



INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS

P.O. Box 4287 • Houston, Texas 77210-4287 USA
10370 Richmond Ave., Suite 760 • Houston, Texas 77042 USA
Phone: 1/713-292-1945 • Fax: 1/713 292-1946 • www.iadc.org

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Commandant (CG-5211)
United States Coast Guard
2100 Second Street, SW – STOP 7126
Washington, DC 20593-5781

Via eRulemaking Portal: <http://www.regulations.gov>

Subj: Docket No. USCG-2011-1106
Draft policy letter regarding "Dynamically Positioned Mobile Offshore Drilling Unit (MODU) Critical Systems, Personnel and Training"

To whom it may concern:

The International Association of Drilling Contractors (IADC) is a trade association representing the interests of drilling contractors, onshore and offshore, operating worldwide. IADC's membership includes the vast majority of drilling contractors currently operating mobile offshore drilling units (MODUs) in the areas subject to the jurisdiction of the United States and MODUs registered in the United States.

The purpose of this letter is to provide comments on the draft policy letter regarding "Dynamically Positioned Mobile Offshore Drilling Unit (MODU) Critical Systems, Personnel and Training" as announced in the 29 December 2011 *Federal Register* (76 FR 81957).

Notwithstanding the additional comments offered below, IADC recognizes that in order to restore regulatory and public confidence in the capabilities of the industry to undertake deepwater drilling operations using dynamically positioned units it is necessary to Coast Guard to establish, on an *interim* basis, policies regarding personnel training and the verification of the functional capabilities of certain critical equipment not presently addressed by regulation.

IADC's comments are offered without prejudice to comments that may be offered directly by IADC's members.

General Comments

Interim Guidance pending Formal Regulatory Action

IADC believes that both the title and statement of purpose of the policy letter should be revised to indicate that it reflects an *interim* policy, pending development and issuance of regulations covering the subject(s). In the comments that follow, IADC has identified several topics that were addressed in the draft policy that it believes must be subjected to formal rulemaking procedures if they are to be implemented.

Imposition of Legally-Binding Requirements

The Coast Guard should drop the pretense, as reflected in the proposed policy letter's DISCLAIMER, that it does not impose legally-binding requirements. 33 CFR 140.101(d) provides that:

As part of an inspection, a Coast Guard marine inspector or an MMS inspector may review records and require and observe the conduct of emergency drills and other tests and procedures as may be necessary to demonstrate to that person's satisfaction that the unit and its equipment are in full compliance with applicable Coast Guard regulations. The Coast Guard marine inspector or the MMS inspector consults with the person in charge of the unit before requiring a drill or other test or procedure to be conducted to minimize disruption of unit activities and risk to life or property.

Implicit in this requirement is that to the extent that they are addressed by "applicable Coast Guard regulations" any failure of a unit to submit to the drills or tests and other procedures, when requested, or the failure of a tested system to operate properly may disqualify the unit from conducting drilling operations until the fault is corrected to the satisfaction of the Coast Guard and/or the Bureau of Safety and Environmental Enforcement (BSEE).

Jurisdictional Issues and Inter-Agency Coordination

While IADC interprets the statements regarding the need to view integrated systems in a holistic way, as well as certain aspects of the proposed policy regarding coordination of inspections as a positive step, we continue to be perplexed by the apparent inability of the Coast Guard and BSEE to develop the coordinated rulemakings and inspection policies that we believe are ultimately necessary.

It is our understanding the BSEE's proposed amendments to its Safety and Environmental Management System (SEMS) rule (76 FR 56683) were substantially altered, at the request of the Coast Guard, to insert language identifying jurisdictional boundaries between the two agencies, with the preamble of that proposed rulemaking specifically pointing to Annex 1 of MMS/USCG MOA: OCS-01 and MMS/USCG MOA: OCS-04, for "a system/sub-system breakdown of what is regulated under BOEMREs jurisdiction."

With this proposed policy, it appears that the Coast Guard is broaching the same jurisdictional boundaries it sought to reinforce by asserting jurisdiction over testing and inspection of well-control safety and shut down systems. The Coast Guard presently has no applicable regulations governing such systems, and while it may have interest in the effectiveness of these equipment and systems, we see no compelling reason for the Coast Guard to assert the need for it to independently, or jointly, witness testing of these systems.

The Coast Guard proposes tests related to the Emergency Disconnect System (EDS) and the Autoshear and Deadman functions of the Blowout Preventer (BOP) that are in addition to, or refinements of, the tests being performed by BSEE in accordance with its regulations in 30 CFR 250.440 through 250.451 and 250.1915. While we do not advocate the proposed "stove piping" of BSEE's SEMS rule (see enclosure) if jurisdictional boundaries are to be maintained, IADC believes that all regulatory testing of the EDS and BOP should be overseen by BSEE in accordance with its regulations in 30 CFR part 250 – not Coast Guard policy.

In the long term, if it has concerns, the Coast Guard should work with BSEE to develop, in a coordinated manner, any regulatory changes to 30 CFR part 250 that are deemed necessary and commit to withdrawing interim policies once such changes have been proposed.

Our members already report substantial difficulties in scheduling Coast Guard inspections which will only be exacerbated by the proposed policy and the additional demands it would impose on both the limited number of inspectors and aircraft that the Coast Guard has available for OCS activities.

References to the MODU Code

The draft policy letter references the 2009 MODU Code and contains a footnote indicating that 33 CFR §§ 142.207(c) and 146.205(c) references the IMO MODU Code as a compliance option for MODUs engaged in OCS activities. IADC would remind the Coast Guard that its 7 December 1999 Notice of Proposed Rulemaking to revise its Outer Continental Shelf Activities regulations (64 FR 68416) would have maintained reference only to the 1979 MODU Code. Industry noted this shortcoming and suggested that the 1989 MODU Code be appropriately referenced. More than a decade later, the industry remains without regulations or guidance from the Coast Guard giving a clear statement regarding its acceptance of either the 1989 or 2009 MODU Codes. IADC believes that references to any edition of the MODU Code, other than the 1979 Code as establishing “requirements” are matters that must be addressed through formal rulemaking.

References to API Standard 53

As noted above, the Coast Guard proposes function tests of the EDS and the BOP’s Autoshear and Deadman functions that are in addition to, or refinements of, the tests presently addressed in API RP 53, *Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells*.

API RP 53, 3rd Edition, March 1997; reaffirmed September 2004; is incorporated by reference in 30 CFR at §§250.442, 250.446, 250.516, and 250.617.

API is in the process of revising this standard, with the intent that it will be issued as STD 53, 4th Edition. (RP 53, 3rd Edition, does not contain rigorous standards for the EDS; however, we anticipate that more rigorous standards will be included in STD 53, 4th Edition.) The first ballot for revision of this standard was opened on 13 June 2011 and closed on 29 July 2011. Because of the nature of the comments received, the standard was subjected to a second ballot, which was opened on 16 November 2011 and closed on 16 January 2012. In IADC’s view, it is regrettable that neither the Coast Guard nor BOEMRE (now BSEE) submitted comments on the first ballot addressing the EDS and BOP matters raised in this draft policy letter. IADC believes it is inappropriate for the policy letter to reference API STD 53, 4th Edition, prior to its adoption.

Specific Comments related to the Proposed Policy

Section 1: Purpose

The paragraph addresses “requirements”, yet for many of the systems, equipment tests, and drills there presently are no applicable Coast Guard regulations. The policy attempts to

justify examination of these systems, and witnessing of equipment tests and drills as "requirements" through: (1) reference to elements of the IMO MODU Code that have not been made applicable by regulation, or (2) by citing industry standards that have not been incorporated into Coast Guard regulation. Accordingly, in IADC's view, it is not proper for the Coast Guard to identify these as "requirements." Nonetheless, it is appropriate for the Coast Guard to ask to have the effectiveness of certain of these systems verified, and certain of the equipment tested, within limits, as identified in the following comments.

Section 3: Directives Affected

As noted in the following comments, it would seem appropriate to indicate that the policy letter constitutes an *interim* change to portions of:

- (1) Navigation and Vessel Inspection Circular No. 3-88, Change; and
- (2) Volume III, Chapter 21 of the Marine Safety Manual.

Ultimately, both of these directives will also need to be revised to reflect the amended OCS Activities regulations (if finalized) and provide additional guidance regarding regulatory acceptance of both the 1989 and the 2009 editions of the MODU Code.

Section 4: Background

IADC finds the first paragraph of section 4 to be exaggerated and misleading and recommends that it be deleted, or substantially revised. The following comments apply:

- The EDS is not a well control system. The EDS would be activated only if the vessel needs to leave the location AND is unable to perform a planned disconnect operation.
- While failure of a Dynamic Positioning System (the term used in the MODU Code) or the Automatic Power Management System (APMS) can result in drive off or drift off of a MODU from its intended location, there can be other causes for drive off. Any loss of the stationkeeping capability of a floating unit may lead to a situation where initiation (not deployment) of the disconnect sequence of the EDS is warranted. The EDS is activated not because the DP system or APMS suffers a failure, but because the unit is suffering an excursion that, if ignored could result in subsea equipment damage, loss of containment, or injury to personnel.
- It is true that failure of the EDS to properly function after activation can lead to damage of subsea equipment and may result in a subsea spill. It is also true that:
 - Activation of the EDS will also likely lead to damage of subsea equipment and will, at least temporarily, foreclose active well control operations;
 - A subsea spill from the reservoir is a possibility only for that portion of the drilling program when the well bore is pressurized and in contact with a producing reservoir;
 - There are situations when the reservoir and well characteristics are such that successful EDS activation may lead to flow outside the annulus of the well that cannot be controlled by the well control equipment; and
 - Successful EDS activation will likely result in loss of any fluids within the drilling riser.
- While we would not minimize the need for the BOP's Deadman function to perform in its intended manner, we would not characterize this function of the BOP as the "absolute last line of defense." The Deadman is actuated on loss of communications and power (both fluid and electrical): A loss of communications alone, as implied in the draft policy, would not actuate the Deadman function.

With regard to the second paragraph, we would offer the following comments:

- IADC generally accepts the policy statement regarding its interpretation of the provision of the MODU Code that “level of safety equivalent to that provided for anchoring arrangements” requires specific adherence to classification society DP standards. However, we view this as a matter that: (1) Should be addressed by formal rulemaking; (2) Needs to be addressed in other Coast Guard directives; and (3) Should be put forward for consideration as an amendment to the MODU Code.
- We believe that the term “Dynamic Position Officer” should be replaced by “Dynamic Positioning Operator.”
- The last bullet is worded incorrectly; it should read “Loss of power and/or position keeping capability while servicing a subsea well which causes the MODU to drift off location until activation of the EDS was required to mitigate the risks to personnel, and damage to equipment and environment.”

Section 5: Discussion

The opening paragraph indicates that it “establishes procedures.” Is this appropriately a topic for a section entitled “Discussion?”

Please refer to our earlier regarding “requirements” in Section 1.

