

**ADDRESSES:** Comments must be identified with RIN 2700-AD82 and may be sent to NASA via the *Federal E-Rulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Please note that NASA will post all comments on the Internet with changes, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Nanette Jennings, (202) 358-0819.

**SUPPLEMENTARY INFORMATION:**

**Direct Final Rule Adverse Comments**

NASA has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes to correct citations. No opposition to the changes and no significant adverse comments are expected. However, if the Agency receives a significant adverse comment, it will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

**Background**

The Board, established on May 15, 1961, is authorized to act for and exercise the authority of the Administrator in cases involving requests for extraordinary contractual adjustments under the Act of August 28, 1958 (50 U.S.C. 1431-35), is continued in effect by this regulation. Subpart 3 was promulgated to consider and dispose of requests for extraordinary contractual adjustments by contractors of NASA. The Board references an obsolete internal NASA policy (NASA Management Instruction (NMI) 1152.5) that was cancelled September 30, 1994, because it was considered to be a duplication of this regulation. Therefore, it should no longer be referenced in the regulation.

**Statutory Authority**

The National Aeronautics and Space Act (the Space Act), 51 U.S.C. 20113(a), authorizes the Administrator of NASA to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of its operations and the exercise of the powers vested in it by law.

**Regulatory Analysis**

*Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improvement Regulation and Regulation Review*

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). EO 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as "not significant" under section 3(f) of EO 12866.

**Review Under the Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities" (5 U.S.C. 603). This rule removes an obsolete citation referenced in 14 CFR part 3 and, therefore, does not have a significant economic impact on a substantial number of small entities.

**Review Under the Paperwork Reduction Act**

This direct final rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Review Under EO 13132, Federalism**

EO 13132, "Federalism," 64 FR 43255 (August 4, 1999) requires regulations be reviewed for Federalism effects on the institutional interest of states and local governments, and if the effects are sufficiently substantial, preparation of the Federal assessment is required to assist senior policy makers. The amendments will not have any substantial direct effects on State and local Governments within the meaning of the EO. Therefore, no Federalism assessment is required.

**List of Subjects in 14 CFR Part 1209**

Government contracts.

Accordingly, 14 CFR part 1209, subpart 3 is revised as follows:

**PART 1209—BOARDS AND COMMITTEES**

■ 1. The authority citation for part 1209 subpart 3 is revised as follows:

**Authority:** Pub. L. 85-804 and 51 U.S.C. 20113.

**§ 1209.302 [Amended]**

■ 2. In § 1209.302, remove the words "NASA Management Instruction (NMI) 1152.5 and".

**Charles F. Bolden, Jr.,**  
*Administrator.*

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**BILLING CODE P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Safety and Environmental Enforcement**

**30 CFR Part 250**

[Docket ID: BSEE-2012-0011]

RIN 1014-AA04

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

**AGENCY:** Bureau of Safety and Environmental Enforcement (BSEE); Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule will revise and add several new requirements to regulations for Safety and Environmental Management Systems (SEMS). These requirements pertain to developing and implementing stop work authority (SWA) and ultimate work authority (UWA), requiring an employee participation plan (EPP), and establishing guidelines for reporting unsafe working conditions. The rule establishes additional requirements for conducting job safety analyses (JSA) for activities identified in an operator's SEMS program. In addition, this final rule requires that SEMS programs be audited by an accredited audit service provider (ASP). This rulemaking will further support BSEE's efforts to reduce the occurrence of accidents, injuries, and spills during oil and gas activities on the Outer Continental Shelf (OCS).

**DATES:** This rule becomes effective on June 4, 2013. You must comply with the provisions of this rule on or before June 4, 2014, except the auditing requirements under § 250.1920. You must be in compliance with § 250.1920 by June 5, 2015. The incorporation by reference of certain publications listed

in the rule is approved by the Director of the Federal Register as of June 4, 2013.

**FOR FURTHER INFORMATION CONTACT:**

Keith Petka, Office of Offshore Regulatory Programs, (703) 787-1736 or email [sems@bsee.gov](mailto:sems@bsee.gov).

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

When Congress enacted the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1332(6)), it declared that it is the policy of the United States to assure that operations on the OCS are conducted:

- Safely by well-trained personnel; and
- Using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of:
  - blowouts, loss of well control, fires, or spillage, physical obstruction to other users of the waters or subsoil and seabed;
  - occurrences that may cause damage to the environment or to property; and
  - occurrences that endanger life or health.

Final regulations implementing a SEMS program were published on October 15, 2010, to accomplish these goals and to reduce the likelihood of another event like the *Deepwater Horizon* explosion and oil spill, 75 FR 63610. The regulations required operators to have a SEMS program in place as of November 15, 2011. A SEMS program is a comprehensive system to reduce human error and organizational failure.

On September 14, 2011, the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) published a Notice of Proposed Rulemaking in the **Federal Register** entitled, “Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Revisions to Safety and Environmental Management Systems” (76 FR 56683). These revisions to 30 CFR 250, subpart S, grow out of and strengthen the existing SEMS framework. The previous SEMS final rule was published in October 2010. The current BSEE SEMS regulations incorporate by reference the entirety of the American Petroleum Institute’s Recommended Practice 75 (API RP 75), Third Edition, May 2004, reaffirmed May 2008. Many companies operating on the OCS were already in compliance with parts of the existing SEMS regulation when it was published in 2010. Through this final rule, being published today, BSEE supplements the requirements in API RP 75 to ensure that all companies are implementing

current best practices and establishing well-functioning SEMS programs.

This final rule incorporates ideas from comments that were received following publication of the proposed rule. This final rule will require operators to integrate new requirements into their existing SEMS program to enhance the program and facilitate oversight. These additional requirements provide several key ways for personnel to help ensure safe performance of oil and gas activities on the OCS:

1. *Job Safety Analysis (JSA)*—Provides additional requirements for conducting a JSA.

