



September 15, 2009

Department of the Interior  
Minerals Management Service (MS 4024)  
Attn: Rules Processing Team (Comments)  
381 Elden Street  
Herndon, VA 20170-4817

Re: RIN 1010-AD 15; SEMS  
MMS-2008-OMM-0003  
FR Vol. 74, No. 115 6-17-09

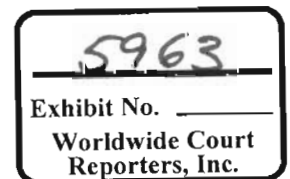
Ladies and Gentlemen:

The Offshore Operators Committee (OOC) and the American Petroleum Institute (API) appreciate this opportunity to provide written comments on the subject proposed rule to add a new Subpart S-Safety and Environmental Management Systems (SEMS) published on June 17, 2009 in the Federal Register (74 FR 28639). OOC and API worked jointly in developing these comments. These two associations represent oil and gas producers who conduct essentially all of the OCS oil and gas exploration and production activities in the Gulf of Mexico. Additionally, many of our members are involved in drilling, construction and support services for the offshore oil and gas industry and will be significantly impacted by any MMS rulemaking requiring operators to implement a safety and environmental management system.

Our comments are submitted without prejudice to any member company's right to have or express different or opposing views, and we have encouraged all of our members to submit comments on the proposed rulemaking.

We thank MMS for holding a workshop on September 2, 2009 to hear industry's concerns with the proposed rulemaking and we have attached the questions and presentation material we presented at the workshop as a part of our written comments. Prior to the proposed rulemaking, MMS published an Advanced Notice of Proposed Rulemaking (ANPR) on May 22, 2006 in the Federal Register (71 FR 29277). In the ANPR, MMS requested responses to 22 questions and we provided responses for the record for the 22 questions. At the workshop held on September 2, 2009, MMS indicated that the agency did not receive the detailed industry responses and information that was needed. If this is the case, then we recommend that MMS suspend this rulemaking and either enter into an open dialogue with industry or go back to an Advanced Notice of Proposed Rulemaking and solicit more detailed information.

We share MMS's concern about safety of personnel and protection of the environment. Safety is our industry's top priority. The offshore industry has an admirable safety record; and a



commitment toward continuous improvement. As MMS has noted in this proposal, most industrial accidents and spills result from human error or organizational errors, not device or equipment failures. We agree. So the question is, "How do we overcome human error?" It is difficult for us to see how a mandatory, highly prescriptive program as proposed by MMS will overcome human error. However, we agree with the statement in the preamble, "...operations are safer when management systematically encourages individuals to be safety conscious, provides adequate resources, fosters safe worksite practices, promotes good housekeeping habits and assures that workers are properly trained." Many operators, contractors, and service companies are already following these practices. For those companies that are not, it is difficult for us to see how a mandatory, highly prescriptive program will make a difference. It will only penalize the good performers. We believe that voluntary programs that have enough flexibility to suit the corporate culture of each company are the best way to actually achieve the goals of this proposal. Having a detailed plan on paper will not ensure an improvement in performance.

### **Industry Performance**

According to MMS data, the overall safety and environmental performance on the U.S. OCS has shown steady improvement over the past decade. We reviewed data compiled by MMS between 1996 and 2008 from OCS Performance Surveys. For combined operations on the OCS, the recordable and lost workday/DART case incident rates fell from a 3.39 rate in 1996 to 0.64 in 2008, a reduction of over 80%. These dramatic reductions in case incident rates followed almost identical patterns across drilling, production, and construction operations on the U.S. OCS. This steady improvement in safety and environmental performance is clearly evident when viewing MMS's own charts from recent agency presentations summarizing this information. We included a number of these safety performance charts in our presentation at the MMS SEMS regulation workshop held September 2, 2009 in New Orleans, LA. The presentations from that workshop are included as attachments to this submittal.

Another important point, supported by government data, is that safety performance of the overall U.S. oil and gas exploration and production industry compares very favorably with other industries. According to a Department of Labor (DOL), Bureau of Labor Statistics 2007 report on the incident rates of nonfatal occupational injuries and illnesses of various industries in the United States, the incident rate for the crude oil and gas extraction industry was 1.7 per 200,000 hours worked (i.e. 100 workers for 1 year). The incident rates for various mining and construction industries were generally between 3.0 to 5.0 per 200,000 hours worked or higher. Workers in other mining and construction industries were between two and three times more likely to experience a non-fatal occupational injury or illness as compared to those in the overall oil and gas exploration and production industry. An evaluation of MMS and Bureau of Labor Statistics data shows the offshore oil and gas E & P industry has a safety record superior to that of the overall oil and gas extraction industry. Our conclusion is that the safety performance of the offshore oil and gas exploration and production industry is very good now compared to similar industries. We are continuing to improve.