With regard to Table 1, we would offer the following comments:

- Row (1), Marine Casualties. IADC sees no purpose in citing the MODU Code, rather than the Coast Guard’s OCS Activities Regulations. If the Coast Guard views the present reporting requirements as inadequate, it should be addressed through formal rulemaking. IADC would note that the provisions of section 1.8.1 of the 2009 MODU Code address the conduct of investigations of casualties by Administrations and coastal States, not the reporting of casualties.
- Row (2), Dynamic Position (DP) equipment Class 2. This should read “Single failure of a DPS or APMS active component will not cause loss of position.”
- Row (3), FMEA proving trials. FMEA proving trial approval is required only from a recognized class society. The Coast Guard should NOT mandate the additional step of flag State approval.
- Row (4), Position Reference Systems. Remove the word “redundant.” The standard calls for three position reference systems of at least two types. As presently worded, the inference in this statement is that each of the position references must be redundant and of different types.
- Row (7), Loss of position. The IMO MODU Code Par. 14.1 does not address loss-of-position alarms directly. Accordingly, while as a matter of industry practice such alarms can be expected (and if installed, should function in their intended manner), this row should be removed from the table. If such alarms are to be required, this should be addressed through formal rulemaking and the development of a proposal to amend the MODU Code.
- Row (8), EDS. Neither the MODU Code nor the present (3rdEdition) of API RP 53 address EDS directly. Accordingly, this row should be deleted. The present BSEE regulations at 30 CFR 250.1915 could be interpreted to address this issue.

With regard to subparagraph (b), Definitions, we would offer the following comments:

- For clarity, consideration should be given to locating the definitions earlier in the proposed policy, e.g., following paragraph 3.

- Paragraph 5.b.1, Loss of Position. We recommend deleting all text after the words “operational watch circle.” The mechanical limits and various factors that are evaluated on a site-specific basis define the operational watch circle. These change in accordance with specific operations, with water depth, with environmental parameters, and other factors. (See to API 16Q, *Marine Drilling Risers* and ISO 13624 – Part 1 *Design and Operation of Marine Drilling Riser Equipment*.)
- Paragraph 5.b.2, Degraded DP capability. We could not find where the term is used in the draft policy. If there is need to use this term, we would note that there is no DP “Operating” Class. Class Notations are Equipment Notations which reflect the standards against which the system was designed and constructed. Equipment class notations do not change as the result of a component failure and a vessel operator is required to operate the system as defined in Par. 2.7 of MSC Circ. 645 at all times.
- Paragraph 5.b.3, Operator. The term “operator” is used in the proposed policy with meanings other than that in the proposed definition. Accordingly, for clarity, we recommend that the defined term “Operator” be revised to “Lease Operator” and it then be defined identically to its definition in 30 CFR 250.105, *i.e.*, “Lease Operator” has the same meaning as “Operator” as defined in 30 CFR 250.105 and means the person the lessee(s) designates as having control or management of operations on the leased area or a portion thereof. An operator may be a lessee, the MMS-approved designated agent of the lessee(s), or the holder of operating rights under an MMS-approved operating rights assignment.”

Section 6: Procedures

The opening paragraph indicates that it “provides other related background.” Shouldn’t “background” information be contained in the “background” section?

We offer the following comments regarding subparagraph a., General:

- If the Coast Guard is to insist on witnessing tests and inspections related to well control safety and shutdown systems (*i.e.*, EDS and the BOP’s Autoshear and Deadman functions) then IADC would recommend separation of the discussion of these tests and inspections from those of APMS and DPS. We strongly recommend that consideration be given to the possibility that, after consultation with the parties concerned, the separation of the APMS/DPS tests from the EDS/BOP tests may be a preferable course of action.
- It is true that Coast Guard witnessing of tests and inspections related to well control safety and shutdown systems would be most efficiently conducted at the same time that the related/identical tests required by BSEE regulations were being performed, particularly if they were to be witnessed by BSEE personnel as well. Nonetheless, as stated above, we do not see the compelling need for the Coast Guard to witness these particular tests given the historic division of responsibilities between the two agencies and BSEE’s greater expertise/experience in this regard.
- For the APMS and DPS tests and inspections, as well as the testing of gas detectors, IADC would suggest that the Coast Guard’s witnessing of these tests might be most efficiently conducted at the time that the classification society’s required DP Annual Trials are conducted. For rigs first entering service under U.S. jurisdiction, these tests could be performed before the unit moves to its first well location.

We offer the following comments regarding subparagraph b., Manning:

- Coast Guard (COMDT CG-0941) Letter dated 11 February 2011, “Potential Legal Issues Associated with Vessels Employing Dynamic Positioning Systems” recognizes a lack of

universally adopted standards by the international community and identifies the need to “clarify DP vessels’ status **in regulations**” (emphasis added). IADC acknowledges that the Coast Guard has authority under the OCS Lands Act to require that a licensed master be on board at all times and notes that other coastal States exercise such authority by specifying national manning standards. However, IADC does not believe that it is appropriate to infer that a flag State must revise its manning certificate to meet coastal State expectations. IADC suggests that, should the flag State’s manning certificate not be acceptable to the Coast Guard, the Coast Guard should stipulate its own manning requirements on the unit’s Certificate of Compliance.

- We note that the draft policy letter lacks specific guidance for inspectors regarding non-compliance with the policy.
- Any policy in this regard should be identified as affecting NVIC 3-88.
- Existing Coast Guard guidance on manning of MODUs (Volume III, Chapter 21 of the Marine Safety Manual) does not conform to this draft policy and should either be revoked or revised.

We offer the following comments regarding subparagraph c., Documentation of emergency procedures:

- Chapter 14 of the MODU Code was revised when the 2009 MODU Code was adopted. These revisions are unlikely to be reflected in the Operations Manual of most units certified under earlier editions of the Code. Is the Coast Guard’s expectation that all MODU Operations Manuals be revised to reflect the provisions of the 2009 MODU Code? If so, significant time will be required to accomplish this, even for the limited number of DP units currently operating under US jurisdiction. This is a matter that should be addressed through formal rulemaking. Absent such rulemaking, under the current regulations, and NVIC 3-88, change 1, a manual accepted under the 1979 Code should be accepted.
- IADC would suggest that paragraph 6.c.1 be revised to read: “There should be a clear assignment of authority and responsibility to initiate emergency disconnect procedures. The documentation should include both a listing of those conditions or indications where activation of the emergency disconnect system is expected, as well as a listing of those positions having authority and responsibility to activate the emergency disconnect system. At a minimum, such authority must rest with the Master and Offshore Installation Manager (OIM).”
- IADC does not consider “gas in the riser” as an example of a condition that would warrant activation of the EDS. We suggest the sentence containing this example be deleted in favor of the more general text proposed above.
- In paragraph 6.c.2., we suggest deletion of all text beginning with the word “Caution.” We believe this additional text does not provide useful information and may be a source of confusion.

We offer the following comments regarding subparagraph d., Personnel training documentation:

- IADC believes that it is premature to specify that Dynamic Position Officer Certificates be issued by “a DP training center accredited by the Nautical Institute.” IADC believes that if such a requirement is to be imposed, it should be subject to formal rulemaking. The formalization of such professional qualifications has the potential to affect individuals presently employed in these positions. IADC believes that some transitional period may be needed if this particular form of professional qualification is to be mandated. Until a regulatory requirement for such accredited training is established, the Coast Guard should be prepared to assess DP Operator qualifications on an

individual basis. Again, the present BSEE regulations at 30 CFR 250.1915 could be interpreted to address this issue

- IADC requests that the Coast Guard make public the criteria that it used in determining that it could provide such recognition to the Nautical Institute's accredited training programs. IADC has previously asked for similar Coast Guard recognition of its accredited training programs for Ballast Control Operators (which is administered in association with the Nautical Institute) and Well Control, both of which address training that is critical to MODU safety. These requests have been denied. Has there been a change in Coast Guard policy?
- How does a Nautical Institute DPO's log book become "official?" IADC suggests that other log books containing essentially similar information be accepted.
- The present BSEE regulations at 30 CFR 250.1915 require the lease operator to describe how it "will verify that the contractors are trained in the work practices necessary to perform their jobs in a safe and environmentally sound manner." This regulation could be useful to the Coast Guard with respect to documentation of personnel training. Unfortunately, the applicability of this requirement to persons performing dynamic positioning operations and other marine-related tasks will be clouded by the additional text limiting the scope of the regulation to that training which would be "regulated under BOEMRE jurisdiction" if the amendments to the SEMS rule (76 FR 56683) are adopted as proposed.

We offer the following comments regarding subparagraph e., Drills:

- IADC does not believe that the Coast Guard's expectations regarding drills are realistic or appropriate. Due in large part to the perceived risks involved in such drills, no IADC members report that they have developed, or intend to develop, drills of the character implied by this section of the draft policy. Their preference is to assure the proper functioning of equipment through routine maintenance programs and periodic tests and inspections, and they address matters related to personnel competence through training and assessment programs, including programs utilizing simulators. Accordingly, IADC believes this subparagraph should be deleted from the policy.
- Should the above suggestion not be accepted, we would ask consideration of the following:
 - There is an inaccurate reference to "paragraph (6)(b)". It appears the reference should be to "paragraph 6.c."
 - There is an inaccurate reference to "paragraph (e)(1)". It appears the reference should be to "paragraph 6.f.1."
 - Guidance for drills on mobile offshore units is provided by IMO resolution A.891(21). IADC has previously notified the Coast Guard that it has begun developing proposed amendments to this guidance. If the Coast Guard is insistent on developing drills of the type envisioned by the draft policy, IADC would appreciate the appointment of a Coast Guard representative to work with IADC and other flag Administrations on this effort.
 - What is "a software generated actual drive off from a simulated well location?"
 - As written, to conduct the actual "dead ship: drill, it would be necessary to create an actual drift-off while "connected" with the means to recover inhibited. There are other means to test the Driller Alert system, but the as-written text should be removed to reduce the risks associated with the drill. We suspect the intent of the statement is something different than what is written.

We offer the following comments regarding subparagraph f., Equipment testing:

- As indicated above, we recommend removing the reference to drills.

- In the second sentence, we recommend deleting “Due to the variety of DPS, EDS and BOP systems...” as the importance of planning and communication is general in nature.
- No specific standards for fixed gas detection systems are provided by the MODU Code or Coast Guard regulations, and that the MODU Code only speaks to their installation in “enclosed areas.” Accordingly, the components and configuration of such systems can be expected to vary widely. We suggest additional guidance to indicate that in relation to gas detectors, the word “critical” means those gas detectors which are intended to automatically initiate a programmed response (other than simple visual/audible indication) on actuation, or are located in certain specified locations, *e.g.*, mud pit areas.
- It appears from the document, though not specifically stated, that repetition of the FMEA Proving Trials may be expected prior to going on each location. This is a major issue in that some FMEA tests have a history of cumulative damage to vessel equipment and can create failures if conducted too frequently. (For example, a concern arises when downstream circuit breakers are tripped due to an under-voltage condition with the potential for depletion of the battery backup source resulting from either extended test period or a missed circuit breaker reset after test is completed. Repetitive testing may increase the probability of unintended out-of-service of critical auxiliary devices.) FMEA Proving Trials are intended to validate the design of the system, whereas Annual Trials are intended to validate the condition. Full FMEA Proving Trials should be required only in accordance with classification society requirements, *i.e.*, at Special Periodical Survey (5-years) or after certain qualifying equipment modifications to the system(s).
- We are confused by the reference to an “APM or DPS failure mode identified by the approved FMEA that may cause the MODU to lose power or position.” If the FMEA is correct, no single failure mode would have such a result.
- The statement “These tests should not be ‘simulated’” is confusing. Stump tests are simulations.

