS programs because the intent is to have a program that evolves and adapts, as needed. This allows operators to tailor the program to their individual needs and corporate cultures on an ongoing basis.</p> <p>Under § 250.1925 of the final rule, BOEMRE may conduct an audit if BOEMRE identifies safety or non-compliance concerns based on the results of our inspections and evaluations, or as a result of an event.</p>
250.1913(b)	What are the qualifications of the BOEMRE representatives conducting these evaluations? Are they familiar with management systems and auditing protocols?	BOEMRE will use appropriate BOEMRE personnel with the proper credentials and training to ensure consistency.
250.1914	We have serious concerns about the consistency of enforcement actions. How will BOEMRE ensure the consistency of evaluation?	BOEMRE continually works to address inconsistency. We have demonstrated improvements in this area for the last 10 years. BOEMRE has established internal processes to help ensure consistency in enforcement.
250.1915	<ol style="list-style-type: none"> 1. Please provide detailed instructions and examples for filling out MMS–131. 2. Who within BOEMRE is the form to be sent to and by what method * * * paper, electronic, etc.? 3. By calendar year, we assume that you mean Jan 1 to Dec 31. If not, please clarify. 4. Please state how BOEMRE will utilize the data 5. Please include provisions for holding the individual company data confidential. 6. We also point out the authority to require employers to collect and report work-hours and injury/incident data of this type actually rests with the USCG based on the MOU between USCG and OSHA dated 19 December 1979. Furthermore, the collection and reporting of injuries and illnesses on the OCS falls under the currently pending USCG rulemaking (RIN 1625–AA18) issued on 27 June 1995, and entitled Outer Continental Shelf Activities. Coordination by BOEMRE with the USCG is recommended to consolidate and coordinate their efforts and avoid any duplication of requirements and unnecessary burdens. 	<ol style="list-style-type: none"> 1. See Appendix I in preamble of the final rule. 2. The form may be sent to the Safety and Enforcement Branch by fax to (703) 787–1575, by e-mail to semp@BOEMRE.gov, or by mail to 381 Elden St., MS–4023, Herndon, VA 20170. 3. For this application, the BOEMRE considers a calendar year to cover the time from January 1st to December 31st. 4. BOEMRE uses the data collected in Form MMS–131 to calculate 20 annual, OCS-wide, performance indices. The indices provide information about performance and safety trends; they also allow OCS operators to compare their performance with industry averages. 5. The information on Form MMS–131 is not protected from disclosure and is subject to FOIA should a member of the public request this information. 6. BOEMRE disagrees. The OSHA does not have authority for OCS oil and gas and sulphur activities.

The following lists the citation for the proposed rulemaking and what the current citation is in the final rulemaking.

Proposed rulemaking citation	Final rulemaking citation
§ 250.1900 Must I have a SEMS program?	§ 250.1900 Must I have a SEMS program?
§ 250.1901 What is the goal of my SEMS program?	§ 250.1901 What is the goal of my SEMS program?
§ 250.1902 When must I comply with the regulations in this subpart?	§ 250.1900(a). Must I have a SEMS program?

Proposed rulemaking citation	Final rulemaking citation
§ 250.1903 May I use an industry standard to develop my SEMS program?	Removed.
§ 250.1904 What are my general responsibilities for SEMS?	§ 250.1909 What is management's general responsibilities for the SEMS program?
§ 250.1905 What criteria for Hazards Analyses must my SEMS program meet?	§ 250.1911
§ 250.1906 What criteria for Operating Procedures must my SEMS program meet?	§ 250.1913
§ 250.1907 What criteria for Mechanical Integrity must my SEMS program meet?	§ 250.1916
§ 250.1908 What criteria for Management of Change must my SEMS program meet?	§ 250.1912
§ 250.1909 What criteria must be documented in my SEMS program for contractor selection?	§ 250.1914 What criteria must be documented in my SEMS program for safe work practices and contractor selection?
§ 250.1910 What are my responsibilities when conducting a SEMS audit?	§ 250.1920
§ 250.1911 What are my documentation and recordkeeping requirements?	§ 250.1928
§ 250.1912 What qualifications must an independent third-party or my designated and qualified personnel meet?	§ 250.1926
§ 250.1913 How will BOEMRE determine if my SEMS program is effective?	§ 250.1924
§ 250.1914 What happens if BOEMRE finds shortcomings in my SEMS program?	§ 250.1927
§ 250.1915 What are my responsibilities for submitting OCS performance measure data?	§ 250.1929
	[NEW SECTION] § 250.1903 Definitions.
	[NEW SECTION] § 250.1904 Documents incorporated by reference.
	[NEW SECTION] § 250.1910 What safety and environmental information is required?
	[NEW SECTION] § 250.1914 What criteria must be documented in my SEMS program for safe work practices and contractor selection?
	[NEW SECTION] § 250.1915 What criteria for training must be in my SEMS program?
	[NEW SECTION] § 250.1917 What criteria for pre-start up review must be in my SEMS program?
	[NEW SECTION] § 250.1918 What criteria for emergency response and control must be in my SEMS?
	[NEW SECTION] § 250.1919 What criteria for investigation of incidents must be in my SEMS program?
	[NEW SECTION] § 250.1925 May BOEMRE direct me to conduct additional audits?

Appendix 1

Instructions on How To Fill Out Form MMS-131—Performance Measures Data

1. On the line titled, "Company Name(s)," enter the name(s) of the operating company(ies) that are the owners of the data that need to be entered on the remainder of this form.

2. Directly across from your entry on "Company Names," please enter the name of the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) Region where your operating company(ies) have worked and generated the data to be entered on the remainder of this form.

3. On the line titled, "Operator Code(s)," please enter all the known operator codes for the company name or names that you have entered above.

4. Directly across from your entry on "Operator Codes," please enter the Calendar Year the data to be entered on the remainder of the form was generated.

5. On the line titled, "Contact Name," please enter the name of your chosen contact person. This person should be knowledgeable about the data your company has submitted on this form as they will be

the first person the BOEMRE contacts should the bureau have any questions about the data you have provided.

6. Directly across from your entry on "Contact Name," please input an active, valid e-mail address for your "Contact Name."

7. Enter an active and valid telephone number on the line titled, "Telephone." This telephone number should belong to your "Contact Name."

8. Enter an active and valid fax number on the line titled, "Fax." This fax number should be accessible to your "Contact Name."

9. Enter the date this form was submitted to the BOEMRE on the line titled, "Date Submitted."

10. On line A, in the column labeled, "Production Operations," enter the total number of company employee recordable injuries and illnesses accrued in each of the four quarters of the calendar year. Only the total number of recordable injuries and illnesses suffered by operating company employees while they were engaged in production operations may be entered here.

11. On line A, in the column labeled, "Drilling** Operations," enter the total number of company employee recordable injuries and illnesses accrued in each of the

four quarters of the calendar year. Only the total number of recordable injuries and illnesses suffered by operating company employees while they were engaged in drilling operations may be entered here.

12. On line A, in the column labeled, "Construction Operations," enter the total number of company employee recordable injuries and illnesses accrued in each of the four quarters of the calendar year. Only the total number of recordable injuries and illnesses suffered by operating company employees while they were engaged in construction operations may be entered here.

13. On line B, in the column labeled, "Production Operations," enter the total number of contract employee recordable injuries and illnesses accrued in each of the four quarters of the calendar year. Only the total number of recordable injuries and illnesses suffered by contract employees while they were engaged in production operations may be entered here.

14. On line B, in the column labeled, "Drilling** Operations," enter the total number of contract employee recordable injuries and illnesses accrued in each of the four quarters of the calendar year. Only the total number of recordable injuries and

illnesses suffered by contract employees while they were engaged in drilling operations may be entered here.

15. On line B, in the column labeled, "Construction Operations," enter the total number of contract employee recordable injuries and illnesses accrued in each of the four quarters of the calendar year. Only the total number of recordable injuries and illnesses suffered by contract employees while they were engaged in construction operations may be entered here.

16. On line C, in the column labeled, "Production Operations," enter the total number of company employee DART recordable injuries and illnesses accrued in each of the four quarters of the calendar year. Only the total number of DART recordable injuries and illnesses suffered by operating company employees while they were engaged in production operations may be entered here.

17. On line C, in the column labeled, "Drilling** Operations," enter the total number of company employee DART recordable injuries and illnesses accrued in each of the four quarters of the calendar year. Only the total number of DART recordable injuries and illnesses suffered by operating company employees while they were engaged in drilling operations may be entered here.

18. On line C, in the column labeled, "Construction Operations," enter the total number of company employee DART recordable injuries and illnesses accrued in each of the four quarters of the calendar year. Only the total number of DART recordable injuries and illnesses suffered by operating company employees while they were

engaged in construction operations may be entered here.

19. On line D, in the column labeled, "Production Operations," enter the total number of contract employee DART recordable injuries and illnesses accrued in each of the four quarters of the calendar year. Only the total number of DART recordable injuries and illnesses suffered by contract employees while they were engaged in production operations may be entered here.

20. On line D, in the column labeled, "Drilling** Operations," enter the total number of contract employee DART recordable injuries and illnesses accrued in each of the four quarters of the calendar year. Only the total number of DART recordable injuries and illnesses suffered by contract employees while they were engaged in drilling operations may be entered here.

21. On line D, in the column labeled, "Construction Operations," enter the total number of contract employee DART recordable injuries and illnesses accrued in each of the four quarters of the calendar year. Only the total number of DART recordable injuries and illnesses suffered by *contract* employees while they were engaged in construction operations may be entered here.

22. On line E, in the column labeled, "Production Operations," enter the total number of hours that operating company employees worked on production operations during each of the four quarters of the calendar year.

23. On line E, in the column labeled, "Drilling** Operations," enter the total number of hours operating company employees worked on drilling operations

during each of the four quarters of the calendar year.

24. On line E, in the column labeled, "Construction Operations," enter the total number of hours that operating company employees worked on construction operations during each of the four quarters of the calendar year.

25. On line F, in the column labeled, "Production Operations," enter the total number of hours that contract employees worked on production operations during each of the four quarters of the calendar year.

26. On line F, in the column labeled, "Drilling** Operations," enter the total number of hours contract employees worked on drilling operations during each of the four quarters of the calendar year.

27. On line F, in the column labeled, "Construction Operations," enter the total number of hours that contract employees worked on construction operations during each of the four quarters of the calendar year.

28. On line G, enter the total number of EPA NPDES non-compliances experienced by the operating company during the calendar year.

29. On line H, for oil spills of less than 1 bbl:

a. Count every occurrence of such a spill individually and tally that sum.

b. On line 1, enter the total number of oil spills less than 1 bbl that you have tallied.

c. For each individual spill, estimate the volume of oil lost.

d. Sum the estimates for each spill and enter the final amount of oil lost (in bbls) on line 2.