2. *Auditing*—Requires that all SEMS audits must be conducted by an audit service providers (ASPs), accredited by a BSEE-approved accreditation body (AB).

3. *Stop Work Authority (SWA)*—Creates procedures that establish SWA and make responsible any and all personnel who witness an activity that is creating imminent risk or danger to stop work.

4. *Ultimate Work Authority (UWA)*—Clearly defines requirements establishing who has the UWA on the facility for operational safety and decision-making at any given time.

5. *Employee Participation Plan (EPP)*—Provides an environment that promotes participation by employees and management in order to eliminate or mitigate hazards on the OCS.

6. *Reporting Unsafe Working Conditions*—Empowers all personnel to report to BSEE possible violations of safety or environmental regulations and requirements and threats of danger.

**Background**

Pursuant to the OCSLA, the Federal government has a broad mandate to promote a culture of safety and environmental protection on the OCS. Acting on this mandate, BSEE’s predecessor, the Minerals Management Service (MMS), advocated voluntary implementation of API RP 75. The MMS’ goal was to assist in the development of a management system designed to promote safety and environmental protection during the performance of offshore oil and gas and sulphur operations. This system would be a tool for integrating and managing operations. By developing a management system based on API RP 75, owners and operators would be required to formulate policy and objectives concerning significant safety hazards and environmental impacts over which they had control and could be expected to have an influence. Ultimately, a SEMS program is intended to focus attention on the role of human

error and poor organization in accidents, drive continuous improvement in the offshore industry’s safety and environmental records, encourage the use of performance-based operating practices, and encourage collaboration between industry to promote the interests of offshore worker safety and environmental protection.

Many operators voluntarily developed a SEMS program, as outlined by API RP 75. Prior to implementing the SEMS regulations, MMS carefully analyzed accident panel investigation reports, incident reports, and incidents of noncompliance. The MMS determined that the root cause of most safety and environmental accidents and incidents derived from four specific elements identified in API RP 75: Hazards Analysis; Management of Change; Operating Procedures; and Mechanical Integrity. The MMS issued an Advance Notice of Proposed Rulemaking on May 22, 2006 (71 FR 29277), soliciting comments on amending the agency’s regulations to include SEMS. The MMS issued a Notice of Proposed Rulemaking on June 17, 2009 (74 FR 28639) that would require all operators to develop a management system minimally consisting of the four main elements identified by MMS as the root cause of most accidents.

However, the *Deepwater Horizon* explosion and resulting oil spill highlighted potential faults in the existing OCS safety culture, convincing MMS of the need to require all operators to implement a comprehensive SEMS. On October 15, 2010, BOEMRE, the successor agency to MMS, published in the **Federal Register** the final rule, “Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Safety and Environmental Management Systems” (75 FR 63610). That rule established a new Subpart S in 30 CFR part 250, requiring all OCS operators to have a SEMS program in place by November 15, 2011.

Nearly a month before this deadline, on September 14, 2011, BOEMRE proposed revisions to SEMS to address safety concerns that were not covered in the first SEMS final rule issued in October 2010. The comment period for the proposed rule closed on November 14, 2011. In this final rule, BSEE is promulgating many of the changes that were proposed in the September 2011 proposed rule.

On June 21, 2010, the MMS was renamed to BOEMRE. On October 1, 2011, the Department of the Interior (DOI) reorganized BOEMRE, creating two new Bureaus, BSEE and the Bureau of Ocean Energy Management (BOEM).

The SEMS program and regulations fall under the authority of BSEE.

### Summary of Comments on the Notice of Proposed Rulemaking

In response to the proposed rule, BSEE received 35 sets of comments from oil and gas companies (operators and contractors), industry associations, environmental organizations, and individuals. In the following section, we first address the general comments on the rule. These are followed by a Section-by-Section discussion of comments, including any changes made to the final rule based on comments. Comments that are not related to the proposed rule or that are outside the scope of this rulemaking are not addressed. All of the comments received are posted on [www.regulations.gov](http://www.regulations.gov), under docket number BOEM-2011-0003.

### General Comments

*Comment:* A commenter suggested that BSEE reopen the comment period and hold a workshop to address the following issues:

- (1) The BSEE's vision for the regulatory program.
- (2) The BSEE's strategy for achieving that vision.
- (3) Migrating to a goal-setting regime that is less prescriptive, with fewer approvals.
- (4) How SEMS "fits" with the United States Coast Guard (USCG) and Pipeline and Hazardous Materials Safety Administration (PHMSA).
- (5) How the SEMS regulations compare to other international regulatory regimes.
- (6) Experience with implementation of SEMS to date.

Several other commenters also requested more time to comment on the proposed rule.

*Response:* The BSEE does not believe it is necessary to allow more time to comment on the proposed rule. In the future, we intend to hold a workshop on SEMS to address implementation and other issues raised in the comments. The BSEE actively engages with members of the industry, non-government organizations, academia, trade organizations, standards committees, and members of the public to develop regulations and standards, and to encourage joint participation in research and workshops. All of these activities are used to implement BSEE's vision for safe, clean, and efficient OCS operations.

*Comment:* A commenter stated that the proposed rule appeared to indicate that a company's size does not matter in relation to safety, and that adverse

consequences from an incident are the same regardless of the operator's size. Instead, the commenter felt that smaller operators have fewer financial resources compared to large operators. The commenter stated that in the event of a catastrophic incident, a small operator is more likely to seek bankruptcy protection and walk away from the problem than a larger operator.

Additionally, the commenter believes the main lesson to be learned from the *Deepwater Horizon* explosion and oil spill is that the risk of another event stems from managing high pressure wells, not from operating in deepwater.