Enclosure (1): Pre-Planning Checklist

We offer the following comments and observations:

- It is our understanding that coordination with BSEE would be better effected through contact with BSEE **District** Offices.
- The purpose served by having the Marine Safety Center review EDS test procedures against 46 CFR 61.40-10 is unclear. We would acknowledge that the Coast Guard may have expertise in this area that is presently lacking within BSEE. If such review is desirable, it should not be contingent upon the deployment of a Coast Guard inspector, but should be made a matter of routine coordination between the agencies. If the proposed process is use, to whom and by whom would the results of such a review be communicated, and would that communication be delivered in a timely manner?
- IADC would presume that the requirement for helicopter underwater escape training (HUET) is addressed in other Coast Guard policies and procedures. The mention in this checklist begs the question of completion of “Basic Training” in accordance with the standards of the STCW Code, and standards for medical certification of its inspectors performing offshore inspections. Does this affect other Coast Guard directives?
- If the DP Proving Test procedure is to be required as a routine matter, particularly if it is to subject to review by the Marine Safety Center, the requirement should subject to a formal rulemaking and should also be addressed in NVIC 3-88. As noted above, IADC believes the DP Annual Trial is more appropriate than the Proving Trial.

- We note the statement "Ensure a helicopter flight is arranged for CG witnesses." Will the Lease Operator/contractor be expected to provide the transportation? If so, their specific policies regarding HUET will need to be ascertained and complied with.

Finally, while we recognize the Coast Guard's need to prioritize its activities, we note that the proposed policy addresses matters that are not necessarily unique to dynamically positioned MODUs. Is it the Coast Guard's intent to extend these policies to other types of vessels (e.g., well stimulation vessels) or MODUs (e.g., moored units) where similar procedures and equipment may be employed?

IADC appreciates the opportunity to provide comments on this proposed policy and requests that IADC's comments be given due consideration. If you have any questions about these comments, please contact me by phone at (713) 292-1945, ext. 207.

Sincerely,



Alan Spackman
Vice President, Offshore Technical and Regulatory Affairs

Encl: IADC letter of 11 November 2011 to Docket BOEM-2011-0003 regarding Revisions to Safety and Environmental Management Systems (SEMS) regulations



INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS

P.O. Box 4287 • Houston, Texas • 77210-4287 USA
10370 Richmond Ave., Suite 760 • Houston, Texas • 77042 USA
Phone: +1 713 292 1945 • Fax: +1 713 292 1946 • www.iadc.org

11 November 2011

[Docket ID BOEM-2011-0003]

Bureau of Safety and Environmental Enforcement
Office of Offshore Regulatory Programs
Regulations Development Branch
381 Elden Street, MS-4024,
Herndon, Virginia 20170-4817

Via: Federal e-Rulemaking Portal

Re: Revisions to Safety and Environmental Management Systems (SEMS), RIN 1010-AD73

To whom it may concern:

The International Association of Drilling Contractors is a trade association representing the interests of drilling contractors, onshore and offshore, operating worldwide. Our membership includes all drilling contractors currently operating mobile offshore drilling units (MODUs) in the areas subject to the jurisdiction of the United States.

The purpose of this letter is to respond to the Bureau's 14 September 2011 Notice of Proposed Rulemaking (NPRM)(76 FR 56683) regarding proposed amendments to the Bureau's Safety and Environmental Management Systems (SEMS) regulations at 30 CFR part 250, subpart S.

We wish to make it absolutely clear that IADC believes that robust SEMS should be in place for all companies conducting offshore activities and that we are not opposed to appropriate regulations requiring such systems.

IADC offers the general comments and recommendations below for your consideration. Our detailed comments and recommendations are attached.

Withdrawal of the proposed rulemaking and reconsideration of the regulatory approach

IADC urges the Bureau to withdraw the proposed rulemaking and reconsider its approach to the regulatory mandate for of safety and environmental management systems on the U.S. Outer Continental Shelf (OCS).

IADC believes that there were fundamental flaws in the final rule published by the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) on 15 October 2010 (75 FR 63610), that these flaws must be corrected before the matters addressed in the NPRM can be effectively addressed, and that it would be beyond the scope of the present rulemaking to address these flaws.

Among the issues that IADC believes must be addressed are:

- Placement of responsibility for "Ultimate Work Authority";
- The definition of "Facility" and reconciliation of other definitions in 30 CFR part 250.
- The means of addressing jurisdictional boundaries with other Federal agencies;

- Responsibilities and potential liabilities of contractors and individuals; and
- Removal of prescription from 30 CFR part 250, subpart S.

The following is a brief description of each of these issues. They are addressed more fully in the attached detailed comments.

Placement of responsibility for “Ultimate Work Authority”

IADC firmly supports the concept of defining “Ultimate Work Authority” (UWA). However, we believe that the prescriptive placement of responsibility, as proposed, is inappropriate. It does not fulfill the need for identifying a single person having the ability to assert absolute control over particularly those involving multiple facilities, units, vessels and infrastructure. We would offer the Cascade/Chinook complex with its subsea infrastructure, FPSO, shuttle tankers, and with the possibility of a mobile offshore drilling unit and/or well intervention vessel as an “enterprise” where placement of UWA in a manner other than prescribed by the proposed regulations would be necessary.

IADC believes that the lessee/operator should designate the Ultimate Work Authority (UWA), but must have the flexibility to do so in a manner that allows the appropriate placement of this responsibility given the particular circumstances of the infrastructure and the work being undertaken. For drilling operations, the Well Construction Interface Document contemplated by API/IADC Bulletin 97 (under development) would serve as the vehicle for the designation of UWA and could be used as a general model for other operations.

Definition of “Facility” and reconciliation of other definitions

In reviewing the proposed rule, it became evident to IADC that the original SEMS rulemaking was deficient in not having developed or incorporated definitions of certain key terms necessary to support the rule. How these key terms are defined significantly affects the scope of the rule, its placement of regulatory responsibility and liability, and the ability of the rule to achieve its desired objectives. IADC believes that addressing this issue is a prerequisite to, but outside the scope of, the present proposal. A key term for which a definition is required is “facility.”

The term “facility” is critical to determining the applicability of the SEMS rule to various types of offshore infrastructure, how SEMS for management of that infrastructure are to be structured and how, in establishing who is the “person in charge” of the facility, regulatory responsibility is placed for administering the day-to-day implementation of the SEMS program required by the regulations.

30 CFR 250.105 currently provides four definitions of “facility.” None of these is applicable to subpart S, and none of which, in IADC’s view, are appropriate for use for the purposes of subpart S. For the reasons set forth in our detailed comments, IADC believes that careful consideration must be given in defining this term.

Other terms for which IADC believes definitions are needed for subpart S include, but are not limited to: Drilling; Workover operations; well completion operations; well servicing operations; and plugging and abandonment operations.

Jurisdictional boundaries

The proposed regulation contains numerous provisions that limit the operation of the regulation to “activities that are regulated under BOEMRE jurisdiction.” This wording creates unacceptable ambiguity with respect to the expected scope of the SEMS and SEMS elements required by the regulations.

For the health and safety of the offshore workforce, and for the protection of the environment, it is incumbent upon industry to develop holistic management systems addressing health, safety and the environment, irrespective of jurisdictional boundaries that may be established by regulatory agencies. The need for this holistic approach has long been recognized and is reflected in the guidance provided for the development of safety and environmental management systems in the American Petroleum Institute’s *Recommended Practice for Development of a Safety and Environmental Management Program for Offshore Operations and Facilities* (API RP 75), the E&P Forum’s (now the International Association of Oil and Gas Producers) Report No. 210 *Guidelines for the Development and Application of Health, Safety and Environmental Management Systems*, and IADC’s *HSE Case Guidelines for Mobile Offshore Drilling Units*.

While the proposed regulatory text does not attempt to define the limits of BOEMRE’s (now BSEE’s) regulatory jurisdiction, the preamble to the rule specifically points to Annex 1 of MMS/USCG MOA: OCS–01 and MMS/USCG MOA: OCS–04, indicating that “a system/sub-system breakdown of what is regulated under BOEMREs jurisdiction” can be found in these documents. No guidance is provided with respect to the boundaries of jurisdiction with respect to other agencies having health, safety or environmental jurisdiction over activities on the U.S. OCS, such as the U.S. Environmental Protection Agency (EPA), the Federal Aviation Administration (FAA), or the Pipeline and Hazardous Materials Safety Administration (PHMSA).

The reference to BSEE’s jurisdictional boundaries in the SEMS rule gives leave to the unscrupulous to severely restrict the scope of their SEMS, to the potential detriment of the health and safety of the offshore workforce and the protection of the environment.

Further, as the referenced MOA’s were not developed for the purpose of delineating agency responsibilities with respect to health, safety and the environment, they are ambiguous. IADC is concerned that this ambiguity will cause particular difficulty not only with respect to BSEE’s enforcement of the SEMS regulation and the scope of activities that will be examined during the required audits, but will be a create commercial friction between lessees/operators and their contractors.

IADC strongly recommends that BSEE withdraw the present proposal and work with the other agencies having jurisdiction, particularly the U.S. Coast Guard, to develop a more holistic regulatory approach. In the alternative, while our preference would be to not add to the prescriptiveness of the regulations, we would ask that BSEE include text in the introductory sections of subpart S to specifically identify the equipment and those activities that are not within its jurisdiction rather than simply point to documents that define agency policies.

Responsibilities and potential liabilities of contractors and individuals

In the preamble to the 15 October 2010 SEMS Final Rule (75 FR 63615) BOEMRE stated:

"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."

In the "Report Regarding the Causes of the April 20, 2010 Macondo Well Blowout", September 14, 2011 (page 158) BOEMRE stated:

"MMS regulations made clear that lessees, designated operators, and persons actually performing activities on the OCS were "jointly and severally responsible" for complying with any regulation that requires the lessee to meet a requirement or perform an action as providing authority to pursue civil penalties against entities other than the lessee or the lessee's designated operator."

It appears to IADC that BOEMRE found this clarity in 30 CFR 250.146(c):

"(c) Whenever the regulations in 30 CFR parts 250 through 282 require the lessee to meet a requirement or perform an action, the lessee, operator (if one has been designated), and the person actually performing the activity to which the requirement applies are jointly and severally responsible for complying with the regulation."

Apparently relying on this regulation, on 12 October 2011, BSEE issued a Notification of Incidents of Noncompliance to Transocean Offshore Deepwater Drilling for violation of various regulations in 30 CFR part 250.

IADC believes that there is a conflict between the statement made by BOEMRE in the preamble to the 15 October 2010 Final Rule and the enforcement action that it has initiated against Transocean for potential violations of regulations in 30 CFR part 250.

Based on BSEE's enforcement action, IADC is concerned that, notwithstanding the statement in the preamble to the 15 October 2010 Final Rule, BSEE may initiate enforcement actions against a contractor based upon an lessee's or operator's failure to effectively implement all or part of the regulations within 30 CFR subpart S.

Without a change in BSEE's enforcement posture, IADC sees no solution to this conflict absent a wholesale review and revision of the regulations in 30 CFR part 250, including subpart S, to remove the "plain language" term "you" and replace it with text to provide clarity regarding those provisions where contractors and others may be held jointly and severally responsible for regulatory compliance by BSEE.

Removal of prescription from 30 CFR part 250, subpart S

As identified in the attached detailed comments, it is IADC's view that many elements of the proposed rule are overly prescriptive and may unnecessarily and inappropriately restrict management's options in the management of OCS activities. Similarly, IADC generally views the existing SEMS rule as being overly prescriptive. A major contributor in this regard was the Bureau's re-interpretation of the word "should" in API RP 75 as meaning "shall" as a provision of its incorporation by reference into subpart S.