OOC and API examined the 33 MMS Accident Panel Investigation Reports that were used as part of the justification for imposing a mandatory SEMS program. We noted that 14 of the 33 incidents (42%) were related to loss of well control events. While several of these events could be attributed in part to mechanical integrity issues, it was difficult for us to understand how a mandatory SEMS program would have prevented or otherwise changed the outcome of these specific events. Unanticipated shallow gas hazards or unexpected productive sand zones were the largest causes of these events. In general, the multiple layers of safety systems and the

incident training of lease operator and drilling contractor personnel worked exceptionally well and allowed personnel on board MODUs and platforms to safely evacuate the facilities prior to incident escalation. Well control is one of the cornerstones of any successful oil and gas exploration and production program. Both offshore operator well planning and MMS APD reviews and approvals focus on ensuring that operator drilling programs maintain well control at all times. It is difficult to understand how a mandatory SEMS program will significantly influence what is already a vital and highly scrutinized activity.

Seven of the 33 Accident Panel Investigation reports (21%) were related to various lifting incidents (cranes, tuggers, etc). Lifting incidents create a high potential for accident and injuries due to the heavy weights involved and the potential of equipment or people to be dropped from heights. As an industry, we are aware that additional attention is needed to better understand the nature of lifting accidents on the OCS and how we can work together to reduce these incidents. On July 14 and 15, 2009, OOC and API were co-sponsors of the *Offshore Safe Lifting Conference* in Houston, Texas. Over 400 individuals from oil and gas companies, operating, drilling and crane services companies attended this important industry event. In addition, API, OOC and our member companies are working with MMS and the U.S. Coast Guard in a Safe Lifting Workgroup. The group initially met on May 5, 2009 to kick off efforts and to organize an industry based group to look more closely at crane and other lifting incidents on the GOM OCS. We met again as a group on August 11, 2009 in New Orleans to begin reviewing lifting incident reports and plan to meet again on December 8, 2009 in Houston to further review the accident data and to report out recommendations. The group's goals are to better understand the nature of offshore lifting accidents and develop approaches to reduce the frequency of these events. The International Association of Drilling Contractors will be the lead sponsor the *Offshore Safe Lifting Conference* in 2010. The point of noting these activities is to highlight industry's commitment to continuously improving our safety performance. Further, we believe that these targeted approaches in specific problematic areas has a better chance of improving safety than broad approaches such as prescriptive safety and environmental management plans provide.

#### **Relation to API RP 75**

The proposed rulemaking suggests incorporating API RP 75 into the regulation and then rewording the requirements of API RP 75 while adding many prescriptive documentation and record keeping requirements. The rulemaking refers to requiring only four of the API RP 75 elements to make up the Safety and Environmental Management System (SEMS). In actuality, the rulemaking addresses eight of the twelve elements covered in API RP 75. The remaining four elements not covered under this rulemaking are already covered by other MMS regulations – so, in essence, all of the elements actually will be required. These include:

- Safety and environmental information (needed to perform all of the SEMS elements)
- Hazards analysis (new requirement)
- Management of change (new requirement)
- Operating procedures (new requirement)
- Safe work practices (Contractor Selection)
- Training (covered under Subpart O)
- Mechanical integrity (new requirement);
- Pre-startup review (generally included with hazards analysis and operating procedures)
- Emergency response and control (covered under 30 CFR 254)
- Investigations of incidents (covered under 30 CFR 250.191)
- Auditing (SEMS audits and audit personnel qualification)
- Records and documentation (collateral new requirement)

- Appendix E-Performance Measures (MMS Form 131)

OOC and API have worked with MMS on developing requirements for safety and environmental plans for a number of years. The first edition of API RP 75 was published in 1993 and the current edition (third edition) was published in May 2004 (reaffirmed last year). API reviews its recommended practices on a periodic basis and updates them as appropriate. It should be noted that this document was developed with the assistance of MMS, USCG, IADC, OOC, IPAA and NOIA. Since its publication, our associations and MMS have encouraged operating companies to develop safety and environmental management programs based on API RP 75. As noted in the preamble, many operators have programs in place. We believe API RP 75 provides a good basis for SEMS while allowing operators the flexibility to tailor their SEMS to fit their operations and corporate culture. Many operators have very little in the way of a written plan, but actually do implement many of the API RP 75 elements. For example, they may not have a written procedure that describes when, how and by whom facility level hazards analysis are conducted, but they routinely conduct these hazards analysis and mitigate the hazards. We believe that operators who voluntarily have safety and environment management plans are more likely to have effective programs that make their operations safer. OOC conducted a survey of the finalists and winners of past SAFE awards on each company's voluntary implementation of safety and environmental management systems. The results (copy attached) show that the safest of the companies operating on the OCS have very diverse plans, but it works for them. According to the survey results, the overall compelling reasons these plans are effective are management commitment and worker ownership. In many cases, mandated programs quickly become paperwork exercises where you can demonstrate compliance. Without worker ownership, it does little to increase safety. As history has shown, a voluntary program has worked well. As recently as 2003 at a MMS/API/OOC meeting in Washington, MMS stated that it saw no need for a mandated program – a voluntary approach was performing well.