BILLING CODE 4310-MR-P

U.S. Department of the Interior
Bureau of Ocean Energy Management,
Regulation and Enforcement

OMB Control Number 1010-0186
OMB Approval Expires 10/31/2013

PERFORMANCE MEASURES DATA

Provide Data on an Annual Basis for the Previous Calendar Year by March 31 of Each Year

Company Name(s) _____ BOEMRE Region _____

Operator Code(s)* _____ Calendar Year _____

Contact Name _____ Email Address _____

Telephone _____ Fax _____ Date _____

<u>SAFETY</u>	<u>PRODUCTION OPERATIONS</u>	<u>DRILLING** OPERATIONS</u>	<u>CONSTRUCTION OPERATIONS</u>
A. No. of Company Employee Recordable Injuries/Illnesses	1 st Qtr _____	_____	_____
	2 nd Qtr _____	_____	_____
	3 rd Qtr _____	_____	_____
	4 th Qtr _____	_____	_____
B. No. of Contract Employee Recordable Injuries/Illnesses	1 st Qtr _____	_____	_____
	2 nd Qtr _____	_____	_____
	3 rd Qtr _____	_____	_____
	4 th Qtr _____	_____	_____
C. No. of Company Employee DART Injuries/Illnesses***	1 st Qtr _____	_____	_____
	2 nd Qtr _____	_____	_____
	3 rd Qtr _____	_____	_____
	4 th Qtr _____	_____	_____
D. No. of Contract Employee DART Injuries/Illnesses***	1 st Qtr _____	_____	_____
	2 nd Qtr _____	_____	_____
	3 rd Qtr _____	_____	_____
	4 th Qtr _____	_____	_____

<u>SAFETY</u>		<u>PRODUCTION OPERATIONS</u>	<u>DRILLING** OPERATIONS</u>	<u>CONSTRUCTION OPERATIONS</u>
E. Company Employee Hours Worked	1 st Qtr	_____	_____	_____
	2 nd Qtr	_____	_____	_____
	3 rd Qtr	_____	_____	_____
	4 th Qtr	_____	_____	_____
F. Contract Employee Hours Worked	1 st Qtr	_____	_____	_____
	2 nd Qtr	_____	_____	_____
	3 rd Qtr	_____	_____	_____
	4 th Qtr	_____	_____	_____

ENVIRONMENT

G. No. of EPA NPDES Noncompliances _____

H. For Oil Spills < 1 bbl

1. No. of Spills _____

2. Total Volume for Spills _____ **bbl**

* Please list all operator codes that these data represent.

** Drilling Operations include Drilling, Workover, and Allied Services.

*** Formerly Lost Time Cases that include Days Away from work, Restricted duty, and Transfer situations.

Paperwork Reduction Act of 1995 (PRA): The PRA (44 U.S.C. 3501 *et seq.*) requires us to inform you that BOEMRE collects this information to carry out its responsibilities under the OCS Lands Act, as amended. BOEMRE will use the information to evaluate the effectiveness of industry's continued improvement of safety and environmental management in the OCS. Responses are mandatory. No proprietary data are collected. We estimate the public reporting burden, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information to average 10 hours per response. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB has approved this collection of information and assigned OMB control number 1010-0186. You may direct comments regarding the burden estimate or any other aspect of this collection of information to the Information Collection Clearance Officer, Mail Stop 5438, Bureau of Ocean Energy Management, Regulation and Enforcement, Department of the Interior, 1849 C Street, NW, Washington, DC 20240.

**COMPANY-SPECIFIC DATA COLLECTED UNDER THIS REQUEST IS INTENDED FOR
GOVERNMENT USE ONLY**

BOEMRE Form MMS-131 (Oct 2013 Replaces previous editions that may not be used.) Page 2 of 2**BILLING CODE 4310-MR-C**

After reviewing and discussing the comments, BOEMRE decided to require each offshore operator to develop, implement, maintain, and operate under a SEMS program composed of all elements addressed in API RP 75, Development of a Safety and Environmental Management Program for Offshore Operations and Facilities,

Third Edition, May 2004, Reaffirmed May 2008.

In addition to the SEMS elements, we clarified hazards analysis and expanded recordkeeping and documentation requirements. We are also requiring operators to conduct a JSA for OCS activities identified in their SEMS program. In § 250.1911, we allow the

operator to perform a single hazards analysis for simple and multiple similar facilities. The hazards analysis may apply to all such facilities after verifying that site-specific deviations are addressed in each of the elements of your SEMS program. The hazards analysis section in API RP 75 addresses the job task at the facility level.

Therefore, BOEMRE is requiring JSAs as part of the SEMS program under § 250.1911. A JSA is used to review site-specific detailed job steps and uncover hazards associated with the specific job undertaken. The JSA defines the requirements for identifying, assessing, and controlling personal risks associated with work activities. Operators must complete a JSA prior to performing any activity identified in their SEMS program. The supervisor of the person in charge of the task must approve the JSA prior to the work commencing. The JSA is performed to identify and evaluate hazards of a job/task for the purpose of hazards control or elimination that is currently not addressed in API RP 75, Section 3, Hazards Analysis element.

The decision to require a SEMS program plus the JSA requirements is based on BOEMRE accident panel investigation reports, incident investigation findings, analyses of INC data, performance reviews with operators, and the fact that existing BOEMRE regulations do not address the SEMS elements as a separate and comprehensive approach. Since existing regulations (30 CFR part 250) do not address these elements as a separate and comprehensive approach, it is appropriate to require these SEMS elements. BOEMRE's evaluation of safety information included the following:

Accident Panel Investigation Reports

BOEMRE prepares accident panel investigation reports for major accidents. An analysis of 42 accident panel reports from 2000 through 2009 revealed that many fatalities and injuries occurred while performing routine tasks such as drilling, construction, coiled tubing operations, and crane and other lifting events. In addition, most of these accident panel reports' recommendations related to one of the following four SEMS elements: Hazards Analysis, Management of Change, Operating Procedures, and Mechanical Integrity.

The accident panel reports can be viewed at the following Web site:
http://www.gomr.BOEMRE.gov/homepg/offshore/safety/acc_repo/accindex.html.

CONTRIBUTING CAUSES

BOEMRE report	Hazards analysis	Management of change	Operating procedures	Mechanical integrity	Injury #	Fatality #
BOEMRE 2009-042	X	X	X	X	1	1
BOEMRE 2009-028	X		X	X		1
BOEMRE 2009-018	X		X	X		1
BOEMRE 2009-008	X					1
BOEMRE 2008-056				X		
BOEMRE 2008-054				X		
BOEMRE 2008-053		X				
BOEMRE 2008-038		X	X			
BOEMRE 2008-016	X	X	X			1
BOEMRE 2007-058	X	X	X			1
BOEMRE 2007-045	X	X	X			1
BOEMRE 2007-037	X		X			1
BOEMRE 2006-070	X		X	X		1
BOEMRE 2006-058	X		X			
BOEMRE 2006-047	X		X			
BOEMRE 2006-039			X			
BOEMRE 2006-021			X			
BOEMRE 2006-002	X		X			1
BOEMRE 2005-027		X	X	X		
BOEMRE 2005-007			X	X		
BOEMRE 2004-078	X	X	X			1
BOEMRE 2004-075	X		X	X		
BOEMRE 2004-048			X	X		
BOEMRE 2004-046	X	X	X		3	
BOEMRE 2004-010	X					
BOEMRE 2004-004	X					1
BOEMRE 2003-068			X			
BOEMRE 2003-046			X			
BOEMRE 2003-023		X				
BOEMRE 2002-080		X				
BOEMRE 2002-076	X	X		X		1
BOEMRE 2002-075	X					1
BOEMRE 2002-062		X			2	1
BOEMRE 2002-059	X			X	1	1
BOEMRE 2002-040				X		
BOEMRE 2001-084		X		X		
BOEMRE 2001-045		X		X		1
BOEMRE 2001-042	X	X		X		1
BOEMRE 2001-010	X	X			1	
BOEMRE 2001-009		X	X			
BOEMRE 2001-005	X	X				
BOEMRE 2000-089	X			X		1
Total	24	19	23	17	8	19

The table shows that the accidents covered by 20 of the 42 panel reports resulted in a combined 27 fatalities and injuries. The analysis done on the accidents identified six contributing causes that are related to the four elements:

- 1. A lack of communication between the operator and contractor(s);
- 2. A JSA was not conducted prior to beginning work, or there was a lack of written procedures;
- 3. An onsite supervisor failed to enforce existing procedures or practices;
- 4. A lack of written safe work procedural guidelines;
- 5. Integrity of the facilities and equipment were not maintained according to recommended practices; and
- 6. Workplace hazards were not identified or corrected.

Some of these accidents could have been minimized or prevented if the operator had implemented a comprehensive SEMS.

Incident Analysis

BOEMRE also studied 1,930 incidents that occurred in OCS waters from 2001 through 2009 to determine if those events were associated with any of the following 4 SEMS elements: Hazards

Analysis, Management of Change, Operating Procedures, and Mechanical Integrity. Although these four elements have been identified by BOEMRE as contributing causes to these events, BOEMRE recognizes the value of the remaining API RP 75 elements as a critical part of a comprehensive safety management program helping to ensure that all elements are addressed completely. The events we reviewed included 44 fatalities, 440 injuries, 19 losses of well control, 23 collisions, 597 fires, 436 pollution events, and 371 crane and other lifting events (e.g., hoists, winches, etc.).

The majority of incidents occurring in the OCS were related to operational and maintenance procedures or human error. These incidents are not addressed by BOEMRE's hardware-oriented compliance inspections. Additionally, of the incidents involving injuries, fires, and pollution on production facilities, only 25 were due to failure of a safety device. The majority of the 1,930 incidents had at least 1 of the following 4 elements as a contributing cause for the event occurring:

SEMS element	Number of incidents
Hazards Analysis	412
Management of Change	203
Operating Procedures	609
Mechanical Integrity	726

Incidents of Noncompliance (INCs)

BOEMRE inspectors issue three General INCs (G-INCs) that potentially relate to elements within a SEMS. The following summarizes these INCs:

- 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 all necessary precautions taken to correct and remove any hazards).

BOEMRE issued 4,284 G-INCs during 2003–2009 for drilling and production activities. Of these G-INCs issued, 4,116 (approximately 96 percent) were related to 1 or more of the following 4 SEMS elements:

- Hazards Analysis,
- Management of Change,
- Operating Procedures, and
- Mechanical Integrity.

The following table summarizes the G-INCs written for drilling and production activities:

G-INCs Issued from 2003–2009	SEMS elements	Drilling percentage
Hazards Analysis	23	20
Management of Change	9	9
Operating Procedures	25	18
Mechanical Integrity	39	49
Unrelated	4	4

BOEMRE evaluation of accident panel investigations and reports, incident analysis, and INCs indicates that in most cases, accidents can be traced to human error and/or organizational failures. For example, not following maintenance procedures as outlined in the SEMS program, could lead to the failure of critical equipment, which could lead to an accident. For that reason, it is important for operators to ensure that safe and environmentally sound operating practices are followed. Operations are safer when management systematically encourages individuals to be safety conscious, provides adequate resources, fosters safe worksite practices, promotes good housekeeping habits, and assures that workers are properly trained.

This final rule will require operators to have their SEMS program audited by an independent third-party or designated and qualified personnel. All auditors must meet the qualifications as

discussed in this final rule and the audit must be conducted according to the schedule in API RP 75, Section 12, and deficiencies addressed by the designated auditor. A knowledgeable and experienced independent third-party or designated and qualified personnel will audit an operator's SEMS program to determine the extent the operator is complying with their SEMS program. These audits will be conducted in an office environment and in the field, and could cover both a broad range of activities or be focused on a particular area (i.e. records, gas compressors, blowout preventers, or documentation), as appropriate. If the auditor determines that a SEMS program does not meet the requirements in this subpart and API RP 75, the operator must submit a report to BOEMRE within 30 days of the audit completion date. The report must outline the results of the audit including deficiencies identified, a timetable or

schedule for implementing corrections to deficiencies, and the person responsible for correcting each identified deficiency including their job title. BOEMRE will verify that corrective actions have been undertaken and that these actions effectively address the audit findings.