IADC is concerned that the present proposal is evidence of an ever-expanding spiral of prescriptive "command and control" regulations with prescription following prescription in order to provide clarification of subpart S.

We urge BSEE to consider a wholesale re-write of 30 CFR subpart S, and the means by which it has incorporated the provisions of API RP 75 into subpart S, in order that they be made more goal-setting and less prescriptive. In the alternative, while we are opposed to the addition of more prescription, we ask that BSEE adopt the detailed recommendations presented the attachment – many of which will add more prescription to the rule.

IADC appreciates the opportunity to provide a response to this proposed rulemaking and requests that the above comments and recommendations, as well as those in enclosure (1) will be given due consideration. Should you have any questions about these comments or recommendations, please contact me by phone at: +1 713 292-1964.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Spackman". The signature is fluid and cursive, written in a professional style.

Alan Spackman
Vice President, Offshore Technical and Regulatory Affairs

Attachment

Definitions (§§250.105 and 250.1903) – Mobile Offshore Drilling Unit (MODU), Facility, Well Workover, Well Completion and Well Servicing

Issues:

The term “Mobile offshore drilling unit” and the acronym “MODU” are already used in several locations in part 250, but they have not been defined. The proposed rule would add a definition of the term and acronym to subpart S, which would be only for use within the subpart. IADC views this as problematic because:

- This could create confusion regarding the intended definition of the term in the other regulations in which it is used.
- Many of the terms used in the proposed definition of “mobile offshore drilling unit” are not defined in either subpart S or in regulatory provisions having general applicability.
- The proposed definition would include not only those units that are traditionally viewed as MODUs, but would also seem to include liftboats, well stimulation vessels, and other vessels that have not, heretofore, been considered within this definition for any purpose.
- The proposed definition differs from that used in Coast Guard regulations. Given the overlapping of jurisdiction with the Coast Guard, this may be a source of confusion.

While the proposed definition seems to be aimed at identifying certain higher-risk open-hole activities, plugging and abandonment operations have not been included.

Background information:

The proposed definition reads:

Mobile offshore drilling unit or MODU means a vessel capable of engaging in drilling well workover, well completion or well servicing operations for exploring or exploiting subsea oil, gas or other mineral resources.

Note: It appears that the definition should have read “. . . drilling, well workover . . .”.

The term “mobile offshore drilling unit” and/or the acronym MODU are used in the following existing regulations in part 250:

- § 250.105 – Definitions, in the definition of “facility”;
- § 250.150 – Naming of facilities;
- § 250.154 – Identification signs;
- § 250.403 – Drilling unit movements;
- § 250.406 – Drilling rig movement restrictions;
- § 250.411 – Information included with applications;

Attachment to IADC letter of 11 November 2011
Revisions to Safety and Environmental Management Systems (SEMS), RIN 1010-AD73

- § 250.417 – Information to be provided for use of MODUs;
- § 250.900 – Conversion of MODUs to platforms;
- § 250.1901 – SEMP program goals; and
- § 250.1911 – Criteria for hazards analyses;

Related definitions in the existing regulations include:

§250.105 (for all of part 250) already defines *Workover operations* as:

“Workover operations means the work conducted on wells after the initial well-completion operation for the purpose of maintaining or restoring the productivity of a well.”

§250.501 (for Subpart E only) already defines *Well-completion operations* as:

“Well-completion operations means the work conducted to establish the production of a well after the production-casing string has been set, cemented, and pressure-tested.”

§250.1500 (for Subpart O only) defines *Well completion/well workover* as:

“Well completion/well workover means those operations following the drilling of a well that are intended to establish or restore production.”

§250.1500 (for Subpart O only) defines *Well servicing* as:

“Well servicing means snubbing, coiled tubing, and wireline operations.”

None of the above definitions seem to include plugging and abandonment operations, which could produce similar levels of risk.

U.S. Coast Guard regulations, based on the provisions of 46 U.S.C. 2101, define *Mobile offshore drilling unit* as:

“(15a) “mobile offshore drilling unit” means a vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources.”

The proposal relies on the definition of MODU in many of its provisions. One, in particular, creates the potential for confusion based on the differences between the definition proposed for subpart S and the existing Coast Guard definition, *i.e.* the proposed § 250.1931, which reads as follows:

“§ 250.1931 What must be included in my SEMS program for “Ultimate Work Authority” (UWA)?

(a) For fixed and floating facilities (e.g., floating production systems; floating production, storage and offloading facilities; tension-leg platforms; and spars) and for MODUs performing activities under BOEMRE’s jurisdiction, your SEMS program must identify the person with the ultimate work authority (UWA), *i.e.* the person located on the facility or MODU with the final responsibility for making decisions relating to activity and operations on the facility. This person must be designated by the operator taking into account all applicable Coast Guard regulations that deal

with designating a "person in charge" (in accordance with USCG definition) of a MODU or OCS facility found in 33 CFR 146.5 and 46 CFR 109.109. Your SEMS program must clearly define who is in charge at all times."

This would be problematic for the operation of this regulation since neither 33 CFR 146.5, nor 46 CFR 109.109, would be applicable to some of the vessels that would be considered a MODU (e.g., well stimulation vessels) under the proposed definition.

IADC comments/recommendations:

- (1) Having noted the extensive use of the term "mobile offshore drilling unit" and the acronym "MODU" within part 250, IADC recommends that the term and acronym be defined in §250.105. IADC recommends that the definition so added be identical to that used by the Coast Guard, *i.e.*:

Mobile offshore drilling unit or MODU means a vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources.

- (2) Based on our review of the proposed regulations, IADC has concluded that the definition of *mobile offshore drilling unit* was to be added to subpart S, not for general applicability, but in attempt to identify, for the purposes of the proposed §250.1931 (regarding "Ultimate Work Authority") certain higher risk operations that need to be subjected to special controls, *i.e.*: drilling, well workover, well completion or well servicing operations. Accordingly, it would be preferable to craft a regulation that identifies these higher-risk activities rather than distort and confuse the definition of *mobile offshore drilling unit*.
- (3) IADC notes that the terms *well workover*, *well completion* and *well servicing*, are only defined within specific subparts of the existing part 250 for use within those subparts (*i.e.*, subparts E and O). IADC recommends that the definition of these terms be included in §250.105 as terms of general applicability to part 250.
- (4) IADC believes that plugging and abandonment operations can produce risks similar to those experienced during drilling, well workover, completion and servicing operations. IADC suggests that it would be appropriate to provide certainty in the applicability of various regulations in part 250 by adding text that includes such operations within the scope of "well servicing" when it is defined.
- (5) If the above recommendations are adopted, IADC believes the purpose intended for the proposed §250.1931 could be met by revising paragraph (a) to read:

Note: Please refer to IADC's comments regarding "Ultimate Work Authority and the definition of "facility" as they may further affect those portions of the recommended text below that are shown in square brackets [].

(a) For facilities performing drilling, well workover, well completion or well servicing operations activities under BOEMRE's jurisdiction, your SEMS program must identify [the person] with the ultimate work authority (UWA), [*i.e.* the person located on the facility with the final responsibility for making decisions relating to activity and operations on the facility. This person must be designated by the operator taking into account all applicable Coast Guard regulations that deal with designating a "person in charge" found in 33 CFR 146.5 and 46 CFR 109.109.] Your SEMS program must clearly define who is in charge at all times.

Definitions (§§250.105 and 250.1903) –Facility

Issue:

There is no definition of “facility” in the existing §250.105 that is applicable to subpart S, nor is this term defined within subpart S.

The term “facility” is critical to determining the applicability of the SEMS rule to various types of offshore infrastructure, how SEMS for management of that infrastructure are to be structured and how, in establishing who is the “person in charge” of the facility, regulatory responsibility is placed for administering the day-to-day implementation of the SEMS program required by the regulations.

Background information:

The existing definitions of “facility in §250.105 are:

Facility means:

(1) As used in §250.130, all installations permanently or temporarily attached to the seabed on the OCS (including manmade islands and bottom-sitting structures). They include mobile offshore drilling units (MODUs) or other vessels engaged in drilling or downhole operations, used for oil, gas or sulphur drilling, production, or related activities. They include all floating production systems (FPSs), variously described as column-stabilized-units (CSUs); floating production, storage and offloading facilities (FPSOs); tension-leg platforms (TLPs); spars, etc. They also include facilities for product measurement and royalty determination (e.g., lease Automatic Custody Transfer Units, gas meters) of OCS production on installations not on the OCS. Any group of OCS installations interconnected with walkways, or any group of installations that includes a central or primary installation with processing equipment and one or more satellite or secondary installations is a single facility. The Regional Supervisor may decide that the complexity of the individual installations justifies their classification as separate facilities.

(2) As used in §250.303, means all installations or devices permanently or temporarily attached to the seabed. They include mobile offshore drilling units (MODUs), even while operating in the “tender assist” mode (i.e. with skid-off drilling units) or other vessels engaged in drilling or downhole operations. They are used for exploration, development, and production activities for oil, gas, or sulphur and emit or have the potential to emit any air pollutant from one or more sources. They include all floating production systems (FPSs), including column-stabilized-units (CSUs); floating production, storage and offloading facilities (FPSOs); tension-leg platforms (TLPs); spars, etc. During production, multiple installations or devices are a single facility if the installations or devices are at a single site. Any vessel used to transfer production from an offshore facility is part of the facility while it is physically attached to the facility.

(3) As used in §250.490(b), means a vessel, a structure, or an artificial island used for drilling, well completion, well-workover, or production operations.

(4) As used in §§250.900 through 250.921, means all installations or devices permanently or temporarily attached to the seabed. They are used for exploration, development, and production activities for oil, gas, or sulphur and emit or have the potential to emit any air pollutant from one or more sources. They include all floating production systems (FPSs), including column-stabilized-units (CSUs); floating production, storage and offloading facilities (FPSOs); tension-leg platforms (TLPs); spars, etc. During production, multiple installations or devices are a single facility if the installations or devices are at a single site. Any vessel used to transfer production from an offshore facility is part of the facility while it is physically attached to the facility.

The term "facility" is used in the following existing and *proposed* provisions of subpart S:

- § 250.1901 – Goal of the SEMS program, referring to "personnel aboard a facility";
- § 250.1903 – *Definition of "management"*;
- § 250.1909(h) – Responsibilities of management;
- § 250.1910– Required safety and environmental information;
- § 250.1911 – Criteria for hazards analyses;
- § 250.1911(a) – Facility level hazards analysis;
- § 250.1911(b) – *Job safety analysis*;
- § 250.1913 – Operating procedures;
- § 250.1914(f) – Notification to contractors of known hazards;
- § 250.1915(a) – Initial SEMS training;
- § 250.1915(c) – Communicating change;
- § 250.1918 – Emergency response and control;
- § 250.1919 – Incident investigation;
- § 250.1924 – BOEMRE determination of SEMS program effectiveness;
- § 250.1928(f) – *Stop Work Authority documentation*;
- § 250.1930(c) – *Authority or authorize return to work after SWA exercised*;
- § 250.1931 – *Inclusion of Ultimate Work Authority in SEMS*;
- § 250.1933(c) – *Reporting unsafe working conditions*.

IADC comments/recommendations:

- (1) In IADC's view, none of the existing definitions of "facility" in § 250.105 are appropriate to define "facility" for the purpose of subpart S.
- (2) IADC believes a definition of "facility" is needed for subpart S.
- (3) The definition of "facility" needs to be adequate to address facilities ranging from an isolated well that has been temporarily abandoned to a complex integrated combination of installations and devices consisting of wells, subsea infrastructure, flowlines, pipelines, FPSOs, shuttle tankers that may be attached to the FPSO, and the possibility of drilling units, well intervention vessels, or diving support vessels supporting divers working on this infrastructure.