Assuming the rulemaking goes forward in its current form, it is unclear how operators and contractors are expected to model their SEMS plans after API RP 75 when MMS has included such highly prescriptive requirements that vary from the recommended practice. If MMS intends to require that each SEMS conform to API RP 75, then the highly prescriptive language should be removed and the final rule should simply reference the appropriate section in API RP 75. Any exception or additions could be listed, similar to the approach taken in 30 CFR 250.804. The MMS rewrite of sections of API RP 75 is confusing. The clarifying detail has been deleted, and the meanings have been changed. Further, many operators have voluntarily developed SEMS based on API RP 75 that are fully functioning for them. With this rulemaking, each and every one of those plans will have to be reviewed and modified. In many cases, these will have to be totally rewritten just to address what we view as unwarranted prescriptive requirements. Additionally, operators with fully functioning plans that are not based on API RP 75 will be required to completely rewrite a plan. It is difficult to see how a rewriting exercise of functional and effective plans will prevent accidents and increase safety.

We view the key to further improving our safety record to be changing worker behavior. The only element in the proposed regulation that attempts to address this issue is the task-specific "hazard analysis". However, there is a lot of confusion throughout the regulated community about the terms "job hazard analysis" and "job safety analysis". We typically use the term "job hazard analysis" to mean a broad analysis of the hazards associated with a job or process. Such analysis is typically done by a diverse team and may be done in an office setting or at the job site. Many times, this analysis is included with a facility-level hazard analysis or operating

procedures and in many cases covers routine tasks. We typically use the term "job safety analysis" to be the analysis done by onsite workers immediately prior to performing a task, many times a non-routine task. Some workers start with a "go-by" and mark it up for the specific task at hand and others start with a blank piece of paper or form. We believe that the application of "job safety analysis" has the best opportunity to impact worker behavior since it is the workers themselves that are identifying the hazards and developing plans, procedures, safeguards, etc. to avoid an incident. We note that many operators do a "job safety analysis" whether or not they have a formal safety and environmental management plan. API RP 75 does not explicitly address "job hazard analysis" and "job safety analysis". If MMS believes this could be a valuable addition, we encourage them to make a formal request to API to address this issue in the next update to API RP 75.

### **Contractors**

The proposed rule is confusing with respect to contractor requirements. There are four categories of contractors, discussed below.

1) The first group is comprised of contractors such as MODUs where we contract drilling rigs and personnel to conduct drilling, completion, workover and abandonment operations on our leases. These also include lift boats, diving spreads, derrick barges, etc. We neither own nor operate the MODU and it is impossible for us to fully develop and implement a SEMS plan for the MODU, nor would it serve any useful purpose. By including the term MODU in the facility definition, it is requiring us to develop these plans. MODUs are regulated by their flag state, classification society and the USCG, and they have requirements for hazard analysis, operating procedures, etc. For purposes of this rulemaking, they should not be included in the definition of facility.

2) The second group includes contractors that are brought onto platforms to perform tasks such as a painting or cleaning of a separator. They are normally on the platform for a short period of time and then removed to move on to another job. It would be impractical or impossible to comply with the proposed requirements to document these contractors' SEMS programs at the various operational platforms.

3) The third group includes contract operating companies that we contract to operate our platforms. These contract operating companies are expected to provide safety and environmental plans for operations within their control.

4) The fourth group includes contracted individuals that work side-by-side with our employees and work under our plans.

The rulemaking is unclear in distinguishing between these different types of contractors. Also, the word "employee" is used in several places throughout the rulemaking. If it is the intent of MMS to limit the requirements to just the operator's actual employees, clarification is needed. However, if MMS intends to extend the requirements to all contractors, we suggest that alternative wording be included. In our detailed comments that are attached to this letter, we have recommended substituting the word "worker" where appropriate.