BOEMRE may, at its discretion, evaluate independent third parties or designated and qualified personnel, meet with operators to periodically review the results of SEMS program audits, and conduct announced or unannounced evaluations to assess SEMS program compliance and effectiveness. The operators will be responsible for all costs associated with any independent third-party audit of their SEMS program. BOEMRE would be more likely to participate as an observer in the case where the third-party auditor is the same as the contractor who developed the SEMS program.

This final rule requires operators to verify that their contractors can perform their assigned duties. The operator is responsible for ensuring that *all* contractors and subcontractors have safety policies and procedures in place that support the implementation of the SEMS program and align with the principles of managing safety set forth in API RP 75. The operator must inform contractors of any known hazards on the facility that are related to the contractor's work. This applies to contractors performing maintenance or repair, turnaround, major renovation, or specialty work on or adjacent to a covered process.

In this final rule, BOEMRE will require the operator to document and keep the last two SEMS audits conducted (onshore or offshore) and make them available to BOEMRE upon request. In addition, the operator must keep documentation and records for 2 years (onshore or offshore) including the following:

1. JSAs (must be kept onsite for 30 days, electronic access onsite to the JSA would be sufficient to comply with this requirement).
2. Management of change provisions.
3. Injury/illness log.
4. Evaluations completed on contractors.

These records and documentation must be available to BOEMRE upon request.

In this final rule, BOEMRE will require operators to submit Form MMS-131 on an annual basis, broken down quarterly, reporting the previous calendar year's data, by March 31st. For example, on March 31, 2011, Form MMS-131 must be submitted with data from calendar year 2010. On March 31, 2012, the data submitted will be from calendar year 2011.

Form MMS-131 includes the number of hours worked by company and contract employees (people on the facility) during production, drilling, pipeline, and construction activities (including adding or removing equipment and/or facility modifications). Submitting this information will allow the BOEMRE to publish incident rate information that is more useful and representative of the industry's safety record. The collected hours worked data will support BOEMRE's Government Performance and Results Act (GPRA), the Program Assessment Rating Tool (PART), and the OCS Performance Measures Program.

BOEMRE does not want the SEMS program to be a paperwork exercise conducted solely to meet regulatory requirements. BOEMRE understands that the development and implementation of this type of program may place an additional burden on some OCS operators, in the short term. A SEMS program that includes all API RP 75 elements will benefit operators by integrating safety across all aspects of the operating environment.

Procedural Matters

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

This final rule is a significant rule, as determined by the Office of Management and Budget (OMB), under Section 3(f)(4) of EO 12866 due to its novel legal and policy issues, and is therefore subject to OMB review.

Regulatory Flexibility Act

While the final rule will affect a substantial number of small entities, it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small operators 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 (91 operators) of the operators on the OCS are considered small. Therefore, this final rule will affect a substantial number of small entities. This rule will not have a significant economic effect on small operators. Costs related to complying with this regulation are relatively small compared to the costs associated with operating offshore on an annual basis.

Assumptions

BOEMRE made the following assumptions concerning the costs associated with the requirements in the final rulemaking:

- Because of the wide variation in company size, we grouped operators into three classes (High, Moderate, and Low Activity).
- We used the results of 13 years of voluntary SEMS Performance Measures reporting by OCS operators and determined that a minimum 70 of the 130 operators are using SEMS. We

believe that this number is higher based on previous Annual Performance Review Meetings conducted by the BOEMRE where voluntary SEMS was discussed.

- We used actual costs from safety management system vendors for our estimated costs for industry.
- We assumed no new capital costs will be incurred for the estimated 70 operators who are currently using SEMS to comply with this final rule, as their systems are already developed and funds they expend to manage and implement this program should not change significantly. However, we calculated additional costs for compliance with JSAs, documentation, maintenance, and recordkeeping requirements.
- The estimated cost for the 60 remaining operators to implement, develop, and manage the SEMS program is based on the operator having an Internet-based system, which is the most common approach used by operators.
- The cost for auditing a SEMS program is part of the entire program, per API RP 75, as audits are an integrated part of maintenance of all elements combined, and the time involved cannot be easily separated out.
- Many smaller operators can use a template from a safety management system vendor that will meet their needs for compliance with the final regulation. In most cases, the operators will not need to spend additional money to customize a template for their use.

High, Moderate, and Low Activity Definitions

Oil and gas operators in the OCS vary substantially in size and the degree to which they are engaged in extracting oil from the OCS. The scale of operations for the 130 OCS oil and gas operators ranges from as little as 1 complex to nearly 500 facilities; and from as little as 15,000 barrels of oil equivalent (BOE) annual production to more than 300 Million (MM) BOE annual production. Because of this variation in activity, BOEMRE divides operators into high, moderate, and low activity for measuring performance. We used these size categories to estimate costs associated with developing, managing, and fulfilling reporting requirements for the final SEMS rule. BOEMRE uses the following criteria for categorizing operators:

	High activity	Moderate activity	Low activity
Annual Production	>= 10 MMBOE	1 MMBOE < 10 MMBOE	< 1 MMBOE.

	High activity	Moderate activity	Low activity
In-service components	>= 1,000 components	100 < 1,000 components	< 100 components.

Development of SEMS Program

After reviewing the voluntary SEMS submissions received from 1996 to 2009 (OCS Performance Measures Data, Form MMS-131), an average of 70 of 130

operators, or 54 percent, reported having a SEMS-type program in-place. The other 60 operators, or 46 percent, may not have a SEMS program in-place or may have a SEMS program, but are

not participating in the voluntary SEMS program.

The following table shows a breakdown by operator activity category (high, moderate, low):

Activity category	Number of operators without SEMS	Number of operators with SEMS	Number of operators with partial SEMS	Total number of operators by activity	Percent of operators with SEMS
High Activity Operators	0	13	0	13	100
Moderate Activity Operators	12	29	10	41	71
Low Activity Operators	48	28	12	76	37
Total	60	70	22	130	54

As shown in the table, 54 percent of all OCS operators have a comprehensive and/or partial SEMS program in place. A partial SEMS includes the following elements; Hazard Analysis, Management of Change, Mechanical Integrity, Operating Procedures, Training, Safe Work Practices. At a September 2009 SEMS workshop held in New Orleans, Louisiana, BOEMRE was informed that moderate and low activity operators are implementing a partial SEMS consisting of six elements previously discussed. They will need to address the other seven elements in order to be in compliance with the final rule. All high activity operators, over 70 percent of the moderate activity operators, and almost 40 percent of the low activity operators are using a SEMS program.

Based on information received from consultants and vendors, the cost for an operator to buy a generic SEMS template is approximately \$2,500. If an operator decided to modify the generic SEMS template to make it specific to its use, the cost will be an additional \$10,000. As mentioned in the assumptions, it will not be necessary for many operators to spend the additional \$10,000 to customize a SEMS program.

If the 60 operators without a SEMS program decide to buy a SEMS template, the cost will be \$150,000 (\$2,500 × 60). If all 60 operators needed to modify the generic plan templates for

their specific OCS operations, which is unlikely, it will cost an additional \$600,000 (\$10,000 × 60). The total cost for all 60 operators to buy a template and then modify the template to their philosophy is estimated to be \$750,000 (\$150,000 + \$600,000).

SEMS Implementation

This section provides the estimated cost for industry to implement a SEMS. The following table shows a breakdown of the average number of facilities and components for the 3 operator activity levels:

Activity category	Average number of Components per Complex	Average number of Complexes
High	21	139
Moderate ...	15	29
Low	16	6

We describe the costs for the 60 operators in the moderate and low activity categories that will have to implement a SEMS Program, and all of the costs for the high, moderate, and low activity categories to maintain their SEMS.

High Activity Operators

BOEMRE determined, based on Annual Performance Reviews and voluntary submissions of Form MMS-

131, that all high activity operators already have a SEMS program in place.

Maintenance Costs for a High Activity Operator

The estimated average cost for each high activity operator to maintain their SEMS program is approximately \$1,670,000 a year. The estimated cost for all 13 high activity operators to maintain their SEMS program is \$21,710,000 per year.

General	\$ 50,000
Safety and Environmental	75,000
Hazards analysis	300,000
Management of Change	150,000
Operating Procedures	100,000
Safe Work Practices	125,000
Training	200,000
Mechanical Integrity	225,000
Pre-Startup	125,000
Emergency Response and Control	175,000
Investigation of Incidents	95,000
Audits*	20,000
Records and Documentation ...	30,000

Total \$1,670,000

* audits are conducted every 3 years at an estimated cost of \$60,000 per audit (\$60,000/3 = \$20,000 per year).

Moderate Activity Operators

BOEMRE calculated the cost for a moderate activity operator to implement and manage a SEMS program based on the 13 SEMS elements, as follows:

IMPLEMENTATION COSTS FOR A MODERATE ACTIVITY OPERATOR

Element	Basis	Estimated cost
General	The General section includes implementation, planning and management review and approval of the SEMS Program.	\$18,000 per year (includes the year to implement SEMS). This also includes data collection, analysis, report development, and cost of meetings.

IMPLEMENTATION COSTS FOR A MODERATE ACTIVITY OPERATOR—Continued

Element	Basis	Estimated cost
Safety and Environmental Information.	This section outlines the minimum safety and environmental information needed for any facility, such as design data on facility process (e.g., flow diagrams) and mechanical components (e.g., piping and instrument diagrams). The information is used to perform a hazards analysis.	\$22,000 per year (includes the year to implement SEMS). This also includes data collection, evaluation, and documentation update of the design data on the facility process and mechanical components.
Hazards Analysis	Operators will need a facility risk assessment for each facility. After the initial facility risk assessments are prepared, the cost will be less because a hazards analysis is required only for changes in the process or the equipment on a facility. The JSA at the task level includes data collection, analysis, and report development. This cost is included in the hazards analysis.	\$102,000 per year (includes the year to implement SEMS). This also includes annual updates.
Management of Change (MOC).	The cost is based on one change request per month, but it is also dependent on the complexity of the change—something minor will not cost as much as something more complex. The MOC cost is determined by the physical state of the facilities, the status of technology, and the turnover of personnel.	\$30,000 per year (includes the year to implement SEMS). This also includes MOC data collection, evaluation, and documentation update.
Operating Procedures	An operator will need to evaluate the operating procedures of its facility each year. The operating procedure cost is determined by the maintenance of such procedures. For most operators, no formal evaluation is necessary since changes will be identified through the JSA process and managed through the MOC process.	\$20,000 per year (includes the year to implement SEMS). This also includes data collection, evaluation, documentation update, and recordkeeping.
Safe Work Practices	An operator will need to evaluate its safe work practices each year to minimize safety and environmental risks associated with operations. Safe work practices should address all personnel.	\$28,000 per year (includes the year to implement SEMS). This also includes data collection, evaluation, inspection report development, and inspection plan update.
Training	An operator will need to develop provisions for ensuring that its employees and their supervisors are taught how to conduct operations safely, to recognize unsafe methods of operations, and to identify potential environmental and safety hazards.	\$30,000 per year (includes the year to implement SEMS). This also includes job description review, training program development, and tracking of training and maintenance of training records. The cost of training is not included in this assessment, only the cost of managing the program. Well control and production safety training is implemented following the enforcement of subpart O.
Mechanical Integrity	Based on the assumption that mechanical integrity is achieved through preventive maintenance. The preventive maintenance program is defined prior to the commissioning of the facility. We did not include the cost of maintenance in this assessment, only the cost of managing the program.	\$40,000 per year (includes the year to implement SEMS). This includes the quality assurance inspection plan, evaluation of schedule appropriateness, communication of maintenance program, salaries, maintenance and inspection reports, and record-keeping.
Pre-startup Review	An operator will need to include provisions to verify that the facility will function according to design, that personnel have been properly trained, and that safe work practices are in place.	\$25,000 per year (includes the year to implement SEMS). This includes the pre-startup risk register per facility, pre-startup review checklists per facility, records of pre-startup reviews conducted, and evaluation of pre-startup procedures.
Emergency Response and Control.	An operator will need to include provisions to require that all emergency response and control plans be in place and ready for immediate implementation. Specific types of plans include, but are not limited to, emergency evacuation and oil spill contingency plans.	\$30,000 per year (includes the year to implement SEMS). This includes initial identification of risks and possible emergencies, development of response requirements and comparison to existing plans, ensuring that drills are performed as planned, and manually tracking and evaluating risk changes. Costs of emergency response and drills are not included in the assessment, only the cost of managing the procedures.
Investigation of Incidents	An operator will need to include procedures for investigating all incidents with serious or potentially serious safety and environmental consequences.	\$20,000 per year (includes the year to implement SEMS). This includes incident and near miss registers, collecting data, analyzing, developing, and presentation of reports. Only the cost of preventative measures such as near miss tracking is included in the evaluation.
Audits	The operators are required to have an independent third-party or designated and qualified personnel audit of their SEMS program to determine if the program elements were properly implemented and maintained.	\$12,000 every 3 years or \$4,000 per year.