*Response:* The BSEE disagrees that a small operator is more likely to walk away from a catastrophic incident than a larger operator. We stated in the Notice of Proposed Rulemaking that "adverse consequences in the event of incidents are the same regardless of the operator's size." This statement reflects BSEE's concern that small, mid-size, or large OCS oil and gas operators working on the shelf or in deepwater on high-pressure or normal pressure wells can cause damage and loss of life resulting from an oil spill, fire, or explosion. Regarding small companies that declare bankruptcy, the OCSLA authorizes DOI to require lessees to provide financial assurance to cover their decommissioning obligations. Should a small operator attempt to avoid liability for a catastrophic incident, existing statutes govern the agency's rights in that proceeding.

*Comment:* Some commenters urged BSEE to withdraw the proposed rulemaking and reconsider its approach toward using SEMS on the OCS. One commenter stated that the existing BSEE SEMS rule is flawed and expressed concern over the UWA, the definition of facility, contractor responsibilities and liabilities, and jurisdictional boundaries. A wide range of industry commenters also raised concerns regarding the jurisdiction of other Federal agencies. The commenters believed that the scope of the SEMS program should not be defined by Memoranda of Agreement (MOAs) and Memoranda of Understanding (MOUs) among Federal agencies. There is concern that "unscrupulous" parties may "severely restrict" their SEMS programs based on jurisdictional issues. Some commenters believe that the phrase "activities that are regulated under BSEE jurisdiction" creates "considerable and unacceptable ambiguity." Some commenters believe that problems caused by jurisdictional questions can be avoided if SEMS takes a "holistic" approach to OCS safety regulations.

*Response:* The BSEE has authority under the OCSLA to regulate safety and environmental matters associated with oil and gas development. Accordingly, BSEE's authority under the OCSLA is not limited simply because BSEE authority coincides with the authority of another government agency. In a number of areas, BSEE co-regulates offshore activity with other Federal agencies, such as the Coast Guard and EPA. None of the provisions of this rule affects or modifies the authority of these other agencies. The BSEE uses MOUs and MOAs with other agencies to coordinate the regulatory activities for specific types of equipment and processes, but these interagency agreements do not limit the scope of the SEMS program that must be maintained by the operator under these regulations. An operator's SEMS program should address all oil and gas activities subject to a lease and should not be limited to the components listed in the interagency agreements. To further clarify, BSEE has removed the phrase "activities that are regulated under BSEE jurisdiction" from the final rule.

The concerns raised by the comments about UWA, definitions, and potential contractor liabilities are addressed in the Section-by-Section discussion. The BSEE also addresses certain minor editorial flaws and redundancies in the existing regulation. For example, § 250.1920 now consolidates the audit frequency information into one subsection in order to improve readability.

*Comment:* Another commenter expressed the view that the proposed rule has many elements requiring hazard recognition and formal reporting of unsafe conditions. Therefore, the commenter urged BSEE to consider including a requirement for operators to conduct and submit an independent, anonymous survey that validates the status of the existing safety culture, at least once every three years. The commenter believed that this proposed survey would provide evidence for how well the components of work stoppage, employee empowerment, employee participation, etc., have become engrained within the operating culture. The commenter stated that the results would provide further opportunities for initiating action planning and remedial measures. The commenter asserted that it would represent a viable "link" between the SEMS provisions and the reality of how those SEMS components need to be incorporated within a healthy safety culture.

*Response:* The BSEE sees value in the comment concerning a periodic submission of a "survey" to validate the

existence and status of a safety culture within an operator's organization. The BSEE will take this comment under consideration for future guidance or future rulemaking. Such a requirement could be put into effect by BSEE in the future.

### Contractor Safety and Environmental Management Systems Program

*Comment:* Several comments stated that BSEE should better address the role of contractors in the SEMS program. There were suggestions to clarify the regulation regarding the role of contractors in improving safety and environmental performance. The comments also proposed that contractors should have their own separate SEMS and it should not be the operator's role to ensure that contractor employees are trained in the operator's SEMS program.

*Response:* In response to these comments, BSEE is evaluating the possibility of requiring contractors to have a SEMS program while performing operations on the OCS. The BSEE may address this concept through future rulemaking. Currently, all personnel, which includes contractors, must be trained in accordance with the requirements of § 250.1915. Operators must verify that contractors are trained in accordance with § 250.1915 prior to performing a job. In accordance with § 250.1914, operators must ensure that contractors have their own written safe work practices. Contractors may adopt appropriate sections of an operator's SEMS program. Operators and contractors must document an agreement on appropriate contractor safety and environmental policies and practices before the contractor begins work at an operator's facilities.

*Comment:* The commenter stated that BSEE needs to explore the possibility of developing regulations that ensure worker and contractor qualifications (as in the Transportation of Hazardous Liquids by Pipeline (49 CFR part 195, subpart G)) in addition to including training requirements in the SEMS program. The commenter also stated that it is not enough for workers to be trained; the workers need to prove their capabilities and document the proof.

*Response:* A SEMS program, under the existing regulations, must ensure that all personnel are trained in accordance with their duties and responsibilities to work safely and are aware of potential environmental impacts. Because technologies and practices change, and circumstances are diverse, BSEE favors a flexible approach. In the future, BSEE may consider a more prescriptive approach

for establishing worker qualifications and evidence of capabilities.

### Process Safety

*Comment:* A few commenters stated that BSEE should explore the question of whether the Occupational Safety and Health Administration's (OSHA) Process Safety Management (PSM) program will provide a superior approach to attaining process safety compared to the SEMS approach. The commenters stated that if PSM data shows a significant and meaningful reduction in process safety accidents, BSEE should consider implementing PSM requirements or incorporate elements of such an approach into future SEMS rulemakings.