The proposed rulemaking calls for us to document the criteria for contractor selection. We believe this is redundant with the existing Subpart O program. If MMS believes there are any contractor groups who are otherwise not being addressed by the existing Subpart O requirements, then it would be more appropriate to modify Subpart O than addressing the issue



in this rulemaking. We also note that in the small group of incidents that MMS is basing this rulemaking on, contractor selection was not identified as a root cause of any event. OOC and API recommend that MMS delete this section from the proposed rulemaking.

#### **Documentation and Recordkeeping**

The proposed regulation has exhaustive prescriptive documentation and recordkeeping requirements imbedded throughout the rule. Existing programs will have to be rewritten by all operators to incorporate these prescriptive requirements. We do not believe that this level of prescriptive documentation and recordkeeping will increase safety. API RP 75 has a records and documentation section. If MMS is going to require documentation and recordkeeping, then again, we strongly recommend that Section 13 of API RP 75 be adopted in the final rulemaking.

#### **Implementation**

The rule calls for the program to be implemented within one year after the final rule is effective. For operators that do not already have a written SEMS program that covers all of the elements noted above, it will be impossible to develop the SEMS program, conduct all of the hazardous analysis (facility), complete job hazard analysis for every job, write complete operating procedures, establish a mechanical integrity program and establish an audit program for even one facility (much less multiple facilities) in the time provided. Even for those operators that have SEMS in place, it is likely to take more than one year to compare the program to the prescriptive requirements in this rulemaking and make all of the required modifications. Therefore, if a mandatory program is adopted, we recommend that a phased-in approach to implementation needs to be included.

#### **Resource Intensive**

The rule as proposed is a major rulemaking and, in addition to being a major economic and resource burden on industry, will place a significant burden on MMS personnel that will be required to review and monitor all of the paperwork details that will be required.

#### **Summary and Recommendations**

The safety performance of the offshore oil and gas industry is a clear indicator that our voluntary efforts at implementing SEMS have increased safety and reduced incidents offshore. We find no compelling reason for MMS to mandate such programs. We agree with MMS that we should always emphasize safety and environmental performance and strive towards continuous improvement. However, we believe that to improve the safety performance further, we must place emphasis where it is needed the most – on worker behavior. The only element in the proposed rulemaking that addresses worker behavior is “hazard analysis” at the task level, commonly called a “job safety analysis (JSA),” which are performed by the workers preparing to perform the specific task at hand. We all know that to change worker behavior requires recognition of the hazard, a willingness to change and time to make that change a routine part of our everyday lives; and even then we suffer setbacks until the change becomes part of our nature. We do not believe that mandating a highly prescriptive safety and environmental management program will lead to that kind of change in worker behavior.

In lieu of continuing forward with the rulemaking in its current form, we propose the following three alternatives for your consideration:

1. Suspend the rulemaking and continue with the voluntary program currently in place.
2. Suspend the rulemaking and return to the Advance Notice of Proposed Rulemaking phase and/or enter into a dialogue with industry.

3. Abandon the concept of a new prescriptive section in the regulation and simply append the following onto 30 CFR 250.107:

(e) You must have a safety and environmental management program in accordance with the American Petroleum Institute's Recommended Practice for Development of a Safety and Environmental Management Program for Offshore Operations and Facilities (API RP 75), incorporated by reference as specified in 30 CFR 250.198.

- (1) At a minimum, your safety and environmental management program must include:
- (i) Hazards Analysis. You must perform a hazards analysis for all OCS facilities is to identify, evaluate, and, where unacceptable, reduce the likelihood and/ or minimize the consequences of uncontrolled releases and other safety or environmental incidents. This includes having a job safety analysis process. Human factors should be considered in this analysis.
  - (ii) Management of Change. You must establish procedures to identify and control hazards associated with change and maintain the accuracy of safety information.
  - (iii) Operating Procedures. You must have written facility operating procedures designed to enhance efficient, safe, and environmentally sound operations.
  - (iv) Mechanical Integrity. You must ensure that procedures are in place and implemented so that critical equipment for any facility subject to this recommended practice is designed, fabricated, installed, tested, inspected, monitored, and maintained in a manner consistent with appropriate service requirements, manufacturer's recommendations, or industry standards.
  - (v) Documentation. You must establish a documentation system to ensure that records and documents are maintained in a manner sufficient to implement your safety and environmental management program. Records or documentation may be in either paper or electronic form. You must make this documentation available for MMS inspection upon request.

As we have previously stated, we all want safe and environmentally sound operations. However, we do not believe the proposed rulemaking will achieve that goal. Both OOC and API welcome the opportunity to continue our work with MMS and the USCG to achieve the stated objective. Also, we are available to meet with you to answer any questions you may have concerning our comments.

Sincerely,

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Enclosures