- (4) Some of the existing and proposed regulations may need to be revised once the term "facility" is defined. When "facility" is defined, each of its uses will need to be examined to assure that the purposes of the regulation are being met.
- (5) For example, there is a complex interrelationship between the definition of "facility," the administration of Stop Work Authority, and the designation of a person having Ultimate Work Authority (UWA). In this regard, IADC would ask that BSEE examine each of the following scenarios:
- There has been a precautionary evacuation of a platform due to the approach of a tropical storm. Who is responsible for determining when an effort can be made to re-occupy the platform?
 - Who exercises UWA for a jack-up drilling rig engaging in additional drilling operations over a manned fixed platform?
 - Who exercises UWA with respect to a drilling tender with a skid-off drilling package supporting drilling operations on a manned fixed platform?
 - How would Stop Work Authority and UWA be administered with respect to a drilling rig, well servicing vessel, or dive support vessel performing work on one of the sub-sea well centers on the Cascade/Chinook complex?
 - How would Stop Work Authority and UWA be administered with respect to the onshore terminus or hub for a pipeline originating on the OCS?
- (6) Because the addition of a definition of "facility" to the existing regulations will have the potential to significantly affect the scope of the rule, its placement of regulatory responsibility and liability, and its ability to achieve the rule's desired objectives. IADC believes that addressing this issue is a prerequisite to, but outside the scope of, the present proposal.

Definition of *Management* (§250.1903)

Issue:

The term “Management” is already used as a verb, a noun and an adjective in the existing regulations. It is used more than twenty times. The definition, as proposed, cannot be logically inserted into the existing regulations.

Background information:

The proposed definition reads:

Management means a team of individuals who have the day-to-day responsibilities for overseeing operations conducted on a facility or providing instruction to operational personnel, including but not limited to employees and contractors working on a facility or in the company’s onshore offices.

The term “management” is used in the following provisions of the existing subpart S:

- Title of the subpart;
- §250.1900;
- §250.1902;
- §250.1903;
- §250.1909;
- §250.1912;
- §250.1917;
- §250.1919; and
- §250.1928;

IADC comments/recommendations:

- (1) It appears that the proposed new definition for “management” is intended for use solely within the proposed new §250.1932.
- (2) IADC believes it is unnecessary to include this definition in the regulations. It should be possible to craft text for §250.1932 in a manner that would make it unnecessary to include this definition in the regulations.

Note: Please refer to IADC’s comments regarding §250.1932.

Definitions of *Job* and *Work* (§250.1903)

Issue:

Are definitions of “Job” and “Work” required?

Background information

Key provisions of the existing and proposed rule address “Job Safety Analysis,” “Stop Work Authority” and “Ultimate Work Authority” but no definitions of either “Job” or “Work” are provided. For auditors that will be charged with auditing the SEMS, contractors, attempting to develop SEMS programs in order to satisfy their clients and meet the intent of 30 CFR subpart S, and for inspectors attempting to enforce the regulations, there is no clear guidance regarding how these terms are to be defined in practice.

Are the following “jobs” for which a JSA is expected?

- Changing the frequency on a radio.
- Altering the heading command on the autopilot of a drillship.
- Changing toner cartridges or adding paper to a printer or copier.
- Turning on or off a light.
- Changing a light bulb in a desk light.
- Ascending or descending a stairway or ladder. (Would carrying a load make a difference? If so, what type of load?)
- Performing any number of recreational activities.

It is recognized that activities that might not be “jobs” should still be subject to Stop Work Authority, for example, even if turning on a light is not considered a “job” subject to a JSA, there are situations when it would be appropriate for an individual to intervene and keep a co-worker from performing this activity (e.g., when a suspected flammable vapor is detected). But, what does constitute “work” that is subject to Stop Work Authority?

IADC comments/recommendations:

- (1) BSEE has historically fostered a “checklist” mentality that has focused on identifying faults in components and systems.
- (2) While IADC believes our members have legitimate concerns regarding these definitions and how they are to be interpreted, we also believe that continuing to add prescription to prescription is counter-productive. Rather, we believe that the entire regulatory approach to SEMS implementation must be reconsidered so that the goal of the SEMS, both for contractors and operators / leaseholders becomes improvement of safety and environmental performance – not regulatory compliance.
- (3) In any case – Guidance to establish reasonable expectations is needed.

Jurisdictional restrictions (§250.1911(b) and (c), §250.1915, §§250.1930(a) and (e), §§250.1931(a), (b) and (c), and §§250.1933(b) and (c))

Issue:

In order to restrict the applicability of the proposed regulation to matters that are within BOEMRE's authority, and satisfy intra-agency concerns established as a matter of policy regarding jurisdiction, the proposed rule extensively uses terminology limiting the applicability of the rules' provisions to operations and facilities *under BOEMRE jurisdiction*.

This exclusionary language is a source of confusion where there is overlapping regulatory jurisdiction and will cause difficulty with regard to audits and enforcement and will become a source of commercial friction as differences arise between contractors and their clients regarding their interpretations of their obligations under the regulations.

This regulatory exclusion' is also inconsistently applied, as it is not included in each of the provisions of subpart S where jurisdictional issues might arise.

If taken literally, it also has the potential to create gaps in what, in IADC's view, should be a holistic Safety and Environmental Management System.

Background information:

The OCS Lands Act provides various authorities for the issuance of safety-related regulations:

- 43 U.S.C. 1333(a)(1), which provides that:

"(a)(1) The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental shelf were an area of exclusive Federal jurisdiction located within a state . . ."

- 43 U.S.C. 1347(c), which provides that:

"(c) The Secretary of the Department in which the Coast Guard is operating shall promulgate regulations or standards applying to unregulated hazardous working conditions related to activities on the Outer Continental Shelf when he determines such regulations or standards are necessary. The Secretary of the Department in which the Coast Guard is operating may from time to time

modify any regulations, interim or final, dealing with hazardous working conditions on the Outer Continental Shelf.”

- 43 U.S.C. 1334(a), which provides that:

“(a) The Secretary shall administer the provisions of this Act relating to the leasing of the outer Continental Shelf, and shall prescribe such rules and regulations as may be necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of this Act. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary shall cooperate with the relevant departments and agencies of the Federal Government and of the affected States. . . .”

- 43 U.S.C. 1356(a), which provides that:

(a) Within six months after the date of enactment of this section, the Secretary of the Department in which the Coast Guard is operating shall issue regulations which require that any vessel, rig, platform, or other vehicle or structure—

* * *

(2) which is used for activities pursuant to this Act, comply, except as provided in subsection (b), with such minimum standards of design, construction, alteration, and repair as the Secretary or the Secretary of the Department in which the Coast Guard is operating establishes; and

* * *

These provisions create overlapping jurisdiction between multiple Federal agencies over activities on the OCS, for example, overlap is created:

- Between the EPA and BOEMRE by the overlapping authority and responsibilities established under 43 U.S.C. 1333(a)(1) and 43 U.S.C. 1334(a).
- Between the U.S. Coast Guard and BOEMRE by the overlapping authority and responsibilities established under 43 U.S.C. 1333(a)(1) (regarding regulation of vessels), 43 U.S.C. 1347(c) (regarding workplace hazards), and 43 U.S.C. 1334(a).
- Within the U.S. Coast Guard by the overlapping authority and responsibilities established under 43 U.S.C. 1333(a)(1) and 1356(a) (regarding regulation of vessels) and 43 U.S.C. 1347(c) (regarding regulation of workplace hazards).

The preamble to the rulemaking recognizes the overlap of Coast Guard and BOEMRE jurisdiction, and in an attempt to provide clarity regarding the jurisdictional boundaries

that have been agreed as a matter of policy, indicates that a system/sub-system breakdown of what is under BOEMRE's jurisdiction can be found in Annex 1 of MMS/USCG MOA: OCS-01 and MMS/USCG MOA: OCS-04. It further indicates that operators should refer to these documents when developing, implementing and auditing their SEMS plan.

MMS/USCG MOA: OCS-01 and MMS/USCG MOA: OCS-04, are the most recent in a series of agreements between the agencies attempting to establish clarification with regard to agency authorities and responsibilities. Both predate BOEMRE's 15 October 2010 Final Rule (75 FR 63610) requiring the development and implementation of safety and environmental management systems.

For MODUs, MMS/USCG MOA: OCS-01 provides a long list of systems/sub-systems that are under Coast Guard, rather than MMS (now BSEE) jurisdiction. This list (with provisions highlighted for emphasis) includes:

- Structural integrity, modifications for construction and repair requirements;
- Stationkeeping:
 - Foundations,
 - mooring and tethering systems, and
 - and dynamic positioning;
- Lightering equipment & procedures;
- Utility systems:
 - Boilers, pressure vessels, waste heat recovery (from any engine exhaust), water heaters and other piping or machinery,
 - High pressure (HP) washdown,
 - Seawater supply,
 - Compressed air,
 - Potable wash and sanitary water,
 - Sewage unit & piping,
 - Diesel fuel,
 - Bilge & ballast, including pumps, and related control systems, and
 - Fuel gas from well (except when powering drilling and production systems);
- Elevators for personnel;
- Aircraft landing and refueling (decks, fuel handling, and storage);
- **Fire protection:**
 - Fire protection, detection and extinguishing, and
 - Structural fire protection for accommodations;
- Safety systems (General alarm);
- General alarm;
- **Electrical Design & Equipment:**
 - Drilling systems (with some limitation),
 - Emergency lighting power generation and distribution, and
 - Hazardous area classification;
- Aids to Navigation;
- Communications;
- Pollution Prevention:
 - Garbage and plastic per MARPOL 73/78, and

- Petroleum and other product transfers to and from a vessel (includes lightering of produced hydrocarbons);
- Cranes and Material Handling Equipment:
 - Crane design, certification, and operations, and
 - Other material handling equipment;
- Ventilation:
 - Accommodations and machinery spaces, and
 - Areas other than accommodations or machinery spaces;
- Lifesaving equipment;
- **Workplace Safety and Health;**
 - Personnel protection equipment, and
 - Hazardous material storage & handling (other than produced hydrocarbons);
- Living Quarters and Accommodation Spaces;
- General Arrangements:
 - Access/egress & means of escape, and
 - Safety plan, fire control or fire equipment, and lifesaving equipment plans;
- Miscellaneous Systems and Operational Requirements:
 - Structural inspection requirements,
 - Personnel requirements for marine and lifesaving operations,
 - Emergency evacuation plans,
 - Drills – fire, abandon, and lifeboat,
- Inspection and testing of all marine and lifesaving equipment;
- Diving operations & equipment; and
- **Safety Analysis (of industrial systems)**

If this list is interpreted literally, virtually all MODU systems/sub-systems would be excluded from significant provisions of the SEMS rule.

On 7 March 1985, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) (CGD 84-098) (50 FR 9290), that discussed inspection of fixed facilities, emergency evacuation, workplace safety and health, lifesaving, fire protection, training, and vessels used for OCS activities. According to the Coast Guard, because virtually all of the comments received to the ANPRM focused on inspection of fixed facilities and emergency evacuation, it chose to handle these subjects in two separate rulemakings.