Another commenter stated that the proposed regulations do not fully draw upon the learning and best practices from PSM to handle low-probability, high-consequence events that often become large disasters. The commenter believes that process safety requires more than a SEMS program and the new elements. The commenter proposed that BSEE regulations should also address safety critical elements and performance requirements for those elements. Additionally, the commenter stated that BSEE regulations should ensure that barrier management for all operations is identified, described, and managed based upon process safety management principles. The commenter asserted that such requirements would effectively address the low-probability, high-consequence events that management systems do not fully consider.

*Response:* The BSEE evaluated the OSHA, *Process safety management of highly hazardous chemicals*, 29 CFR 1910.119 requirements. The elements in the PSM requirements are very similar to those included in SEMS (e.g., training, management of change, and auditing). However, BSEE determined that the SEMS approach is more appropriate because it was developed specifically for the offshore oil and gas industry and therefore addresses processes unique to OCS operations.

The term "critical equipment" is used in the API RP 75 (defined in Appendix D) and Subpart S. A SEMS program addresses all types of operations and equipment on a variety of OCS facilities, including low-probability, high-consequence events and high-probability, low-consequence events. The SEMS requirement that the operator identify the "critical equipment" on a facility and the requirement to conduct a hazards analysis are methods to prioritize hazards (low-probability, high-consequence events and high-probability, low-consequence events)

and develop appropriate mitigation measures to address the identified hazards.

### Goal Setting

*Comment:* Several commenters stated that BSEE should establish a broader, "holistic" regulatory strategy for offshore facilities that is based on setting goals. As part of the overall strategy to transition to a goal-setting regulatory culture, the commenters stated that SEMS should be structured as a goal-setting safety management regime. One commenter elaborated on this suggestion by adding that SEMS should be based on operator (not regulator) responsibility, risk management (not prescription), and regulatory oversight (not regulator command-and-control). This commenter also stated that BSEE should allow operators to establish audit programs, JSA criteria, employee input programs, stop work procedures, and facility management procedures that are best suited to their organization and culture. Also, the commenter stated that BSEE should encourage operators to follow practices that are best for their particular circumstances, and monitor the operator's performance to evaluate their success.

*Response:* The SEMS approach, consistent with API RP 75, integrates a variety of safety management initiatives that give the operator the flexibility to comply with regulatory requirements. Examples of similar provisions are: Subpart O performance-based training regulations; Subpart A, the use of alternate procedures or equipment at § 250.141; and the use of customizable field rules in Subparts D, E, and F. In § 250.141, BSEE allows an operator to propose the use of new operational procedures or equipment not already addressed in our regulations. These "alternate" procedures and technologies provide a mechanism for the industry to develop and use alternate procedures and technologies, with approval from BSEE as long as the proposed alternate procedures and technologies provide an equivalent of higher of safety and environmental protection on the OCS. Additionally, § 250.463 (field drilling), § 250.512 (field well-completion), and § 250.612 (field well-workover) requirements allow us to establish rules specific to a particular field that are different from what is required in the regulations if local geologic and engineering information show they are appropriate.

### Overly Prescriptive

*Comment:* One commenter stated that many elements of the proposed rule

were overly prescriptive, and unnecessarily and inappropriately restricted options for managing OCS activities. The commenter also viewed the existing SEMS rule as overly prescriptive. The commenter stated that a major contributor in this regard was BSEE's substitution of the word "shall" for "should" regarding the incorporation of API RP 75 into Subpart S. Commenters urged BSEE to make the regulations less prescriptive by completely re-writing 30 CFR part 250, subpart S, and the means by which it has incorporated the provisions of API RP 75 into Subpart S.

*Response:* The BSEE agrees with this comment in part. Regarding the prescriptive nature of the regulations as they incorporate API RP 75, we have removed the "should"/"shall" language from § 250.1904. This language has also been removed from § 250.198(a)(3) under the recently published rule on Increased Safety Measures for Energy Development on the Outer Continental Shelf (77 FR 50856).

The overarching mechanism used by an operator to develop and implement its SEMS program provides avenues of flexibility, including the following:

1. The operator may apply the JSA to recurring events;
2. The operator has the freedom to select the individual with UWA; and
3. The operator can determine training frequency, training methodology, and the training vendor, except in specific cases where certain training requirements are specified in Section 7 of API RP 75.

The BSEE has removed prescriptive language related to training from proposed §§ 250.1911(c) and 250.1933(g). There is no need to prescribe each aspect of an operator's SEMS training program or how frequently an operator must conduct periodic training. The final regulatory text in § 250.1915 is sufficient to cover the detailed training requirements for an operator's SEMS programs. The introductory language establishes that all personnel must be trained to perform work safely. These changes allow operators to take responsibility for implementing their own training in accordance with the regulations.

The main element of prescription that was added to Subpart S was the requirement to conduct a JSA for all tasks addressed in a SEMS. As discussed in the preamble of the proposed rule, JSAs are not covered in API RP 75. Nevertheless, SEMS maintains performance flexibility as evidenced by the discretion granted to operators to develop their EPP and SWA programs. We also eliminated the

requirement that personnel must be given cards with BSEE hotline number for reporting unsafe working conditions.

#### **Suggested Improvements for BSEE**

*Comment:* One commenter indicated that BSEE needs to make significant operational changes and increase oversight and inspection capabilities. The commenter also believes that BSEE should ensure a fundamental transformation in the offshore industry's safety culture.

*Response:* Since the *Deepwater Horizon* explosion and oil spill, BSEE has developed rulemakings to enhance safety and environmental protection and to increase BSEE oversight (e.g., the final rule on Increased Safety Measures for Energy Development on the Outer Continental Shelf (77 FR 50856)). The BSEE is also currently developing other rulemakings to address items such as the design, manufacture, repair, testing, operational verification, and capabilities of blowout preventers; and production safety systems, lifecycle analysis, quality assurance, and safety device testing.