IMPLEMENTATION COSTS FOR A MODERATE ACTIVITY OPERATOR—Continued

Element	Basis	Estimated cost
Records and Documentation	The operators are required to have documentation that describes the 13 elements of their SEMS program and the interaction between the elements.	\$6,000 per year, based on the requirements of § 250.1928 and API RP 75, Section 13.

The estimated cost for one moderate activity operator to implement SEMS is \$375,000. The estimated cost for the 12 moderate activity operators to implement SEMS is \$4,500,000 (\$375,000 × 12 operators). The itemized cost is:

Implementation Costs for a Moderate Activity Operator

General	\$18,000
Safety and Environmental	22,000
Hazards analysis	102,000
Management of Change	30,000
Operating Procedures	20,000
Safe Work Practices	28,000
Training	30,000
Mechanical Integrity	40,000
Pre-Startup	25,000
Emergency Response and Control	30,000
Investigation of Incidents	20,000
Audits	4,000
Records and Documentation ...	6,000
Total	375,000

Implementation Costs for a Moderate Activity Operator (Partial SEMS)

The estimated cost for one moderate activity operator with a partial SEMS to

implement a comprehensive SEMS is \$124,000. The estimated cost for the 10 moderate activity operators to implement SEMS is \$1,240,000 (\$124,000 × 10 operators). The itemized cost is:

General	\$18,000
Safety and Environmental	22,000
Hazards analysis	0
Management of Change	0
Operating Procedures	0
Safe Work Practices	0
Training	0
Mechanical Integrity	0
Pre-Startup	25,000
Emergency Response and Control	30,000
Investigation of Incidents	20,000
Audits	3,000
Records and Documentation ...	6,000
Total	124,000

Maintenance Costs for a Moderate Activity Operator

The estimated average cost for each moderate activity operator to maintain their SEMS program is approximately \$223,000 a year. The estimated cost for the 41 moderate activity operators to

maintain their SEMS program is \$9,143,000 (\$223,000 × 41).

General	\$3,000
Safety and Environmental	12,000
Hazards analysis	34,000
Management of Change	21,000
Operating Procedures	17,000
Safe Work Practices	17,000
Training	25,000
Mechanical Integrity	27,000
Pre-Startup	16,000
Emergency Response and Control	24,000
Investigation of Incidents	17,000
Audits *	4,000
Records and Documentation ...	6,000
Total	223,000

* Audits are conducted every 3 years at an estimated cost of \$12,000 per audit (\$12,000/3 years = \$4,000 per year).

Low Activity Operators

BOEMRE calculated the cost for a low activity operator to implement and manage a SEMS program based on the 13 SEMS elements, as follows:

IMPLEMENTATION COSTS FOR A LOW ACTIVITY OPERATOR

Element	Basis	Estimated cost
General	The General section entails implementation, planning and management review and approval of the SEMS.	\$5,000 per year (includes the year to implement SEMS). This also includes data collection, analysis, report development, and cost of meetings.
Safety and Environmental Information	This section outlines the minimum safety and environmental information needed for any facility, such as design data on facility process (e.g., flow diagrams) and mechanical components (e.g., piping and instrument diagrams). The information is used to perform a hazards analysis.	\$8,000 per year (includes the year to implement SEMS). This also includes data collection, evaluation, and documentation update of the design data on the facility process and mechanical components.
Hazards Analysis	Operators will need to do a facility risk assessment for each facility when the rule is implemented. After the initial facility risk assessments are prepared, the cost will be less because a hazards analysis is required only for changes in the process or the equipment on a facility. The job safety analysis at the task level includes data collection, analysis, and report development. This cost is included in the hazards analysis.	\$25,000 per year (includes the year to implement SEMS). This also includes annual updates.
Management of Change (MOC)	Based on one change request per month but the cost is dependent on the complexity of the change. The MOC cost is determined by the physical state of the facilities, the status of technology, and the turnover of personnel.	\$20,000 per year (includes the year to implement SEMS). This also includes MOC data collection, evaluation, and documentation update.

IMPLEMENTATION COSTS FOR A LOW ACTIVITY OPERATOR—Continued

Element	Basis	Estimated cost
Operating Procedures	An operator will need to evaluate the operating procedures of their facility each year. The operating procedure cost is determined by the maintenance of such procedures. For most operators, no formal evaluation is necessary since changes will be identified through the JSA process and managed through the MOC process.	\$10,000 per year (includes the year to implement SEMS). This also includes data collection, evaluation, documentation update, and record-keeping.
Safe Work Practices	An operator will need to evaluate the safe work practices each year to minimize safety and environmental risks associated with operations. Safe work practices should address all personnel.	\$12,000 per year (includes the year to implement SEMS). This also includes data collection, evaluation, and an inspection report development and inspection plan update.
Training	An operator will need to develop provisions for ensuring that their employees and their supervisors be taught how to conduct operations safely, to recognize unsafe methods of operations, and to identify potential environmental and safety hazards.	\$14,000 per year (includes the year to implement SEMS). This also includes job description review, training program development, and tracking of training and maintenance of training records. The cost of training is not included in this assessment, only the cost of managing the program. Training is well implemented following the enforcement of subpart O.
Mechanical Integrity	This is based on the assumption that mechanical integrity is achieved through preventive maintenance. The preventive maintenance program is defined prior to the commissioning of the facility. We did not include the cost of maintenance in this assessment, only the cost of managing the program.	\$20,000 per year (includes the year to implement SEMS). This includes the quality assurance inspection plan, evaluation of schedule appropriateness, communication of maintenance program, salaries, maintenance and inspection reports, and recordkeeping.
Pre-startup Review	An operator will need to include provisions to verify that the facility will function according to design, that personnel have been properly trained and that safe work practices are in place.	\$8,000 per year (includes the year to implement SEMS). This includes the pre-startup risk register per facility, pre-startup review checklists per facility, records of pre-startup reviews conducted and evaluation of pre-startup procedures.
Emergency Response and Control	An operator will need to include provisions to require that all emergency response and control plans be in place and ready for immediate implementation. Specific types of plan include, but are not limited to, emergency evacuation and oil spill contingency plans.	\$15,000 per year (includes the year to implement SEMS). This includes initial identification of risks and possible emergencies, development of response requirements and comparison to existing plans, ensuring that drills are performed as planned, and tracking and evaluating risk changes. Costs of emergency response and drills are not included in the assessment, only the cost of managing the procedures.
Investigation of Incidents	An operator will need to include procedures for investigating all incidents with serious or potentially serious safety and environmental consequences.	\$10,000 per year (includes the year to implement SEMS). This includes incident and near miss registers, collecting data, analyzing, and developing and presentation of reports. Only the cost of preventative measures such as near miss tracking is included in the evaluation.
Audits	The operators are required to have an independent third-party audit or their designated and qualified personnel of their SEMS program to determine if the program elements were properly implemented and maintained.	\$9,000 every 3 years or \$3,000 per year.
Records and Documentation	The operators are required to have documentation that describes the 13 elements of their SEMS program and the interaction between the elements.	\$4,000 per year, based on the requirements of § 250.1928 and API RP 75, Section 13.

The estimated cost for a low activity operator to implement SEMS is \$154,000. The cost for the 48 low activity operators to implement SEMS is \$7,392,000 (\$154,000 × 48 operators). The itemized cost to implement SEMS for a low activity operator is:

Implementation Costs for a Low Activity Operator

General	\$5,000
Safety and Environmental	8,000
Hazards analysis	25,000
Management of Change	20,000
Operating Procedures	10,000
Safe Work Practices	12,000
Training	14,000

Mechanical Integrity	20,000
Pre-Startup	8,000
Emergency Response and Control	15,000
Investigation of Incidents	10,000
Audits	3,000
Records and Documentation ...	4,000
Total	154,000

Implementation Costs for a Low Activity Operator (Partial SEMS)

The estimated cost for one low activity operator with a partial SEMS to implement a comprehensive SEMS is \$636,000. The estimated cost for the 12 low activity operators to implement SEMS is \$636,000 (\$53,000 × 12 operators). The itemized cost is:

General	\$5,000
Safety and Environmental	8,000
Hazards analysis	0
Management of Change	0
Operating Procedures	0
Safe Work Practices	0
Training	0
Mechanical Integrity	0
Pre-Startup	8,000
Emergency Response and Control	15,000
Investigation of Incidents	10,000
Audits	3,000
Records and Documentation	4,000
Total	53,000

Maintenance Cost for a Low Activity Operator

The estimated cost for each low activity operator to maintain their SEMS program is approximately \$77,000 a year. The cost for the 76 low activity operators to maintain SEMS is \$5,852,000.

General	\$2,000
Safety and Environmental	3,000
Hazards analysis	14,000
Management of Change	7,000
Operating Procedures	4,000
Safe Work Practices	5,000
Training	9,000
Mechanical Integrity	11,000
Pre-Startup	5,000
Emergency Response and Control	7,000
Investigation of Incidents	3,000
Audits *	3,000
Records and Documentation	4,000
Total	77,000

* Audits are conducted every 3 years at an estimated cost of \$9,000 per audit (\$9,000/3 years = \$3,000 per year).

Burden Cost to Submit to BOEMRE

The following are the estimated costs for complying with the submissions to BOEMRE and associated recordkeeping. The burden hours that these costs are based on are addressed in the Paperwork Reduction Act section.

- All JSAs conducted will require a supervisor and/or third-party approval, which will cost \$4,233,050 each year.
- Operators must demonstrate and explain, if required, the policies and procedures included in your SEMS, which will cost \$4,272 each year.

- Make available to BOEMRE evaluations documentation and supporting information, which will cost \$23,140 each year.

- On an annual basis, operators must submit Form MMS-131 (Performance Measures Data) to BOEMRE and maintain a contractor employee injury/illness log in the operation area, which will cost approximately \$115,700.

- Operators must notify the BOEMRE when an operator plans to conduct an audit of its SEMS program in order for BOEMRE to have the opportunity to participate or observe, must submit plans, submit audit reports documenting all findings/conclusions/deficiencies, which will cost approximately \$19,135 each year.