On 26 May 1988, the Coast Guard published a Final Rule entitled "Self Inspection of Fixed OCS Facilities" (CGD 84-098a) (53 FR 18977) and, on 18 May 1989, it published a Final Rule entitled "Emergency Evacuation Plans for Manned OCS Facilities" (CGD 84-098b) (54 FR 21566).

On 27 June 1995, the Coast Guard published a "Request for Comments" (CGD 95-016) (60 FR 33185) describing a broad scope of workplace safety issues that had gone unaddressed since its 7 March 1985 ANPRM and asked for public comments. The issues addressed included workplace safety and health, lifesaving, fire protection, training, operations, and certification. This was followed, on 7 December 1999, by the publication of a Notice of Proposed Rulemaking (NPRM) (USCG 1998-3868) (64 FR 68415) that was intended to revisit virtually all of the OCS regulations in subchapter N to take advantage

of past experiences and new improvements to make the OCS a safer workplace. There has been no subsequent action. The July 2011 Unified Agenda indicated that a supplemental NPRM for this rulemaking had been planned for August 2011.

IADC comments/recommendations:

- (1) For the health and safety of the offshore workforce, and for the protection of the environment, it is incumbent upon industry to develop **holistic** management systems addressing health, safety and the environment, irrespective of jurisdictional boundaries that may be established by regulatory agencies. This is recognized in API RP 75, E&P Forum Report No. 210, and the IADC HSE Case Guidelines for Mobile Offshore Drilling Units.
- (2) On plain reading of the statute, IADC believes primary responsibility for regulation of hazardous workplace conditions during OCS activities was placed with the Coast Guard. The Coast Guard's failure to dedicate the necessary resources to pursue its OCS Activities Regulations in a timely manner is regrettable.
- (3) MMS/USCG MOA: OCS-01 did not contemplate safety and environmental management systems at the time of its development. In IADC's view, its use for this purpose is not appropriate. This is particularly evidenced by the identification of the "system" of "workplace safety and health" and "safety analysis (of industrial systems)" (which IADC views as a subset of the "facility level hazards analysis") as matters within the jurisdiction of the Coast Guard.
- (4) The Coast Guard does have regulations for Safety Management Systems (33 CFR part 96, Rules for the Safe Operation of Vessels and Safety Management Systems). These regulations implement Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS), 1974, International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code), as required by 46 U.S.C. Chapter 32. The Coast Guard enforces these regulations with respect to self-propelled MODUs (regardless of flag) engaged in OCS activities.
- (5) IADC believes that it is within the authority of the Secretary of the Interior and the Secretary of the Department in which the Coast Guard is operating to develop a regulatory model that is more in line with the holistic approach needed to provide protection for the offshore workforce and the environment.
- (6) Many existing provisions of subpart S, not affected by the current proposal, do not contain the exclusionary language and the intent regarding matters not within the agency's jurisdiction is therefore uncertain. These include:
 - §250.1909 – Management responsibilities;
 - §250.1902 – Information requirements;
 - §250.1911 – Facility level hazards analysis;
 - §250.1912 – Management of change;

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- §250.1913 – Operating procedures;
 - §250.1914 – Documentation of safe working practices and contractor selection;
 - §250.1916 – Mechanical integrity;
 - §250.1917 – Pre-startup review;
 - §250.1918 – Emergency response and control;
 - §250.1919 – Incident investigation; and
 - §250.1920 – Audit scope
- (7) In the absence of a coordinated BSEE and Coast Guard regulations to address SEMS in a holistic manner, IADC recommends that the exclusionary language should be removed from the individual sections and be placed in a section having general applicability to the entire subpart (*e.g.*, as a new paragraph in §250.1902) so as to clearly indicate that it applies to **all** provisions of the subpart.
- (8) IADC reiterates that it is concerned that:
- The regulatory gaps that would be created by the present proposal will be a continual source of confusion for both BSEE enforcement personnel and the auditors that will be required to identify non-conformities with the regulations.
 - Differing interpretation of the their respective obligations under the regulations will be a source of commercial friction between drilling contractors and their clients; and
 - Literal interpretation of the regulations will have the potential to create gaps that will be exploited by the unscrupulous.

Definition of “You” (§250.105)

Issue:

Despite ‘clarifications’ by BOEMRE, IADC believes that the placement of regulatory responsibility in subpart S is unclear.

Background:

30 CFR 250.105 defines “You” as follows:

You means a lessee, the owner or holder of operating rights, a designated operator or agent of the lessee(s), a pipeline right-of-way holder, or a State lessee granted a right-of-use and easement.

In the “Report Regarding the Causes of the April 20, 2010 Macondo Well Blowout”, September 14, 2011 (page 158) BOEMRE states:

MMS regulations made clear that lessees, designated operators, and persons actually performing activities on the OCS were “jointly and severally responsible” for complying with any regulation that requires the lessee to meet a requirement or perform an action as providing authority to pursue civil penalties against entities other than the lessee or the lessee’s designated operator.

BOEMRE cites 30 CFR 250.146(c) as providing this “clarity” despite the ubiquitous use of “you” as defined in 30 CFR 250.105 throughout 30 CFR part 250, including subpart S.

Apparently relying on 30 CFR 250.146(c), on 12 October 2011, BSEE issued a Notification of Incidents of Noncompliance to Transocean Offshore Deepwater Drilling for violation of various regulations in 30 CFR part 250.

30 CFR 250.146(c) reads as follows:

(c) Whenever the regulations in 30 CFR parts 250 through 282 require the lessee to meet a requirement or perform an action, the lessee, operator (if one has been designated), and the person actually performing the activity to which the requirement applies are jointly and severally responsible for complying with the regulation.

In the preamble to the 15 October 2010 Final Rule (at 75 FR 63615) requiring the development and implementation of safety and environmental management systems, BOEMRE stated:

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.

IADC comments/recommendations:

- (1) IADC believes that there is a conflict between the statement made by BOEMRE in the preamble to the 15 October 2010 Final Rule and the enforcement action that it has initiated against Transocean for potential violations of regulations in 30 CFR part 250.
- (2) Based on BSEE's enforcement action, IADC is concerned that, notwithstanding the statement in the preamble to the 15 October 2010 Final Rule, BSEE may initiate enforcement action against a contractor based upon an operator's failure to effectively implement the regulations within 30 CFR subpart S. This concern is amplified by the uncertainty regarding the use of the terminology limiting the applicability of the rules' provisions to operations and facilities *under BOEMRE jurisdiction* as previously noted.
- (3) IADC notes that subpart S already makes extensive use of the term "operator" rather than the use of the "plain language" term "you".
- (4) Absent a change in BSEE's enforcement posture, IADC sees no solution to this conflict absent a wholesale review and revision of the regulations in 30 CFR part 250 to remove the "plain language" term "you" and replace it with text to provide clarity regarding those provisions where contractors and others may be held jointly and severally responsible for regulatory compliance by BSEE.

Job Safety Analysis (JSA) (§250.1911(b)(3))– approval procedures

Issue:

The proposed regulation would require that all JSA's be approved and signed by the facility's designated "person in charge".

Background information:

In the preamble to the SEMS rule (75 FR 63616), MMS made the following statement regarding JSAs:

JSAs are required for the immediate tasks at hand and are not required for general operations

Changes to "general operations" would seemingly be covered by the provisions of the existing §250.1912(a)(5). Under §250.1912, the operator ("you") is required to develop written management of change procedures, but is not required to designate any specific individual with the authority to approve "changes" that may be adopted.

Coast Guard regulations in 33 CFR 146.5 (for all facilities other than MODUs) and 46 CFR 109.107 (for MODUs, as defined by the Coast Guard, not the proposed rule) require the designation of a person in charge on a MODU.

There is presently no regulation requiring the designation of a person in charge of "OCS units" (per the definition proposed by the Coast Guard's 7 December 1999 NPRM), that are presently engaging in OCS activities, but are not subject to any regulations under 33 CFR subchapter N. These OCS units may be engaged in combined operations.

For self-propelled MODUs, the Coast Guard regulations require that the MODU's master be designated the person in charge.

Under the Manila Amendments to the STCW Convention (to which the U.S. is a party) all persons who are assigned duty as officer in charge of a watch (which may include the ship's master) or as a rating forming part of a watch and those whose duties involve designated safety, prevention of pollution and security duties shall be provided with a rest period of not less than: A minimum of 10 hours of rest in any 24-hour period; and 77 hours in any 7-day period.

Under the 2006 International Maritime Labour Convention (the U.S. is not yet a party, but the following countries in are: Bahamas, Denmark, Liberia, Marshall Islands, Norway, Panama, Singapore, and St Vincent & the Grenadines) imposes the following limits on the hours of work or rest, which will apply to the master:

- maximum hours of work shall not exceed:
 - (i) 14 hours in any 24-hour period; and

- (ii) 72 hours in any seven-day period;
- or
- minimum hours of rest shall not be less than:
 - (i) ten hours in any 24-hour period; and
 - (ii) 77 hours in any seven-day period.

IADC comments/recommendations:

- (1) As previously indicated, IADC believes that SEMS should be holistic. While a SEMS must be developed in consideration of the requirements of regulatory agencies having jurisdiction, jurisdictional boundaries should not cause, or be an excuse for, failing to address potential safety and/or environmental hazards within the SEMS.
- (2) With particular reference to MODU operations, we believe that the inclusion of the phrase "under BOEMRE jurisdiction" will be a source of continued regulatory confusion and commercial friction. For example, since both "crane design, certification and operations" and "other material handling equipment" are areas under USCG jurisdiction under the MOA, does this mean that JSAs are not considered to be required by BOEMRE for any material handling operations conducted on MODUs?
- (3) IADC believes that is inconsistent to mandate that approval authority for JSA's (*i.e.*, "tasks at hand") must rest with the facility's person in charge, when no specific level of approval is specified for changes of far greater significance that are addressed by management of change procedures.
- (4) IADC believes that the proposed requirement that the person in charge approves and signs all JSAs is overly prescriptive. The regulations should permit the designation of this authority to other qualified persons. For example, IADC believes that the Chief Engineer on MODUs should have full authority over JSAs related to those portions of the engineering plant (that are within BSEE jurisdiction).
- (5) Drilling operations, in particular are conducted on a 24/7 basis, and it can be anticipated that it will be necessary to develop JSAs at any time that the unit is operating.
- (6) Requiring that the JSAs be approved and signed by a MODU's mater would limit the time period during which JSAs could be approved and signed to those hours during which the master is authorized to work and/or not a required rest period. This is not practicable.

(7) IADC recommends that the proposed §250.1911(b)(3) be revised to read:

(3) You must designate persons having authority to approve and sign JSAs and assure that each JSA is approved and signed by a person so designated.

Job Safety Analysis (JSA) (§250.1911(b) and (c))

Issue:

As identified in our earlier comments regarding “jurisdictional restrictions,” the proposed regulation contains provisions that limit the operation of the regulation to “activities that are regulated under BOEMRE jurisdiction.”

This wording creates considerable and unacceptable ambiguity with respect to its application to MODUs, where the Coast Guard has jurisdiction.

Background information:

A system/sub-system breakdown of what is regulated under BOEMRE’s jurisdiction on MODUs can be found in Annex 1 of MMS/USCG MOA: OCS-01. Refer to the earlier discussion regarding jurisdictional restrictions.