The BSEE understands the importance of improving the safety culture across the OCS. The BSEE's intent in implementing the SEMS program is the development and implementation of a safety culture within an organization, which is a step to enhancing a safety culture throughout the entire industry. It is BSEE's intent to use this rulemaking as a step to enhance safety culture throughout industry.

#### **International Regulators**

*Comment:* A few commenters suggested that BSEE should align itself better with its international peers. These commenters asserted that safety management is a regulatory approach, not an element of a prescriptive regulatory regime. They believe that implementing the SEMS program must be accompanied not with layers of new regulations and approvals, but with regulatory reform consistent with the international consensus. They would also like BSEE to explain how SEMS compares to the regulatory regimes of international regulators with established (e.g., Norway, United Kingdom (UK), and/or the Netherlands) and emerging (e.g., Australia) safety regulations.

*Response:* The BSEE actively participates in the International Regulators Forum and shares lessons learned among the Forum's member countries. The BSEE also participates in the Arctic Council's Protection of the Arctic Marine Environment (PAME) Working Group. The DOI Secretary is committed to the Arctic Council's

initiatives, and BSEE supports the Secretary's commitment by contributing expertise at PAME meetings and conferences.

Regarding other international regulators, there are significant differences between BSEE's SEMS program and the use of management systems by other regulatory bodies across the globe. The legal, political, and operational environments vary from one country to another. Some of these differences include: the number of offshore facilities in one area as compared to another; the structure of the various operating companies (multinational, small, independent); and whether and how labor or trade unions are involved in the different areas. These and other distinctions make it difficult to directly compare OCS management systems (i.e., SEMS) with those used in the United Kingdom (i.e., Safety Case), Norway, Australia, and/or the Netherlands. All of these regulatory regimes have tailored the use of management systems to the specific local conditions prevalent in their respective areas.

#### **Compliance Metrics**

*Comment:* A commenter stated that BSEE has expressed a desire to have a risk-based inspection system and to "develop metrics that demonstrate industry's degree of compliance with new regulatory requirements." Also, the commenter stated that the splitting of BOEMRE into BOEM and BSEE has created a departmentally mandated firewall between the Office of Offshore Regulatory Programs and the Economics Division (which is in BOEM), removing the technical and statistical expertise from the Office of Offshore Regulatory Programs in BSEE.

*Response:* We believe that BSEE possesses the necessary expertise to develop the appropriate metrics that will demonstrate industry's degree of compliance. We generate annual incident statistics from reports received from OCS operators in accordance with the Incident Reporting Rule (71 FR 19640, April 17, 2006) and publish this information on our Web site. We will determine industry's degree of compliance with the SEMS regulatory requirements by conducting, participating in, or directing audits of operators' SEMS programs. We are currently working with the Center for Offshore Safety (COS) workgroups on developing indicators to gauge industry OCS performance and would appreciate additional ideas related to metrics (i.e., lagging or leading) from other stakeholders. The BSEE continues to

work with BOEM on functions that have interdependence.

### Increased Financial Burden

*Comment:* A commenter stated that increased regulation and the resulting enforcement significantly underestimate the regulatory burden and energy costs to consumers. The commenter also stated that current standards and self-regulation by Gulf of Mexico operators remain satisfactory. The commenter asserted that government regulations will ultimately hinder innovations that increase safety and productivity.

*Response:* The BSEE disagrees with this comment. The SEMS program is a safety management system based on an industry standard that promotes innovation regarding operator safety. The commenter did not provide additional information to support the assertion that BSEE underestimated the regulatory burden or any increased costs. The Regulatory Impact Analysis assesses the costs of this rulemaking and provides further details. We consider this regulation critical to ensuring continuous safety improvements on the OCS.

### Enhanced Drilling Safety

*Comment:* One commenter suggested that these SEMS revisions explicitly state that U.S. flagged vessels covered by a Document of Compliance with the International Safety Management (ISM) program be considered substantially equivalent to the SEMS requirements without any further documentation.

*Response:* The BSEE is aware of the differences in scope between the SEMS program and the requirements mandated within the ISM program. There is nothing in this rule preventing the operator from including ISM requirements in its SEMS program.

### Section-by-Section Discussion of the Final Rule

The industry trade organizations (*e.g.*, Offshore Operators Committee, American Petroleum Institute (API), and International Association of Drilling Contractors (IADC)) and OCS operators submitted extensive lists of specific comments for most sections of the proposed rule. We responded to some of their comments in the General Comments section. The following addresses more specific comments not already discussed.

#### Definitions. (§ 250.105)

Section 250.105 now contains a definition of “facility” for Subpart S purposes.

*Comment:* A commenter wrote that 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.

*Response:* The BSEE disagrees in part. The term “facility” was defined in § 250.1911, which stated how this term is used throughout Subpart S. However, BSEE agrees with the comment about § 250.105. Therefore, to eliminate any confusion over this term, BSEE removed the definition of facility from § 250.1911 and added it in the definition of facility under § 250.105.

#### Reports and Investigations of Possible Violations (§ 250.193 Includes Certain Language From Proposed § 250.1933)

The BSEE moved the language describing the process by which personnel may report unsafe working conditions from proposed § 250.1933 to § 250.193. This change consolidates the reporting process for any possible violation into one section. The BSEE retained the language regarding operator procedural requirements for unsafe working conditions in § 250.1933. The BSEE also changed the term “apparent violation” to “possible violation” throughout the section and in the title. Under the final rule, personnel only need to identify that a violation may have occurred; they are not required to know whether a specific legal requirement was actually violated in order to report unsafe conditions. However, a report should contain sufficient information to establish a reasonable basis for BSEE to determine whether a violation or other hazardous or unsafe working condition exists.