- Recordkeeping and documentation requirements will cost \$57,850 each year.

The total cost for required paperwork being submitted to BOEMRE will be approximately \$4,443,147.

Summary of Annual Costs To Implement and Maintain SEMS

The total cost to implement and maintain SEMS is approximately \$92,910,811. A summary of all the costs are shown in the following table:

SEMS IMPLEMENTATION COSTS

	Cost *
IMPLEMENTATION of your SEMS:	
Buy/develop and implement SEMS Plan for operators without a SEMS (60 operators)	\$750,000
Implementation cost	0
High activity operator cost (already implemented)	4,500,000
Moderate activity operator cost (\$375,000 × 12)	1,243,000
Moderate activity operator cost (\$124,000 × 10 operators) (Partial SEMS)	7,392,000
Low activity operator cost (\$154,000 × 48)	636,000
Low activity operator cost (\$53,000 × 12) (Partial SEMS)	
TOTAL FIRST YEAR COST	14,521,000
MAINTENANCE of your SEMS:	
Maintain SEMS (Annual Cost after Implementation)	
High activity operator cost (\$1,670,000 × 13)	21,710,000
Moderate activity operator cost (\$223,000 × 41)	9,143,000
Low activity operator cost (\$77,000 × 76)	5,852,000
** Conduct required independent third-party audits	291,000
Paperwork Burden required by BOEMRE (annual cost)	41,393,811
TOTAL ANNUAL COSTS AFTER IMPLEMENTATION	78,389,811

* Rounded to the nearest \$1,000.

** Required independent audits—approximately 20 percent per operator per category: 3 required audits for high operator (\$20,000 per audit × 3 audits = \$60,000); 8 required audits for moderate operator (\$12,000 per audit × 8 audits = \$96,000); and 15 required audits for low operator (\$9,000 per audit per 15 audits = \$135,000) = 26 required audits per year at a total yearly combined cost of \$291,000.

Benefits of SEMS

The ultimate goal of SEMS is to promote safety and environmental protection during OCS activities. The protection of human life and the environment are the top priorities and objectives of this rule. While it is

difficult to provide absolute quantification of the benefits of the lives saved and risks avoided due to this regulation, the BOEMRE believes that implementation of a comprehensive SEMS program will avoid accidents that could result in injuries, fatalities, and

serious environmental damage based upon BOEMRE's incident analysis. In addition, an increase in a system's level of safety leads to reduced material losses and enhanced productivity.

Some additional benefits include:

- Avoiding incident investigation costs and operational disruptions.

Improved communication and risk mitigation will prevent many accidents from occurring.

- Reduction of the direct and indirect costs of accidents. Repair costs, damage claims, increased insurance premiums, and civil penalties are a few of the potential economic consequences of an accidental mishap.

- Establishing a marketable safety record. A record of consistently safe operations can attract new business and investment.

- Improved employee morale and productivity. Promoting communication between management and the rest of the organization prevents disenfranchisement and lifts morale.

Again, while it is difficult to quantify with any degree of certainty the human safety and environmental benefits of a comprehensive SEMS program, the financial burden estimated for developing and managing a SEMS program is minor compared to the costs associated with major accidents. For example, in 1987, prior to industry having developed a safety management template for offshore operations, the Mississippi Canyon 311, A (Bourbon), platform in the Gulf of Mexico was tilted to one side by an extensive underground blowout. The cost associated with this incident alone was \$274,000,000. In 1989, a fire associated with a pipeline repair killed 7 people and destroyed a major production facility. A SEMS plan would have implemented several procedures and evaluations that may have prevented these accidents. A SEMS plan is not a guarantee of avoiding all accidents, but BOEMRE believes that requiring a comprehensive SEMS program, that includes all 13 elements, will reduce the likelihood of the types of accidents and incidents discussed in the preamble and will raise the safety awareness of all personnel in the office and field.

The requirement for SEMS will not have a significant economic effect on a substantial number of small entities. Based on voluntary participation in the SEMS program and annual performance reviews, the BOEMRE estimates that over 40 percent of the small entities currently operating on the OCS have implemented some form of a SEMS program. These small entities (28 low activity and 29 moderate activity operators) implemented SEMS because it improved the efficiency and safety of their OCS operations. The cost for each of the remaining small entities to implement (approximately \$154,000) and maintain (approximately \$77,000) SEMS is very small compared to the average annual revenues these entities will generate (\$28,000,000) from the

production of oil and gas. BOEMRE estimated the annual revenue by multiplying the average production for a small entity (700,000 BOE) times a conservative price for a barrel of oil (\$40). These costs should be less for operators that have already addressed this type of information. Therefore, this rulemaking will not have a significant economic effect on a substantial number of small entities.

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 businesses. If you wish to comment on the actions of BOEMRE, call 1-888-734-3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

Small Business Regulatory Enforcement Fairness Act Subtitle E—Congressional Review

This final rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*, also known as the Congressional Review Act). 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. The requirements will apply to all entities operating on the OCS.

Unfunded Mandates Reform Act of 1995

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, adjusted for inflation. This 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 the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this final rule does not have significant takings implications. The final rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this final rule does 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. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988.

Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this final rule and determined that it has no substantial effects on federally recognized Indian tribes.

Paperwork Reduction Act (PRA)

This rule contains a collection of information that was submitted to the OMB for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The title of the information collection (IC) for this rule is 30 CFR Part 250, Subpart S, Safety and Environmental Management Systems for Outer Continental Shelf Oil and Gas and Sulphur Operations. The OMB approved the collection under Control Number 1010-0186, expiration date 10/31/2013, 465,099 hours, \$12,933,000 non-hour cost burdens. Respondents primarily are an estimated 130 Federal OCS oil, gas, and sulphur lessees and/or operators or other independent third parties. The frequency of response varies, but is primarily annual. Responses to this IC are mandatory. This rulemaking adds a new subpart to the 30 CFR Part 250 regulations. BOEMRE will use the information to: Evaluate the effect of

industry's continued improvement of safety and environmental management of the OCS; develop an industry average that helps to describe how well the offshore oil and gas industry is performing; and judge the reasonableness of company requests for any specific regulatory relief.

BOEMRE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 522) and its implementing regulations (43 CFR Part 2), and 30 CFR 250.197, Data and information to be made available to the public or for limited inspection.

Section 250.198 lists all of the 30 CFR Part 250 incorporated documents. The section is revised to include the new 30 CFR Part 250, Subpart S, incorporated document added under this regulation.

As stated in the preamble, we received 61 comments, of which 99 percent made some mention of the IC burden. Generally, these commenters said that the IC requirements were too burdensome and that the rule was too prescriptive and should follow API RP 75. BOEMRE is incorporating by reference API RP 75 to replace virtually all of the requirements in the proposed rule. The incorporation of this document allows the operators to address the diversity of operations while developing their SEMS program.

Also, all the commenters remarked that the burden hour estimates were too low; therefore, we increased the burdens to reflect this concern. In response to the comments, BOEMRE has included a new IC requirement in the final rule, adjusted hour burdens, and non-hour cost burdens as follows:

a. In §§ 250.1900–250.1929 under Operator Activity in the proposed rule, the burden hours were increased.

1. High Activity operator burden is increased from the proposed rule due to incorporating API RP 75 in its entirety, which will increase the hour burden (+217,204 hours).

2. Moderate Activity operator burden is increased from the proposed rule due to incorporating API RP 75 in its entirety, which will increase the hour burden and non-hour costs (+64,042 hours; \$2,580,000).

3. Low Activity operator burden is increased from the proposed rule due to incorporating API RP 75 in its entirety, which will increase the hour burden and non-hour costs (+44,384 hours; \$5,472,000).

b. In § 250.1911(b), the designated person in charge of the activity must have approval to conduct a JSA. This requirement will help determine that all physical requirements, environmental conditions, personal protective

equipment, and safety factors relating to a specific job or task have been identified properly (+47,450 hours).

c. In § 250.1914(d), a contractor employee injury/illness log must be kept in the operation area. This requirement is needed to assist in filling out Form MMS–131; therefore, we consider this burden as part of the form burden. (Current OMB approved burden per form is 8 hours; this rulemaking increases the burden per form by an additional 2 hours per form (+260 hours).

d. In § 250.1924(b), BOEMRE has added necessary requirements pertaining to verification of the accuracy of industry's SEMS documentation (+260 burden hours).

e. In § 250.1925(a) there is a new non-hour cost burden that will require an operator to pay for all costs associated with an BOEMRE directed audit. This cost is based on a potential of 26 BOEMRE directed audits a year (+\$291,000).

f. For clarity purposes, we placed the majority of all the recordkeeping and documentation requirements in one regulatory requirement, § 250.1928. This will help respondents determine their requirements at a glance (+650 hours).

The following table provides a breakdown of the burdens.

Citation 30 CFR 250 subpart S	Reporting and recordkeeping requirement	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours
1900–1929	High Activity Operator: Have a SEMS program, and maintain all documentation and records pertaining to your SEMS program, according to API RP 75 in its entirety. Make your SEMS available to BOEMRE upon request. As part of your SEMS, you must also develop and implement written JSAs for each OCS activity identified or discussed in your SEMS. <i>NOTE:</i> Based on previous information, High Activity Operators already have a SEMS in place.	18,708	13 operators	243,204
1900–1929	Moderate Activity Operator: Have a SEMS program, and maintain all documentation and records pertaining to your SEMS program, according to API RP 75 in its entirety. Make your SEMS available to BOEMRE upon request. As part of your SEMS, you must also develop and implement written JSAs for each OCS activity identified or discussed in your SEMS.	2,528	41 operators	103,648
	Moderate Activity Operator Implementation. (One time cost to implement SEMS).	\$375,000 per moderate activity implementation × 12 operators = \$4,500,000		

Citation 30 CFR 250 subpart S	Reporting and recordkeeping requirement	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours
1900–1929	Low Activity Operator: Have a SEMS program, and maintain all documentation and records pertaining to your SEMS program, according to API RP 75 in its entirety. Make your SEMS available to BOEMRE upon request. As part of your SEMS, you must also develop and implement written JSAs for each OCS activity identified or discussed in your SEMS.	899	76 operators	68,324
	Low Activity Operator Implementation. (One time cost to implement SEMS).	\$154,000 per low activity implementation × 48 operators = \$7,392,000.		
1900	Develop and implement a SEMS program (One time implementation cost of SEMS template).	\$2,500 per implementation × 60 operators = \$150,000.		
1900	In-house modification (one time implementation cost) of the generic SEMS program to meet needs of specific company.	\$10,000 per implementation × 60 operators = \$600,000.		
1911(b)	Supervisor approval to conduct a JSA	10 mins.	130 operators × 365 days × 6 = 284,700 *.	47,450
1900(b); 1914(d); 1928(d), (e); 1929.	Submit Form MMS–131. Maintain a contractor employee injury/illness log in the operation area, retain for 2 years, and make available to BOEMRE upon request (this requirement is included in the form burden). Inform contractors of hazards.	10	130 operators ...	1,300
1920	Notify BOEMRE with audit schedule 30 days prior to conducting your audit.	1	130 operators/once every 3 years = 43.	43 (rounded)
1920(c); 1925(a), (c)	Submit to BOEMRE after completed audit, report of findings and conclusions, including deficiencies and required supporting information/documentation.	3	44 operators	132
1920(d)	Submit a copy of your plan that will address deficiencies identified in audit, including a correction schedule with appropriate supporting information.	4	10 submissions	40
1924(b);	Make available to BOEMRE upon request, evaluation documentation and supporting information relating to your SEMS.	2	130 operators ...	260
1924(c)	Explain and demonstrate your SEMS during site visit if required; provide evidence supporting your SEMS implementation.	8	6 explanations ..	48
1925(a)	Pay for all costs associated with BOEMRE directed audit approximately 20 percent per operator per category: 3 required audits for high operator (\$20,000 per audit × 3 audits = \$60,000); 8 required audits for moderate operator (\$12,000 per audit × 8 audits = \$96,000; and 15 required audits for low operator (\$9,000 per audit per 15 audits = \$135,000) = 26 required audits per year at a total yearly combined cost of \$291,000.	26 BOEMRE directed audits—for a total of = \$291,000.		