IADC comments/recommendations:

- (1) IADC reiterates that it advocates a holistic approach to the development of Safety and Environmental Management Systems.
- (2) Nonetheless, in order to reduce the ambiguity of the present and proposed provisions of the regulations, IADC asks for specific confirmation that Job Safety Analyses (JSAs) are not required under 30 CFR subpart S for any “jobs” related to the following systems and sub-systems on MODUs:
 - Design basis document;
 - Structural integrity, modifications for construction and repair requirements;
 - Floating stability;
 - Stationkeeping:
 - Foundations,
 - mooring and tethering systems, and
 - dynamic positioning; and
 - Lightering equipment & procedures;
 - Utility systems:
 - Boilers, pressure vessels, waste heat recovery (from any engine exhaust), water heaters and other piping or machinery,
 - High pressure (HP) washdown,
 - Seawater supply,
 - Compressed air,
 - Potable wash and sanitary water,
 - Sewage unit & piping,
 - Diesel fuel,
 - Bilge & ballast, including pumps, and related control systems, and

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- Fuel gas from well (except when powering drilling and production systems);
- Elevators for personnel;
- Aircraft landing and refueling (decks, fuel handling, and storage);
- Fire protection:
 - Fire protection, detection and extinguishing, and
 - Structural fire protection for accommodations;
- Safety systems (General alarm);
- Electrical Design & Equipment, and
- General alarm;
- Electrical Design & Equipment:
 - Drilling systems (with some limitation),
 - Emergency lighting power generation and distribution, and
 - Hazardous area classification;
- Aids to Navigation;
- Communications;
- Pollution Prevention:
 - Garbage and plastic per MARPOL 73/78, and
 - Petroleum and other product transfers to and from a vessel (includes lightering of produced hydrocarbons);
- Cranes and Material Handling Equipment:
 - Crane design, certification, and operations, and
 - Other material handling equipment;
- Ventilation:
 - Accommodations and machinery spaces, and
 - Areas other than accommodations or machinery spaces;
- Lifesaving equipment;
- Workplace Safety and Health:
 - Personnel protection equipment, and
 - Hazardous material storage & handling (other than produced hydrocarbons);
- Living Quarters and Accommodation Spaces;
- General Arrangements:
 - Access/egress & means of escape, and
 - Safety plan, fire control or fire equipment, and lifesaving equipment plans;
- Miscellaneous Systems and Operational Requirements:
 - Structural inspection requirements,
 - Personnel requirements for marine and lifesaving operations,
 - Emergency evacuation plans,
 - Drills – fire, abandon, and lifeboat,
- Inspection and testing of all marine and lifesaving equipment;
- Diving operations & equipment
- Safety Analysis (of industrial systems)

Criteria for SEMS training (§250.1915) – Program Training

Issue:

As identified in our earlier comments regarding “jurisdictional restrictions,” the proposed regulation contains provisions that limit the operation of the regulation to “activities that are regulated under BOEMRE jurisdiction.”

This wording creates considerable and unacceptable ambiguity with respect to its application to MODUs, where the Coast Guard has regulatory jurisdiction.

Background information:

A system/sub-system breakdown of what is regulated under BOEMRE’s jurisdiction on MODUs can be found in Annex 1 of MMS/USCG MOA: OCS-01. Refer to the earlier discussion regarding jurisdictional restrictions.

IADC comments/recommendations:

- (1) IADC reiterates that it advocates a holistic approach to the development of Safety and Environmental Management Systems.
- (2) Nonetheless, in order to reduce the ambiguity of the present and proposed provisions of the regulations, IADC asks for specific confirmation that the criteria for training in a MODU owner’s SEMS program is not required for the following systems and sub-systems on MODUs:
 - Design basis document;
 - Structural integrity, modifications for construction and repair requirements;
 - Floating stability;
 - Stationkeeping:
 - Foundations,
 - mooring and tethering systems, and
 - dynamic positioning; and
 - Lightering equipment & procedures;
 - Utility systems:
 - Boilers, pressure vessels, waste heat recovery (from any engine exhaust), water heaters and other piping or machinery,
 - High pressure (HP) washdown,
 - Seawater supply,
 - Compressed air,
 - Potable wash and sanitary water,
 - Sewage unit & piping,
 - Diesel fuel,
 - Bilge & ballast, including pumps, and related control systems, and

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- Fuel gas from well (except when powering drilling and production systems);
- Elevators for personnel;
- Aircraft landing and refueling (decks, fuel handling, and storage);
- Fire protection:
 - Fire protection, detection and extinguishing, and
 - Structural fire protection for accommodations;
- Safety systems (General alarm);
- Electrical Design & Equipment, and
- General alarm;
- Electrical Design & Equipment:
 - Drilling systems (with some limitation),
 - Emergency lighting power generation and distribution, and
 - Hazardous area classification;
- Aids to Navigation;
- Communications;
- Pollution Prevention:
 - Garbage and plastic per MARPOL 73/78, and
 - Petroleum and other product transfers to and from a vessel (includes lightering of produced hydrocarbons);
- Cranes and Material Handling Equipment:
 - Crane design, certification, and operations, and
 - Other material handling equipment;
- Ventilation:
 - Accommodations and machinery spaces, and
 - Areas other than accommodations or machinery spaces;
- Lifesaving equipment;
- Workplace Safety and Health:
 - Personnel protection equipment, and
 - Hazardous material storage & handling (other than produced hydrocarbons);
- Living Quarters and Accommodation Spaces;
- General Arrangements:
 - Access/egress & means of escape, and
 - Safety plan, fire control or fire equipment, and lifesaving equipment plans;
- Miscellaneous Systems and Operational Requirements:
 - Structural inspection requirements,
 - Personnel requirements for marine and lifesaving operations,
 - Emergency evacuation plans,
 - Drills – fire, abandon, and lifeboat,
- Inspection and testing of all marine and lifesaving equipment;
- Diving operations & equipment
- Safety Analysis (of industrial systems)

Auditor qualifications (§250.1926)

Issues:

There is no provision regarding how long BSEE has to approve a nominated auditor. While the regulation requires the nomination to be submitted at least 30 days prior to the planned audit, the regulation does not require BSEE to approve or not approve the auditor within this time frame.

There is no provision regarding BSEE's communication of the reason why it did not approve a nominated auditor.

Unlike the required audit report, there is no provision regarding the need for BSEE to communicate to the operator whether it approved or did not approve the nominated auditor.

Background information:

The proposed regulation reads:

(a) You must nominate an independent third party to audit your SEMS program. The independent third party auditor must be capable of performing all tasks associated with a SEMS program audit. You must notify BOEMRE in writing of your nomination and must submit a request to BOEMRE for approval at least 30 days prior to your next audit. The request must state the name and address of the nominated individual or organization and the request must include the following listed items:

* * *

(c) After evaluating the qualifications of the nominated independent third party auditor, BOEMRE may or may not approve your nomination.

(d) If BOEMRE does not approve your nomination of an independent third party auditor, then you must submit a new nomination.

IADC comments/recommendations:

In order establish that BSEE will give timely notice of any disapproval of a nominated third party auditor, provide information regarding the reason(s) for disapproval, and allow sufficient time to respond after the approval of the auditor to begin the audit, IADC recommends that paragraph (c) be revised to read as follows:

(c) Within 14 days of receiving your nomination and request for approval of an independent third party auditor, BSEE will approve or deny your nomination. If the nomination is denied, the reason(s) for denial will be given. Notwithstanding the

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provisions of §250.1920, you need not commence any audit within 15 days of receiving BSEE approval of your nominated auditor.

Criteria for SEMS training (§250.1930) – Stop Work Authority

Issue:

As identified in our earlier comments regarding “jurisdictional restrictions,” the proposed regulation contains provisions that limit the operation of the regulation to “activities that are regulated under BOEMRE jurisdiction.” Specifically, the proposed regulation contains provisions that limit the operation of the regulation to “activities that are regulated under BOEMRE jurisdiction” thereby limiting the scope of the Stop Work Authority under the proposed regulations.

This wording creates considerable and unacceptable ambiguity with respect to its application to MODUs, where the Coast Guard has regulatory jurisdiction.

Background information:

A system/sub-system breakdown of what is regulated under BOEMRE’s jurisdiction on MODUs can be found in Annex 1 of MMS/USCG MOA: OCS-01. Refer to the earlier discussion regarding jurisdictional restrictions.

IADC comments/recommendations:

- (1) IADC advocates a holistic approach to the development of Safety and Environmental Management Systems and related instructions to the workforce.
- (2) It is IADC’s position that all offshore workers should have Stop Work Authority with respect to any task in which they are involved, or which they are in a position of observe an unsafe condition or act.
- (3) As earlier noted, there is no definition of “work” in the regulations, and no guidance provide regarding how the term is to be interpreted.
- (4) In order to reduce the ambiguity of the present and proposed provisions of the regulations, IADC asks for specific confirmation that the criteria for training in a MODU owner’s SEMS program is not required to provide Stop Work Authority for the following systems and sub-systems on:
 - Design basis document;
 - Structural integrity, modifications for construction and repair requirements;
 - Floating stability;
 - Stationkeeping:
 - Foundations,
 - mooring and tethering systems, and
 - dynamic positioning; and
 - Lightering equipment & procedures;
 - Utility systems:

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- Boilers, pressure vessels, waste heat recovery (from any engine exhaust), water heaters and other piping or machinery,
- High pressure (HP) washdown,
- Seawater supply,
- Compressed air,
- Potable wash and sanitary water,
- Sewage unit & piping,
- Diesel fuel,
- Bilge & ballast, including pumps, and related control systems, and
- Fuel gas from well (except when powering drilling and production systems);
- Elevators for personnel;
- Aircraft landing and refueling (decks, fuel handling, and storage);
- Fire protection:
 - Fire protection, detection and extinguishing, and
 - Structural fire protection for accommodations;
- Safety systems (General alarm);
- Electrical Design & Equipment, and
- General alarm;
- Electrical Design & Equipment:
 - Drilling systems (with some limitation),
 - Emergency lighting power generation and distribution, and
 - Hazardous area classification;
- Aids to Navigation;
- Communications;
- Pollution Prevention:
 - Garbage and plastic per MARPOL 73/78, and
 - Petroleum and other product transfers to and from a vessel (includes lightering of produced hydrocarbons);
- Cranes and Material Handling Equipment:
 - Crane design, certification, and operations, and
 - Other material handling equipment;
- Ventilation:
 - Accommodations and machinery spaces, and
 - Areas other than accommodations or machinery spaces;
- Lifesaving equipment;
- Workplace Safety and Health:
 - Personnel protection equipment, and
 - Hazardous material storage & handling (other than produced hydrocarbons);
- Living Quarters and Accommodation Spaces;
- General Arrangements:
 - Access/egress & means of escape, and
 - Safety plan, fire control or fire equipment, and lifesaving equipment plans;
- Miscellaneous Systems and Operational Requirements:
 - Structural inspection requirements,
 - Personnel requirements for marine and lifesaving operations,
 - Emergency evacuation plans,

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- Drills – fire, abandon, and lifeboat,
- Inspection and testing of all marine and lifesaving equipment;
- Diving operations & equipment
- Safety Analysis (of industrial systems)

Ultimate Work Authority (§250.1931)

Issues: The proposed regulation fails to address possible need to have a person with “ultimate work authority” in the case of combined operations, *e.g.*, a jack-up MODU performing additional drilling, well workover, well completion or well servicing operations over a fixed platform (which may or may not have a pipeline associated with it).

As identified in our earlier comments regarding “jurisdictional restrictions,” the proposed regulation contains provisions that limit the operation of the regulation to “activities that are regulated under BOEMRE jurisdiction.” Specifically, the proposed regulation contains provisions that limit the operation of the regulation to “activities that are regulated under BOEMRE jurisdiction” thereby limiting the utility of the designation of a person with Ultimate Work Authority under the proposed regulations.