#### Documents Incorporated by Reference (§ 250.198)

The BSEE is incorporating three Center for Offshore Safety (COS) standards and one International Organization for Standardization (ISO) standard at § 250.198. These standards address requirements for accreditation bodies, qualifications for audit teams and auditors, requirements for auditing, and requirements for accreditation of audit service providers. The BSEE believes these standards will substantially improve the SEMS auditing process.

#### Must I have a SEMS program? (§ 250.1900)

The BSEE removed the deadline of November 15, 2011, for having a SEMS program that complies with Subpart S because that date has passed. However, removing the date does not excuse operators in existence before November 15, 2011, from compliance with the rule then in place. Removing the date simply removes reference in the regulatory text

to a date that is now passed. The BSEE will take enforcement action against any operators that were operating before November 15, 2011, whose SEMS programs were not in compliance with Subpart S by November 15, 2011. Furthermore, as of that date, we expect all new operators to be in compliance with Subpart S from the first day of operation.

The BSEE is revising paragraph (a) to make clear that Subpart S takes precedence over any conflicting language in the documents incorporated by reference. Additionally, the BSEE removed paragraph (b) because it is redundant with § 250.1929.

#### What is the goal of my SEMS program? (§ 250.1901)

The BSEE received a comment concerning the operations that may be performed by a mobile offshore drilling unit (MODU) and whether or not decommissioning must be covered by a SEMS program. The BSEE agrees that this issue needs clarification, and has revised § 250.1901(a) accordingly. Decommissioning is encompassed within the meaning of *operation*. The SEMS program addresses facilities and all stages of OCS operations, from start to finish, which includes decommissioning. This requirement applies to all facilities, including MODUs when they are attached to the seabed.

#### What must I include in my SEMS program? (§ 250.1902)

The BSEE developed additional requirements for Subpart S in this rulemaking. The final rule revised this section to include references to the following new sections and requirements: SWA (§ 250.1930); UWA (§ 250.1931); EPP (§ 250.1932); and guidelines for reporting unsafe working conditions (§ 250.1933). These are additional requirements that must be included in an operator’s SEMS program.

#### Definitions (§ 250.1903)

The BSEE added a list of acronyms and the following five new definitions: *accreditation body* (AB), *audit service provider* (ASP), *corrective action plan* (CAP), *personnel*, and *ultimate work authority* (UWA). The CAP definition was added to further increase the readability and clarity of the SEMS auditing requirements. The definition for *MODU* was removed from the final rule. The BSEE removed the definitions for *Management* and *Designated and Qualified Personnel* (DQP).

*Comment:* Several comments stated that the MODU definition should be

consistent with the USCG's MODU definition.

*Response:* The BSEE removed the definition of *MODU* from the final rule. The term *MODU* had been defined to mean a vessel capable of engaging in drilling, well workover, well completion, decommissioning, temporary and permanent abandonment, or well servicing operations for exploring or exploiting subsea oil, gas, or other mineral resources. The BSEE removed the definition of *MODU* because BSEE believes it is already clearly understood among operators that MODUs include vessels that are involved in other operations besides drilling.

*Comment:* Other comments stated that the definition of *Management* appears to be intended for the proposed new § 250.1932 and is not necessary as a definition in the regulations.

*Response:* The BSEE agrees with the comment and has removed the definition of *Management* from § 250.1903. Since BSEE removed the definition of *Management*, the EPP requirements under § 250.1932 were altered to reflect this change. Removal of this term allows the operator to decide who is considered management for the purposes of its SEMS program. The BSEE will hold the operator responsible for complying with its own determination of management as part of any SEMS audits conducted on the operator's program.

*Comment:* It was suggested that the definition of *Designated and qualified personnel* be removed.

*Response:* The BSEE agrees with this comment and made several changes to § 250.1902 to enhance the SEMS auditing requirements. The BSEE removed the definition of *Designated and qualified personnel* from § 250.1903 and all other sections within Subpart S. Operators are now required to have their SEMS program audited by an accredited ASP. The BSEE must approve the AB that accredits the ASP.

*Comment:* A question was asked if the definitions of *job* and *work* were required in an operator's SEMS program.

*Response:* The BSEE does not believe the terms *job* and *work* need to be defined for the purposes of Subpart S. These are terms commonly used by industry and BSEE does not feel there will be any confusion. However, an operator may define either or both of these terms in its SEMS program if it sees value in doing so.

#### **Documents Incorporated by Reference (§ 250.1904 Current Section Title) Special Instructions (§ 250.1904 Final Rule Title)**

The BSEE replaced the title and language of § 250.1904 because the existing language in § 250.1904 was redundant with § 250.198. The new title is Special Instructions. The new language clarifies the terminology used in the COS and the ISO documents incorporated by reference for purposes of these regulations and allows them to be applied across the OCS. For Subpart S purposes, references in the COS documents to *deepwater* means all water depths, and references to *COS member companies* means all operators. For Subpart S purposes, references in the ISO/IEC (International Electrotechnical Commission) document to *conformity assessment body (CAB)* means an ASP.

#### **What hazards analysis criteria must my SEMS program meet? (§ 250.1911)**

The BSEE now requires the operator to prepare, conduct, and approve JSAs for OCS activities identified or discussed in its SEMS program. The JSA is a tool used to identify risks to personnel associated with their job activities. The JSAs are also used to determine the appropriate risk mitigation measures.

The BSEE has added phrases related to environmental hazards and impacts to this section in order to ensure regulatory consistency throughout this section and Subpart S in general. The task level analysis should mirror that conducted at the facility level under § 250.1911(a)(1)(iv). This paragraph requires consideration of impacts to the human and marine environment. Therefore, BSEE added the phrases *environmental hazards* and *environmental impacts* to §§ 250.1911(b)(1)(ii) and (iii), respectively. These additions are consistent with the management of change requirement in § 250.1912(d)(2). The overall goal of SEMS under § 250.1901(a) requires operators to include impacts and environmental hazards in their SEMS programs.