Citation 30 CFR 250 subpart S	Reporting and recordkeeping requirement	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours
1928	(1) Document and keep all SEMS audits for 6 years (at least 2 full audit cycles) at an onshore location, and make available to BOEMRE upon request. (2) JSAs must have documented results in writing and kept onsite for 30 days; retain records for 2 years and make available upon request to BOEMRE. (3) All MOC records (API RP Sec 4) must be documented, dated, and retained for 2 years and make available to BOEMRE upon request.	5	130 operators ...	650
TOTAL BURDEN	285,469	465,099
		\$12,933,000 Non-Hour Cost Burdens		

* We calculated operators conducting six JSAs a day (3 JSAs for each 12 hour shift). Some contractors may perform none for a particular day, whereas others may conduct more than six per day. This estimate is an average.

An agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public may comment, at any time, on the accuracy of the IC burden in this rule and may submit any comments to the Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Regulations and Standards Branch; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170-4817.

National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. BOEMRE has analyzed this final rule under the criteria of the National Environmental Policy Act and 516 Departmental Manual 15. This final rule meets the criteria set forth in 43 CFR 46.210 for a Departmental "Categorical Exclusion" in that this rule is " * * * of an administrative, financial, legal, technical, or procedural nature * * * " This rule also meets the criteria set forth in 516 Departmental Manual 15.4(C)(1) for a BOEMRE "Categorical Exclusion" in that its impacts are limited to administrative, economic or technological effects. Further, the BOEMRE has analyzed this rule to determine if it meets any of the extraordinary circumstances that will require an environmental assessment or an environmental impact statement as set forth in 43 CFR 46.215.

Each section and subsection has also been reviewed to ensure that no potentially relevant extraordinary circumstances apply to the proposed action that would warrant the preparation of an environmental assessment or environmental impact

statement. All extraordinary circumstances were considered in accordance with 43 CFR 46.215, but only the following ones are potentially applicable:

a. Have significant impacts on public health or safety.

e. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

f. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

The first extraordinary circumstance does not apply since rule promulgation will not contribute to any significant and adverse impacts on public health and safety. The SEMS program is likely to improve OCS safety, given the available incident data trends and associated 10 years of analysis. The second extraordinary circumstance does not apply since the promulgation of the rule or the eventual implementation of SEMS by operators does not set precedent for future actions or decisions by BOEMRE. The last extraordinary circumstance does not apply since there is no direct relationship between this rulemaking and other actions that could together contribute to cumulatively significant effects.

Most subsections of the rule address strictly administrative, technical, and/or procedural matters. Specific examples include definitions of terminology, scope and timing of documentation, recordkeeping, and transfer of information, and general descriptions of what is to be included in written procedures. The rule does not create the potential for environmental effects as a result of new technologies, technology configurations, or technological procedures as such measures are not

part of the rule. For aspects of the rule dealing with mechanical integrity and inspections, the requirements are procedural and technical as the rule covers the content of the written procedures. While the rule identifies the requirement, it allows the operator to choose the means to accomplish the end as long as it is consistent with the SEMS requirements.

Other subsections require activities in addition to administrative tasks, advance planning and procedural documentation, such as training and emergency response drills and corrective procedural actions that address human errors identified in investigations. These requirements are also considered procedural in nature since the subsections describe general and ordered steps that operators must undertake to have and maintain a compliant SEMS program. Subsections that require training or drilling of personnel are procedural in that they target the cognitive skills and knowledge of personnel (e.g., 250.1915(b)) and/or clarify the purpose and/or scope of training (e.g., 250.1918(c)). For example, in 30 CFR 250.1918, BOEMRE requires training and drills for personnel to exercise elements in the Emergency Action Plan that focus on response, control, and evacuation procedures and reporting. The principal purpose of this is to ensure retention of and refine the skills, knowledge, and abilities of personnel.

BOEMRE concluded that this rule does not meet any of the criteria for extraordinary circumstances as set forth in 43 CFR 46.215.

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554, app.

C § 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental protection, Incorporation by reference, Public Lands—mineral resources, Reporting and recordkeeping requirements.

Dated: October 1, 2010.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

■ For the reasons stated in the preamble, Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) is amending 30 CFR part 250 as follows:

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

■ 1. The authority citation for 30 CFR part 250 continues to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

■ 2. Amend § 250.198 by adding new paragraph (h)(80) to read as follows:

§ 250.198 Documents Incorporated by Reference.

* * * * *

(h) * * *

(80) API RP 75, Recommended Practice for Development of a Safety and Environmental Management Program for Offshore Operations and Facilities, Third Edition, May 2004, Reaffirmed May 2008, Product No. G07503; incorporated by reference at § 250.1900, § 250.1900(c), § 250.1902(c), § 250.1903, § 250.1909, § 250.1920(a) and (b).

* * * * *

■ 3. Revise § 250.199(e)(17) to read as follows:

§ 250.199 Paperwork Reduction Act statements—information collection.

* * * * *

(e) * * *

30 CFR subpart, title and/or BOEMRE form (OMB Control No.)

Reasons for collecting information and how used

<p>(17) Subpart S, Safety and Environmental Management Systems (1010–0186), including Form MMS–131, Performance Measures Data.</p>	<p>The SEMS program will describe management commitment to safety and the environment, as well as policies and procedures to assure safety and environmental protection while conducting OCS operations (including those operations conducted by contractor and sub-contractor personnel). The information collected is the form to gather the raw Performance Measures Data relating to risk and number of accidents, injuries, and oil spills during OCS activities.</p>
--	--

■ 4. Add new subpart S to read as follows:

Subpart S—Safety and Environmental Management Systems (SEMS)

Sec.

250.1900 Must I have a SEMS program?

250.1901 What is the goal of my SEMS program?

250.1902 What must I include in my SEMS program?

250.1903 Definitions.

250.1904 Documents incorporated by reference

250.1905 through 250.1908 [Reserved]

250.1909 What is management's general responsibilities for the SEMS program?

250.1910 What safety and environmental information is required?

250.1911 What criteria for hazards analyses must my SEMS program meet?

250.1912 What criteria for management of change must my SEMS program meet?

250.1913 What criteria for operating procedures must my SEMS program meet?

250.1914 What criteria must be documented in my SEMS program for safe work practices and contractor selection?

250.1915 What criteria for training must be in my SEMS program?

250.1916 What criteria for mechanical integrity must my SEMS program meet?

250.1917 What criteria for pre-startup review must be in my SEMS program?

250.1918 What criteria for emergency response and control must be in my SEMS program?

250.1919 What criteria for investigation of incidents must be in my SEMS program?

250.1920 What are the auditing requirements for my SEMS program?

250.1921 through 250.1923 [RESERVED]

250.1924 How will BOEMRE determine if my SEMS program is effective?

250.1925 May BOEMRE direct me to conduct additional audits?

250.1926 What qualifications must an independent third party or my designated and qualified personnel meet?

250.1927 What happens if BOEMRE finds shortcomings in my SEMS program?

250.1928 What are my recordkeeping and documentation requirements?

250.1929 What are my responsibilities for submitting OCS performance measure data?

§ 250.1900 Must I have a SEMS program?

You must develop, implement, and maintain a safety and environmental management system (SEMS) program. Your SEMS program must address the elements described in § 250.1902, American Petroleum Institute's Recommended Practice for Development of a Safety and

Environmental Management Program for Offshore Operations and Facilities (API RP 75) (incorporated by reference as specified in § 250.198), and other requirements as identified in this subpart.

(a) You must comply with the provisions of this subpart and have your SEMS program in effect on or before November 15, 2011, except for the submission of Form MMS–131 as required in § 250.1929.

(b) You must submit Form MMS–131 on an annual basis beginning March 31, 2011.

(c) If there are any conflicts between the requirements of this subpart and API RP 75 (incorporated by reference as specified in § 250.198), you must follow the requirements of this subpart.

(d) Nothing in this subpart affects safety or other matters under the jurisdiction of the Coast Guard.

§ 250.1901 What is the goal of my SEMS program?

The goal of your SEMS program is to promote safety and environmental protection by ensuring all personnel aboard a facility are complying with the policies and procedures identified in your SEMS.

(a) To accomplish this goal, you must ensure that your SEMS program identifies, addresses, and manages safety, environmental hazards, and impacts during the design, construction, start-up, operation, inspection, and maintenance of all new and existing facilities, including mobile offshore drilling units (MODU) while under BOEMRE jurisdiction and Department of Interior (DOI) regulated pipelines.

(b) All personnel involved with your SEMS program must be trained to have the skills and knowledge to perform their assigned duties.

§ 250.1902 What must I include in my SEMS program?

You must have a properly documented SEMS program in place and make it available to BOEMRE upon request as required by § 250.1924(b).

(a) Your SEMS program must meet the minimum criteria outlined in this subpart, including the following SEMS program elements:

- (1) General (*see* § 250.1909)
- (2) Safety and Environmental Information (*see* § 250.1910)
- (3) Hazards Analysis (*see* § 250.1911)
- (4) Management of Change (*see* § 250.1912)
- (5) Operating Procedures (*see* § 250.1913)
- (6) Safe Work Practices (*see* § 250.1914)
- (7) Training (*see* § 250.1915)
- (8) Mechanical Integrity (Assurance of Quality and Mechanical Integrity of Critical Equipment) (*see* § 250.1916)
- (9) Pre-startup Review (*see* § 250.1917)
- (10) Emergency Response and Control (*see* § 250.1918)
- (11) Investigation of Incidents (*see* § 250.1919)
- (12) Auditing (Audit of Safety and Environmental Management Program Elements) (*see* §§ 250.1920)
- (13) Recordkeeping (Records and Documentation) and additional BOEMRE requirements (*see* § 250.1928).

(b) You must also include a job safety analysis (JSA) for OCS activities identified or discussed in your SEMS program (*see* § 250.1911(b)).

(c) Your SEMS program must meet or exceed the standards of safety and environmental protection of API RP 75 (incorporated by reference as specified in § 250.198).

§ 250.1903 Definitions.

Definitions listed in this section apply to this subpart and supersede definitions in API RP 75, Appendices D and E (incorporated by reference as specified in § 250.198).

Designated and qualified personnel means employees (not contractors) that

are knowledgeable of your program, and have actual work experience and training in implementing and auditing a SEMS or a similar program in an offshore oil and gas environment.

Personnel means direct employee(s) of the operator and contracted workers who are involved with or affected by specific jobs or tasks.

§ 250.1904 Documents Incorporated by Reference.

The effect of incorporation by reference of a document into the regulations in this part is that the incorporated document is a requirement. When a section in this part incorporates all of a document, you are responsible for complying with the provisions of that entire document, except to the extent that section provides otherwise. If any incorporated document uses the word “should”, it means must for purposes of these regulations.