This wording creates considerable and unacceptable ambiguity with respect to its application to MODUs, where the Coast Guard has regulatory jurisdiction.

Background information:

The proposed 30 CFR 250.1931(a) includes the following:

. . . your SEMS program must identify the person with the ultimate work authority (UWA), *i.e.* the person located on the facility or MODU with the final responsibility for making decisions relating to activity and operations on the facility. This person must be designated by the operator taking into account all applicable Coast Guard regulations that deal with designating a “person in charge” (in accordance with USCG definition) of a MODU or OCS facility found in 33 CFR 146.5 and 46 CFR 109.109. Your SEMS program must clearly define who is in charge at all times.

The present rulemaking is clearly a reaction to the Macondo incident and the alleged management system failures associated with that incident. This incident involved two facilities, the Deepwater Horizon and the well that it was constructing. Other OCS operations can require more complex arrangements for the effective management of workplace safety and protection of the environment, as they can involve multiple facilities under the operational control of multiple owners, *e.g.*, combined operations of fixed and mobile facilities, with the possible additional involvement of pipelines.

IADC comments/recommendations:

- (1) IADC believes that further examination is warranted with respect to the designation a person with UWA in the case of operations involving more than one “facility” (see our earlier comments regarding the definition of “facility”).
- (2) IADC is of the view that there is a need to identify an individual with regard to the combined operations involving multiple facilities, but is not convinced that this

person should, in all cases, be the “person in charge” of the MODU as would seemingly be required by the proposed regulations. This is particularly the case where the combined operations may involve skid-off drilling rigs or a ‘non-traditional’ MODU using the proposed MODU definition (*e.g.*, a liftboat) that may be resident at the combined operation for only a brief period.

- (3) IADC believes that the bridging arrangements contemplated by the proposed API/IADC Bulletin 97, Well Construction Interface Document, could be used in a flexible manner so as to assure the identification of the persons or positions having UWA both for stand-alone and for combined operation.

Employee participation (§§ 250.1928(g) and 250.1932)

Issues:

The proposed regulation is overly prescriptive and would not, in its proposed form, meet its intended objective.

The use of the term “employees” could be a potential source of confusion given the distinction between employees and contracted workers in the existing §250.1903 definitions of “Designated and qualified personnel” and “personnel” and the lack of a definition of “employee” applicable to subpart S.

Background information:

The proposed definition of “management” in 30 CFR 250.1903 and the proposed 30 CFR 250.1931(a) read as follows:

Management means a team of individuals who have the day-to-day responsibilities for overseeing operations conducted on a facility or providing instruction to operational personnel, including but not limited to employees and contractors working on a facility or in the company’s onshore offices.

§ 250.1932 What are my employee participation program requirements?

- (a) Management must consult with their employees on the development and implementation of the company’s SEMS program.
- (b) Management must develop a written plan of action regarding how appropriate employees, in both the operator’s offices and working on offshore facilities, will participate in their SEMS program development and implementation.
- (c) You must provide each employee of the operator and each contractor access to your SEMS program.
- (d) Management must provide BOEMRE a copy of their employee participation program upon request.
- (e) Management must assure that their employee participation program is made available during an audit.

The following existing definitions in §250.1903 imply that “employees” are the direct employees of the operator and do not include contracted workers:

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.

IADC comments/recommendations:

- (1) IADC believes, and has emphasized in its HSE Case Guidelines for Mobile Offshore Drilling Units, that workforce participation is a key element in developing and implementing an effective safety management system for the control of workplace hazards.
- (2) How a SEMS is developed, by whom it is developed, and for whom it is developed are vital to its successful implementation. It is highly unlikely that an effective SEMS can be imposed; rather it must become an integral part of an organizational culture.
- (3) IADC believes that a workforce participation program is necessary. However, it is firstly the responsibility of the employer to develop the SEMS for the operations to be conducted by his or her employees with their participation; this program must then be deemed acceptable by the entity controlling the work site in a manner that can be coordinated with other operations. For example, a diving contractor should develop and implement a SEMS program for diving operations in consultation with his or her workforce. When diving operations are to be conducted from a MODU (on location) both the lease holder/operator and the MODU's person in charge should be satisfied of the general adequacy of the diving contractor's SMS and the specific proposal for the work to be conducted (as controlled by MOC and/or permit-to-work). A general consultation by all "management" (as defined in the proposed regulations) is not needed, nor must it involve all "employees" at the work site.
- (4) Given IADC's view of the uncertainties regarding matters associated with "BOEMRE's jurisdiction" and BSEE's view of the joint and several responsibilities of persons other than the lease holder/operator, IADC can make no recommendation regarding an appropriate change to this regulatory text. This matter is best resolved by reconsideration of the entire regulatory approach to mandating SEMS.

Reporting unsafe working conditions (§250.1933)

Issues:

The preamble to the proposed rule creates the expectation that t “toll free” number will be provided, without substantiating how this will take place.

As identified in our earlier comments regarding “jurisdictional restrictions,” the proposed regulation contains provisions that limit the operation of the regulation to “activities that are regulated under BOEMRE jurisdiction.” Specifically, paragraph (a) of the proposed regulation contains provisions specifically required that matters under Coast Guard jurisdiction be addressed; while paragraph (b) contains test that limits the operation of the regulation to “activities that are regulated under BOEMRE jurisdiction.”

Provisions of paragraph (b) of the proposed regulations regarding the application of the regulation to domestic services (including janitorial work, food and beverage service, laundry service, housekeeping, and similar activities) seemingly conflict with the provisions of the existing 30 CFR 250.1914 (a).

The provisions of paragraph (e) of the proposed regulation would seem to limit BSEE’s ability to share reported information, in a manner that would permit follow-up, by other agencies that may have jurisdiction.

Background information:

The preamble to the proposed rule (76 FR 56687) states:

As relates to the reporting of unsafe work conditions, the operator would be responsible for:

* * *

(3) Providing personnel with a card containing a toll-free telephone number to contact BOEMRE or file a complaint.

The telephone numbers given in the proposed §250.1933(c)(2), i.e., 1-877-440-0173 or 202-208-5646, would not normally be toll-free from most offshore locations. Is BSEE going to take steps to assure that these numbers are “toll free” to the offshore workforce, is it BSEE’s expectation that the leaseholder/operator will assume the costs, or is this an error in the preamble?

The proposed rule includes the following:

(a) Your SEMS program must include procedures that address the reporting of unsafe work conditions. These procedures must include the existing Coast Guard unsafe working conditions reporting requirements found in 33 CFR 142.7 and 46 CFR 109.419.

(b) The unsafe work condition section of your SEMS program must ensure all personnel including the operator's employees contractor employees, as well as, contractors providing domestic services to the lessee or other contractors, including domestic services include janitorial work, food and beverage service, laundry service, housekeeping, and similar activities, who perform activities on the OCS that are under BOEMRE jurisdiction are covered by the program. An employee or contractor is not required to know whether a specific BOEMRE order or regulation has been violated in order to report unsafe conditions.

IADC believes that there is a fundamental conflict between the two provisions, created by the inclusion of provisions of paragraph (b) limiting the operation of the regulation to "activities . . . that are under BOEMRE jurisdiction."

The proposed rule contains the following:

(b) The unsafe work condition section of your SEMS program must ensure all personnel including the operator's employees contractor employees, as well as, contractors providing domestic services to the lessee or other contractors, including domestic services include janitorial work, food and beverage service, laundry service, housekeeping, and similar activities, who perform activities on the OCS that are under BOEMRE jurisdiction are covered by the program. An employee or contractor is not required to know whether a specific BOEMRE order or regulation has been violated in order to report unsafe conditions.

This seems to be in conflict with the provisions of the existing 30 CFR 250.1914, which read as follows:

§ 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.

The proposed rule contains the following:

(e) The identity of any person making a report under paragraph (c) of this section shall not be made available, without the permission of the reporting person, to anyone other than the employees of BOEMRE who have a need for the record in the performance of their official duties.

This language would seemingly preclude BSEE from effectively communicating with or coordinating activities with the Coast Guard for activities falling under the unsafe working conditions reporting requirements in 33 CFR 142.7 and 46 CFR 109.149.

Would this proposed regulation prevent BSEE from sharing information received via the hotline relating to laws or regulations administered by another agency (*e.g.*, with the FBI for a report of a sexual assault, with EPA for a discharge of oil in violation of EPA regulations, or FAA for unsafe flight operations)?

IADC comments/recommendations:

- (1) BSEE should clarify that the reporting hotline is not “toll free” unless it is going to make provisions for assuming any usage charges associated with calls to the numbers provided in the regulations from offshore locations.
- (2) IADC continues to believe that it is within the authority of the Secretary of the Interior and the Secretary of the Department in which the Coast Guard is operating to develop a regulatory model that is more in line with the holistic approach needed to provide protection for the offshore workforce and the environment.
- (3) IADC believes that an effective SEMS must be designed to protect all offshore workers. The exclusion of domestic service workers in the existing §250.1914(e) is counter to the goals of a holistic SEMS.
- (4) BSEE should issue a supplemental notice of proposed rulemaking regarding the provisions of the proposed §250.1933(e) to indicate that information reported over the hotline may be shared with officials of other agencies having jurisdiction, particularly if the report alleges criminal activity.

Hazards communication (§250.1914(f))

Issues:

The regulation may require operators of incriminate themselves regarding routine (and unavoidable) violations of a poorly-crafted provision of the OCS Lands Act.

The regulation has the potential to trivialize the process of hazards communication by conflating the residual risks associated with major hazards (e.g., maintaining barrier integrity during well construction) with slips, trips and falls.

“Slips, trips and falls” would, in general, seem to matters of general “workplace safety and health” under the jurisdiction of the Coast Guard, not BSEE.

Background information

30 CFR 250.1914(f), which is not being amended by this rulemaking, requires:

“(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.”

Section 22 of the OCS Lands Act states:

- (b) It shall be the duty of any holder of a lease or permit under this Act to—
 - (1) maintain all places of employment within the lease area or within the area covered by such permit in compliance with occupational safety and health standards and, in addition, **free from recognized hazards** (emphasis added) to employees of the lease holder or permit holder or of any contractor or subcontractor operating within such lease area or within the area covered by such permit on the outer Continental Shelf;

The regulation has the potential to trivialize the process of hazards communication by conflating the residual risks associated with major hazards (e.g., maintaining barrier integrity during well construction) with slips, trips and falls.

IADC comments/recommendations:

- (1) IADC believes that Section 22 of the OCS Lands Act is poorly crafted and does not reflect terminology in current use by safety professionals regarding hazard identification and risk control.
- (2) The goal of hazard identification is just that – hazard identification. This is then followed by any one of a number of steps to eliminate the hazard or reduce the risks associated with the hazard, recognizing that it is not possible to eliminate all hazards, nor is it possible to eliminate the residual risk of most hazards after appropriate risk control measures have been implemented.

- (3) It would be appropriate for BSEE to formally indicate that the communication of information regarding hazards required by this regulation is not an admission of a violation of Section 22 of the OCS Lands Act.
- (4) This regulation should be revised to focus on residual risks associated with major hazards (*i.e.*, those addressed by the facility level hazards analysis) and those matters of routine workplace safety, and the risks associated with individual jobs are properly addressed through general instructions regarding working conditions and conduct and the JSA process.