The addition of these environmental references is also necessary in order to properly explain the context in which a single JSA may be used for recurring activities. The person in charge must consider several factors in making this determination, including changes in personnel, procedures, equipment, and/or environmental conditions associated with the activity. In accordance with § 250.1915, the operator must provide training for all personnel on how to

recognize and identify hazards and how to develop and implement JSAs prior to performing a job on the facility.

The BSEE removed the phrase “\* \* \* that are regulated under BSEE jurisdiction \* \* \*” from paragraphs (b) and (c) in response to comments received on this subject and as further discussed in the General Comments section.

*Comments:* Several comments were received concerning JSA training requirements, as well as questions regarding who has the authority to approve and sign a JSA. Commenters also stated that the entire JSA process is too demanding and onerous. Commenters were primarily concerned about the proposed rule's clarity in relation to JSAs. They believe that the JSA should not include all personnel affected by the activity being conducted.

*Response:* The BSEE believes the proposed modifications to the JSA requirement will lead to safer OCS operations. The component of the training focused on JSA development and implementation should improve an operator's and contractor's ability to perform an activity in a safe manner. In addition, training will provide personnel a better understanding of how a SEMS program addresses particular hazards. The final rule does require the JSA to include all personnel involved with the job activity being conducted. The personnel performing the job must be aware of the hazards and sign the JSA. The immediate supervisor of the crew actually performing the job needs to conduct the JSA, sign the JSA, and make sure all personnel participating in the job sign the JSA. The individual designated as being in charge of the facility by the operator must approve and sign all JSAs. Having dual levels of involvement/approval in the JSA process provides an extra level of safety.

Providing signatures is an indication by the individuals signing the JSA that they are aware of the hazards and will adhere to the recommended preventions and mitigations while performing and/or supervising the job. This requirement will help minimize the possibility of safety or environmental issues. Requiring signatures from all parties is appropriate. The BSEE has found that not performing a JSA, conducting an incomplete JSA, or not having all parties involved in the task participate in the JSA process has contributed to accidents or Incidents of Noncompliance (INCs). The BSEE believes that requiring signatures on the JSA will ensure a better understanding of the proper way to perform operations and will better ensure that all personnel involved in the job understand the risks, procedures,

and expectations of the task at hand before initiating work.

The BSEE has accepted the commenter's recommendation to remove the phrase *affected by* from the JSA section of the final rule.

*Comment:* One commenter suggested that electronic signatures should be accepted for JSAs.

*Response:* The BSEE agrees. An electronic signature on the JSA is an acceptable alternative to a written signature, as long as the operator's SEMS program states that electronic signatures are acceptable.

*Comment:* A commenter recommended revising the proposed § 250.1911(b) to read as follows: "The JSA must include all personnel involved with the job activity."

*Response:* The BSEE agrees with this comment and has made this revision.

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

To ensure consistent language throughout Subpart S, BSEE updated the language in this section to replace references to *operator* and *lessee* with *you* or *your*.

#### **What training criteria must be in my SEMS program? (§ 250.1915)**

The BSEE now requires a SEMS program to establish and implement a training program so that all personnel are trained in accordance with their duties and responsibilities to work safely and are aware of environmental impacts. Training must address operating procedures (§ 250.1913), safe work practices (§ 250.1914), emergency response and control measures (§ 250.1918), SWA (§ 250.1930), UWA (§ 250.1931), EPP (§ 250.1932), and reporting unsafe working conditions (§ 250.1933); how to recognize and identify hazards (§ 250.1911); and how to construct and implement JSAs (§ 250.1911).

*Comment:* One commenter stated that to reduce the ambiguity of the present and proposed provisions of Subpart S regulations, BSEE should articulate what training in a MODU owner's SEMS program is required for various rig activities and systems.

*Response:* As stated in § 250.1915, an operator's SEMS program must establish and implement a training program so that all personnel who perform activities on the OCS, including personnel on a MODU performing activities on the OCS, are trained in accordance with their duties to work safely and are aware of potential environmental impacts. An SWA

training program will be required on a MODU if these workers are involved with a task or job. The required training imposed on the operator must be in accordance with § 250.1915 and API RP 75.

#### **What are the auditing requirements for my SEMS program? (§ 250.1920)**

The BSEE's current regulations require operators to conduct a comprehensive SEMS audit within a 3-year cycle. This final rule clarifies that the cycle begins on the start date of each audit (including the initial implementation audit) and ends on the start date of the next audit. An operator's SEMS program must be audited by an accredited ASP according to the requirements of Subpart S. Operators must include the ASP's qualifications in their audit plans. Operators must also provide us with a copy of the audit report and their CAP. We extended the deadline for submitting audit reports and CAPs from within 30 days of the audit completion date to within 60 days of the audit completion date in this final rule.

*Comment:* One commenter stated that the rule should retain the option to allow designated and qualified personnel to lead an audit. The commenter stated that there are not enough skilled and knowledgeable independent third party (I3P) auditors available to conduct these audits. In addition, the commenter stated that using designated and qualified personnel ensures that operator audits are conducted by personnel with the highest knowledge of the operator's SEMS program.

*Response:* The BSEE disagrees in part with this comment. The option for the operator to use designated and qualified operator personnel to lead an audit was removed in this final rule from Subpart S and replaced with an accredited ASP. Consistent audits performed by well trained and experienced auditors are critical to ensuring that SEMS programs are successfully implemented and maintained on the OCS. As a result, we are adopting industry best practices related to SEMS audits and auditor qualifications. Industry is already voluntarily adopting these practices in many deepwater operations. We believe that the application of these requirements to all OCS operations will result in more robust and consistent SEMS audits.