§§ 250.1905 through 250.1908 [Reserved]

§ 250.1909 What are management's general responsibilities for the SEMS Program?

You, through your management, must require that the program elements discussed in API RP 75 (incorporated by reference as specified in § 250.198) and in this subpart are properly documented and are available at field and office locations, as appropriate for each program element. You, through your management, are responsible for the development, support, continued improvement, and overall success of your SEMS program. Specifically you, through your management, must:

- (a) Establish goals and performance measures, demand accountability for implementation, and provide necessary resources for carrying out an effective SEMS program.
- (b) Appoint management representatives who are responsible for establishing, implementing and maintaining an effective SEMS program.
- (c) Designate specific management representatives who are responsible for reporting to management on the performance of the SEMS program.
- (d) At intervals specified in the SEMS program and at least annually, review the SEMS program to determine if it continues to be suitable, adequate and effective (by addressing the possible need for changes to policy, objectives, and other elements of the program in light of program audit results, changing circumstances and the commitment to continual improvement) and document the observations, conclusions and recommendations of that review.

(e) Develop and endorse a written description of your safety and environmental policies and organizational structure that define responsibilities, authorities, and lines of communication required to implement the SEMS program.

(f) Utilize personnel with expertise in identifying safety hazards, environmental impacts, optimizing operations, developing safe work practices, developing training programs and investigating incidents.

(g) Ensure that facilities are designed, constructed, maintained, monitored, and operated in a manner compatible with applicable industry codes, consensus standards, and generally accepted practice as well as in compliance with all applicable governmental regulations.

(h) Ensure that management of safety hazards and environmental impacts is an integral part of the design, construction, maintenance, operation, and monitoring of each facility.

(i) Ensure that suitably trained and qualified personnel are employed to carry out all aspects of the SEMS program.

(j) Ensure that the SEMS program is maintained and kept up to date by means of periodic audits to ensure effective performance.

§ 250.1910 What safety and environmental information is required?

(a) You must require that SEMS program safety and environmental information be developed and maintained for any facility that is subject to the SEMS program.

(b) SEMS program safety and environmental information must include:

- (1) Information that provides the basis for implementing all SEMS program elements, including the requirements of hazard analysis (§ 250.1911);
- (2) process design information including, as appropriate, a simplified process flow diagram and acceptable upper and lower limits, where applicable, for items such as temperature, pressure, flow and composition; and
- (3) mechanical design information including, as appropriate, piping and instrument diagrams; electrical area classifications; equipment arrangement drawings; design basis of the relief system; description of alarm, shutdown, and interlock systems; description of well control systems; and design basis for passive and active fire protection features and systems and emergency evacuation procedures.

§ 250.1911 What criteria for hazards analyses must my SEMS program meet?

You must ensure the development and implementation of a hazards analysis (facility level) and a job safety analysis (operations/task level) for all of your facilities. For this subpart, facilities include all types of offshore structures permanently or temporarily attached to the seabed (i.e., mobile offshore drilling units; floating production systems; floating production, storage and offloading facilities; tension-leg platforms; and spars) used for exploration, development, production, and transportation activities for oil, gas, or sulphur from areas leased in the OCS. Facilities also include DOI regulated pipelines. You must document and maintain current analyses for each operation covered by this section for the life of the operation at the facility. The analyses must be updated when an internal audit is conducted to ensure that it is consistent with the current operations on your facility. Hazards analysis requirements for simple and nearly identical facilities, such as well jackets and single well caissons, may be fulfilled by performing a single hazards analysis which you can apply to all such facilities after you verify that any site specific deviations are addressed in each of the elements of your SEMS program.

(a) Hazards Analysis (facility level). For a hazards analysis (facility level), you must perform an initial hazards analysis on each facility on or before November 15, 2011. The hazards analysis must be appropriate to the complexity of the operation and must identify, evaluate, and manage the hazards involved in the operation.

(1) The hazards analysis must address the following:

- (i) Hazards of the operation;
- (ii) Previous incidents related to the operation you are evaluating, including any incident in which you were issued an Incident of Noncompliance or a civil or criminal penalty;
- (iii) Control technology applicable to the operation your hazards analysis is evaluating; and
- (iv) A qualitative evaluation of the possible safety and health effects on employees, and potential impacts to the human and marine environments, which may result if the control technology fails.

(2) The hazards analysis must be performed by a person(s) with experience in the operations being evaluated. These individuals also need to be experienced in the hazards analysis methodologies being employed.

(3) You should assure that the recommendations in the hazards

analysis are resolved and that the resolution is documented.

(b) Job Safety Analysis (JSA). You must develop and implement a JSA for OCS activities identified or discussed in your SEMS program.

(1) You must keep a copy of the most recent JSA (operations/task level) at the job site and it must be readily accessible to employees.

(2) Your JSA must identify, analyze, and record:

- (i) The steps involved in performing a specific job;
- (ii) the existing or potential safety and health hazards associated with each step; and
- (iii) the recommended action(s)/procedure(s) that will eliminate or reduce these hazards and the risk of a workplace injury or illness.

(3) The supervisor of the person in charge of the task must approve the JSA prior to the commencement of the work.

§ 250.1912 What criteria for management of change must my SEMS program meet?

(a) You must develop and implement written management of change procedures for modifications associated with the following:

- (1) Equipment,
- (2) Operating procedures,
- (3) Personnel changes (including contractors),
- (4) Materials, and
- (5) Operating conditions.

(b) Management of change procedures do not apply to situations involving replacement in kind (such as, replacement of one component by another component with the same performance capabilities).

(c) You must review all changes prior to their implementation.

(d) The following items must be included in your management of change procedures:

- (1) The technical basis for the change;
- (2) Impact of the change on safety, health, and the coastal and marine environments;
- (3) Necessary time period to implement the change; and
- (4) Management approval procedures for the change.

(e) Employees, including contractors whose job tasks will be affected by a change in the operation, must be informed of, and trained in, the change prior to startup of the process or affected part of the operation; and

(f) If a management of change results in a change in the operating procedures of your SEMS program, such changes must be documented and dated.

§ 250.1913 What criteria for operating procedures must my SEMS program meet?

(a) You must develop and implement written operating procedures that

provide instructions for conducting safe and environmentally sound activities involved in each operation addressed in your SEMS program. These procedures must include the job title and reporting relationship of the person or persons responsible for each of the facility's operating areas and address the following:

- (1) Initial startup;
- (2) Normal operations;
- (3) All emergency operations (including but not limited to medical evacuations, weather-related evacuations and emergency shutdown operations);
- (4) Normal shutdown;
- (5) Startup following a turnaround, or after an emergency shutdown;
- (6) Bypassing and flagging out-of-service equipment;
- (7) Safety and environmental consequences of deviating from your equipment operating limits and steps required to correct or avoid this deviation;

(8) Properties of, and hazards presented by, the chemicals used in the operations;

(9) Precautions you will take to prevent the exposure of chemicals used in your operations to personnel and the environment. The precautions must include control technology, personal protective equipment, and measures to be taken if physical contact or airborne exposure occurs;

(10) Raw materials used in your operations and the quality control procedures you used in purchasing these raw materials;

(11) Control of hazardous chemical inventory; and

(12) Impacts to the human and marine environment identified through your hazards analysis.

(b) Operating procedures must be accessible to all employees involved in the operations.

(c) Operating procedures must be reviewed at the conclusion of specified periods and as often as necessary to assure they reflect current and actual operating practices, including any changes made to your operations.

(d) You must develop and implement safe and environmentally sound work practices for identified hazards during operations and the degree of hazard presented.

(e) Review of and changes to the procedures must be documented and communicated to responsible personnel.

§ 250.1914 What criteria must be documented in my SEMS program for safe work practices and contractor selection?

Your SEMS program must establish and implement safe work practices

designed to minimize the risks associated with operating, maintenance, and modification activities and the handling of materials and substances that could affect safety or the environment. Your SEMS program must also document contractor selection criteria. When selecting a contractor, you must obtain and evaluate information regarding the contractor's safety and environmental performance. Operators must ensure that contractors have their own written safe work practices. Contractors may adopt appropriate sections of the operator's SEMS program. Operator and contractor must document their agreement on appropriate contractor safety and environmental policies and practices before the contractor begins work at the operator's facilities.

(a) A contractor is anyone performing work for the lessee. However, these requirements do not apply to contractors providing domestic services to the lessee or other contractors. Domestic services include janitorial work, food and beverage service, laundry service, housekeeping, and similar activities.

(b) You must document that your contracted employees are knowledgeable and experienced in the work practices necessary to perform their job in a safe and environmentally sound manner. Documentation of each contracted employee's expertise to perform his/her job and a copy of the contractor's safety policies and procedures must be made available to the operator and BOEMRE upon request.

(c) Your SEMS program must include procedures and verification for selecting a contractor as follows:

(1) Your SEMS program must have procedures that verify that contractors are conducting their activities in accordance with your SEMS program.

(2) You are responsible for making certain that contractors have the skills and knowledge to perform their assigned duties and are conducting these activities in accordance with the requirements in your SEMS program.

(3) You must make the results of your verification for selecting contractors available to BOEMRE upon request.

(d) Your SEMS program must include procedures and verification that contractor personnel understand and can perform their assigned duties for activities such as, but not limited to:

- (1) Installation, maintenance, or repair of equipment;
- (2) construction, startup, and operation of your facilities;
- (3) turnaround operations;
- (4) major renovation; or
- (5) specialty work.

(e) You must:

(1) Perform periodic evaluations of the performance of contract employees that verifies they are fulfilling their obligations, and

(2) maintain a contractor employee injury and illness log for 2 years related to the contractor's work in the operation area, and include this information on Form MMS-131.

(f) You must inform your contractors of any known hazards at the facility they are working on including, but not limited to fires, explosions, slips, trips, falls, other injuries, and hazards associated with lifting operations.

(g) You must develop and implement safe work practices to control the presence, entrance, and exit of contract employees in operation areas.

§ 250.1915 What criteria for training must be in my SEMS program?

Your SEMS program must establish and implement a training program so that all personnel are trained to work safely and are aware of environmental considerations offshore, in accordance with their duties and responsibilities. Training must address the operating procedures (§ 250.1913), the safe work practices (§ 250.1914), and the emergency response and control measures (§ 250.1918). You must document the qualifications of your instructors. Your SEMS program must address:

(a) Initial training for the basic well-being of personnel and protection of the environment, and ensure that persons assigned to operate and maintain the facility possess the required knowledge and skills to carry out their duties and responsibilities, including startup and shutdown.

(b) Periodic training to maintain understanding of, and adherence to, the current operating procedures, using periodic drills, to verify adequate retention of the required knowledge and skills.

(c) Communication requirements to ensure that whenever a change is made to operating procedures (§ 250.1913), the safe work practices (§ 250.1914), or the emergency response and control measures (§ 250.1918), personnel will be trained in or otherwise informed of the change before they are expected to operate the facility.

(d) How you will verify that the contractors are trained in the work practices necessary to perform their jobs in a safe and environmentally sound manner, including training on operating procedures (§ 250.1913), the safe work practices (§ 250.1914), or the emergency response and control measures (§ 250.1918).

§ 250.1916 What criteria for mechanical integrity must my SEMS program meet?

You must develop and implement written procedures that provide instructions to ensure the mechanical integrity and safe operation of equipment through inspection, testing, and quality assurance. The purpose of mechanical integrity is to ensure that equipment is fit for service. Your mechanical integrity program must encompass all equipment and systems used to prevent or mitigate uncontrolled releases of hydrocarbons, toxic substances, or other materials that may cause environmental or safety consequences. These procedures must address the following:

(a) The design, procurement, fabrication, installation, calibration, and maintenance of your equipment and systems in accordance with the manufacturer's design and material specifications.

(b) The training of each employee involved in maintaining your equipment and systems so that your employees can implement your mechanical integrity program.

(c) The frequency of inspections and tests of your equipment and systems. The frequency of inspections and tests must be in accordance with BOEMRE regulations and meet the manufacturer's recommendations. Inspections and tests can be performed more frequently if determined to be necessary by prior operating experience.

(d) The documentation of each inspection and test that has been performed on your equipment and systems. This documentation must identify the date of the inspection or test; include the name and position, and the signature of the person who performed the inspection or test; include the serial number or other identifier of the equipment on which the inspection or test was performed; include a description of the inspection or test performed; and the results of the inspection test.

(e) The correction of deficiencies associated with equipment and systems that are outside the manufacturer's recommended limits. Such corrections must be made before further use of the equipment and system.

(f) The installation of new equipment and constructing systems. The procedures must address the application for which they will be used.

(g) The modification of existing equipment and systems. The procedures must ensure that they are modified for the application for which they will be used.

(h) The verification that inspections and tests are being performed. The

procedures must be appropriate to ensure that equipment and systems are installed consistent with design specifications and the manufacturer's instructions.

(i) The assurance that maintenance materials, spare parts, and equipment are suitable for the applications for which they will be used.

§ 250.1917 What criteria for pre-startup review must be in my SEMS program?

Your SEMS program must require that the commissioning process include a pre-startup safety and environmental review for new and significantly modified facilities that are subject to this subpart to confirm that the following criteria are met:

(a) Construction and equipment are in accordance with applicable specifications.

(b) Safety, environmental, operating, maintenance, and emergency procedures are in place and are adequate.

(c) Safety and environmental information is current.

(d) Hazards analysis recommendations have been implemented as appropriate.

(e) Training of operating personnel has been completed.

(f) Programs to address management of change and other elements of this subpart are in place.

(g) Safe work practices are in place.

§ 250.1918 What criteria for emergency response and control must be in my SEMS program?

Your SEMS program must require that emergency response and control plans are in place and are ready for immediate implementation. These plans must be validated by drills carried out in accordance with a schedule defined by the SEMS training program (§ 250.1915). The SEMS emergency response and control plans must include:

(a) Emergency Action Plan that assigns authority and responsibility to the appropriate qualified person(s) at a facility for initiating effective emergency response and control, addressing emergency reporting and response requirements, and complying with all applicable governmental regulations;

(b) Emergency Control Center(s) designated for each facility with access to the Emergency Action Plans, oil spill contingency plan, and other safety and environmental information (§ 250.1910); and

(c) Training and Drills incorporating emergency response and evacuation procedures conducted periodically for all personnel (including contractor's personnel), as required by the SEMS

training program (§ 250.1915). Drills must be based on realistic scenarios conducted periodically to exercise elements contained in the facility or area emergency action plan. An analysis and critique of each drill must be conducted to identify and correct weaknesses.

§ 250.1919 What criteria for investigation of incidents must be in my SEMS program?

To learn from incidents and help prevent similar incidents, your SEMS program must establish procedures for investigation of all incidents with serious safety or environmental consequences and require investigation of incidents that are determined by facility management or BOEMRE to have possessed the potential for serious safety or environmental consequences. Incident investigations must be initiated as promptly as possible, with due regard for the necessity of securing the incident scene and protecting people and the environment. Incident investigations must be conducted by personnel knowledgeable in the process involved, investigation techniques, and other specialties that are relevant or necessary.

(a) The investigation of an incident must address the following:

(1) The nature of the incident;

(2) The factors (human or other) that contributed to the initiation of the incident and its escalation/control; and

(3) Recommended changes identified as a result of the investigation.

(b) A corrective action program must be established based on the findings of the investigation in order to analyze incidents for common root causes. The corrective action program must:

(1) Retain the findings of investigations for use in the next hazard analysis update or audit;

(2) Determine and document the response to each finding to ensure that corrective actions are completed; and

(3) Implement a system whereby conclusions of investigations are distributed to similar facilities and appropriate personnel within their organization.

§ 250.1920 What are the auditing requirements for my SEMS program?

(a) You must have your SEMS program audited by either an independent third-party or your designated and qualified personnel according to the requirements of this subpart and API RP 75, Section 12 (incorporated by reference as specified in § 250.198) within 2 years of the initial implementation of the SEMS program and at least once every 3 years thereafter. The audit must be a

comprehensive audit of all thirteen elements of your SEMS program to evaluate compliance with the requirements of this subpart and API RP 75 to identify areas in which safety and environmental performance needs to be improved.

(b) Your audit plan and procedures must meet or exceed all of the recommendations included in API RP 75 section 12 (incorporated by reference as specified in § 250.198) and include information on how you addressed those recommendations. You must specifically address the following items:

(1) Section 12.1 General.

(2) Section 12.2 Scope.

(3) Section 12.3 Audit Coverage.

(4) Section 12.4 Audit Plan. You must submit your written Audit Plan to BOEMRE at least 30 days before the audit. BOEMRE reserves the right to modify the list of facilities that you propose to audit.

(5) Section 12.5 Audit Frequency, except your audit interval must not exceed 3 years after the 2 year time period for the first audit.

(6) Section 12.6 Audit Team. The audit that you submit to BOEMRE must be conducted by either an independent third party or your designated and qualified personnel. The independent third party or your designated and qualified personnel must meet the requirements in § 250.1926.

(c) You must require your auditor (independent third party or your designated and qualified personnel) to submit an audit report of the findings and conclusions of the audit to BOEMRE within 30 days of the audit completion date. The report must outline the results of the audit, including deficiencies identified.

(d) You must provide the BOEMRE a copy of your plan for addressing the deficiencies identified in your audit within 30 days of completion of the audit. Your plan must address the following:

(1) A proposed schedule to correct the deficiencies identified in the audit. BOEMRE will notify you within 14 days of receipt of your plan if your proposed schedule is not acceptable.

(2) The person responsible for correcting each identified deficiency, including their job title.

(e) BOEMRE may verify that you undertook the corrective actions and that these actions effectively address the audit findings.

§§ 250.1921 through 250.1923 [Reserved]

§ 250.1924 How will BOEMRE determine if my SEMS program is effective?

(a) BOEMRE or its authorized representative may evaluate or visit

your facility to determine whether your SEMS program is in place, addresses all required elements, and is effective in protecting the safety and health of workers, the environment, and preventing incidents. BOEMRE or its authorized representative may evaluate your SEMS program, including documentation of contractors, independent third parties, your designated and qualified personnel, and audit reports, to assess your SEMS program. These evaluations or visits may be random or based upon the OCS lease operator's or contractor's performance.

(b) For the evaluations, you must make the following available to BOEMRE upon request:

- (1) Your SEMS program;
- (2) The qualifications of your independent third-party or your designated and qualified personnel;
- (3) The SEMS audits conducted of your program;
- (4) Documents or information relevant to whether you have addressed and corrected the deficiencies of your audit; and
- (5) Other relevant documents or information.

(c) During the site visit BOEMRE may verify that:

- (1) Personnel are following your SEMS program,
 - (2) You can explain and demonstrate the procedures and policies included in your SEMS program; and
 - (3) You can produce evidence to support the implementation of your SEMS program.
- (d) Representatives from BOEMRE may observe or participate in your SEMS audit. You must notify the BOEMRE at least 30-days prior to conducting your audit as required in § 250.1920, so that BOEMRE may make arrangements to observe or participate in the audit.

§ 250.1925 May BOEMRE direct me to conduct additional audits?

(a) If BOEMRE identifies safety or non-compliance concerns based on the results of our inspections and evaluations, or as a result of an event, BOEMRE may direct you to have an independent third-party audit of your SEMS program, in addition to the regular audit required by § 250.1920, or BOEMRE may conduct an audit.

- (1) If BOEMRE direct you to have an independent third-party audit,
 - (i) You are responsible for all of the costs associated with the audit, and
 - (ii) The independent third-party audit must meet the requirements of

§ 250.1920 of this part and you must ensure that the independent third party submits the findings and conclusions of a BOEMRE-directed audit according to the requirements in § 250.1920 to BOEMRE within 30 days after the audit is completed.

(2) If BOEMRE conducts the audit, BOEMRE will provide a report of the findings and conclusions within 30 days of the audit.

(b) Findings from these audits may result in enforcement actions as identified in § 250.1927.

(c) You must provide the BOEMRE a copy of your plan for addressing the deficiencies identified in the BOEMRE-directed audit within 30 days of completion of the audit as required in § 250.1920.

§ 250.1926 What qualifications must an independent third party or my designated and qualified personnel meet?

(a) You must either choose an independent third-party or your designated and qualified personnel to audit your SEMS program. You must take into account the following qualifications when selecting the third-party or your designated and qualified personnel:

- (1) Previous education and experience with SEMS, or similar management related programs.
- (2) Technical capabilities of the individual or organization for the specific project.
- (3) Ability to perform the independent third-party functions for the specific project considering current commitments.
- (4) Previous experience with BOEMRE regulatory requirements and procedures.
- (5) Previous education and experience to comprehend and evaluate how the company's offshore activities, raw materials, production methods and equipment, products, byproducts, and business management systems may impact health and safety performance in the workplace.

(b) You must have procedures to avoid conflicts of interest related to the development of your SEMS program and the independent third party auditor and your designated and qualified personnel.

(c) BOEMRE may evaluate the qualifications of the independent third parties or your designated and qualified personnel. This may include an audit of documents and procedures or interviews. BOEMRE may disallow audits by a specific independent third-

party or your designated and qualified personnel if they do not meet the criteria of this section.

§ 250.1927 What happens if BOEMRE finds shortcomings in my SEMS program?

If BOEMRE determines that your SEMS program is not in compliance with this subpart we may initiate one or more of the following enforcement actions:

- (a) Issue an Incident(s) of Noncompliance;
- (b) Assess civil penalties; or
- (c) Initiate probationary or disqualification procedures from serving as an OCS operator.

§ 250.1928 What are my recordkeeping and documentation requirements?

(a) Your SEMS program procedures must ensure that records and documents are maintained for a period of 6 years, except as provided below. You must document and keep all SEMS audits for 6 years and make them available to BOEMRE upon request. You must maintain a copy of all SEMS program documents at an onshore location.

(b) For JSAs, the person in charge of the activity must document the results of the JSA in writing and must ensure that records are kept onsite for 30 days. You must retain these records for 2 years and make them available to BOEMRE upon request.

(c) You must document and date all management of change provisions as specified in § 250.1912. You must retain these records for 2 years and make them available to BOEMRE upon request.

(d) You must keep your injury/illness log for 2 years and make them available to BOEMRE upon request.

(e) You must keep all evaluations completed on contractor's safety policies and procedures for 2 years and make them available to BOEMRE upon request.

(f) You must keep all records in an orderly manner, readily identifiable, retrievable and legible, and include the date of any and all revisions.

§ 250.1929 What are my responsibilities for submitting OCS performance measure data?

You must submit Form MMS-131 on an annual basis by March 31st. The form must be broken down quarterly, reporting the previous calendar year's data.

[FR Doc. 2010-25665 Filed 10-7-10; 4:15 pm]

BILLING CODE 4310-MR-P