To ensure that a sufficient pool of auditors is available, the compliance date for this audit requirement is January 1, 2015, over 2 years from the date this rule will become effective. This compliance date gives the industry

sufficient time to develop an adequate number of qualified SEMS auditors.

#### **What qualifications must the ASP meet? (§ 250.1921)**

The BSEE added this section to include the minimum qualifications that the ASP must meet. These qualifications were developed with consideration of guidelines issued by the COS. The ASP must be accredited by a BSEE-approved AB.

*Comment:* Some commenters were concerned that the exclusion of those individuals already involved in program development will lead to the use of less qualified individuals who may not be equipped with the knowledge to properly evaluate the effectiveness of the SEMS program. The commenters believe that imposing these minimum qualifications could greatly reduce the potential for positive safety and environmental gains expected from full SEMS implementation.

*Response:* The BSEE agrees with this comment in part and altered the final rule to mitigate this concern. Operators are now required to audit their SEMS program by using audit teams from an accredited ASP. The prohibition against qualified operator personnel participating in the audit was removed. Instead, the rule now requires that only the audit team lead must be an ASP employee, representative, or agent, and must not have any affiliation with the operator. The remaining team members may either be operator personnel or that of the ASP. This option gives the operator the flexibility to utilize in-house expertise on the audit team. This rule adopts the latest industry standards related to auditor qualifications.

#### **What qualifications must an AB meet? (§ 250.1922)**

The BSEE has eliminated the I3P process in this final rule and added this section to implement a new process to handle approving auditor teams. The BSEE will now approve ABs which will accredit ASPs that have the necessary expertise and training to perform SEMS audits. The AB will be required to satisfy the requirements of ISO/IEC 17011. The ISO/IEC 17011 standard provides international guidelines for ABs.

*Comment:* Several commenters support the concept of utilizing I3P auditors to assess SEMS compliance. One commenter stated that it is inconsistent with safety management principles for BSEE to approve I3Ps. Commenters believe auditors should be approved through the API COS program.

*Response:* The BSEE agrees with this comment. The I3Ps were replaced by

ASPs. The BSEE will not review and approve audit teams. The BSEE will rely on ABs such as the COS to determine which ASPs meet the necessary qualifications and experience to perform SEMS audits. The BSEE will approve and evaluate ABs responsible for ASP certification. The BSEE has added new sections to the final rule to address the role of an ASP (§ 250.1921) and an AB (§ 250.1922). The rule also defines the functions and standards of the ABs regarding the accreditation process. Operators will be able to choose from a pool of accredited ASPs. Implementing the AB and ASP structure will ensure consistent measurement of SEMS performance and resolution of safety deficiencies within companies and across industry.

#### **[Reserved] (§ 250.1923)**

#### **How will BSEE determine if my SEMS program is effective? (§ 250.1924)**

The BSEE requires the operator to conduct SEMS audits using an accredited ASP. The BSEE, or its authorized representative, may evaluate any and all aspects of your SEMS program as outlined in Subpart S. These evaluations or visits may be random or may be based upon operator or contractor performance.

#### **May BSEE direct me to conduct additional audits? (§ 250.1925)**

This section explains the circumstances under which BSEE may direct operators to conduct an audit and the timeframe for submitting audit reports for BSEE-directed audits. The BSEE updated this section to replace references to I3P with ASP and to ensure consistency with the new language and requirements of §§ 250.1920 and 250.1921. Additionally, BSEE removed existing § 250.1925(b), stating that audit findings may be used in enforcement actions, because it was redundant (also expressed in § 250.1927). Removing paragraph (b) does not affect BSEE's ability to use audit findings to enforce regulations.

#### **[Reserved] § 250.1926**

This section was replaced with § 250.1921.

#### **What are my recordkeeping and documentation requirements? (§ 250.1928)**

For documenting JSAs and SWA procedures, records must be kept onsite for 30 days. In the case of a MODU, records must be kept onsite for 30 days or until the operator releases the MODU, whichever comes first. The BSEE has removed from this section the requirements for training on SWA

policies and a review of SWA procedures as a part of all meetings where the primary topic applies to facility safety, although the SWA procedures still must be reviewed at those meetings under § 250.1930(e).

*Comment:* One commenter stated that not all facilities have the capability to maintain records. Therefore, the commenter suggested that the language should allow records to be maintained at the nearest field office where such records are maintained.

*Response:* In existing § 250.1928(a), all SEMS program documents must be maintained at an onshore location. However, there are some records that BSEE believes are important to also maintain on the actual facility where the task, operation, or job has been performed. These records include those associated with SWA and JSA, as specified in § 250.1928(b) and (f) of the final rule. If a facility does not have the capability to maintain onsite records for the period of time specified in the rule, then that facility needs to be modified. Records can be maintained electronically or as paper.

*Comment:* A commenter stated that documentation cannot be expected to be retained on a MODU if the operator releases the MODU prior to the 30-day required record-retention time frame.

*Response:* The BSEE agrees. The BSEE modified the regulatory text to state that in the case of a MODU, records must be kept onsite for 30 days or until the operator releases the MODU, whichever comes first.

#### **What must be included in my SEMS program for SWA? (§ 250.1930)**

This final rule will require operators to create and implement a SWA program. This program will ensure that all personnel are given the responsibility and authority to stop work when they witness an activity that creates an imminent risk or danger to the health or safety of an individual, to the public, or to the environment. The SWA will include authority to stop the specific task(s) or activity that poses an imminent risk or danger as defined in § 250.1930(a).

The rule provides further that individuals who receive notification to stop work must comply with the direction immediately. In supporting the safe execution of work and to promote a culture of safety at work, all personnel should have the responsibility and authority, without fear of reprisal, to stop work or decline to perform an assigned task when an immediate risk or danger exists. Personnel exercising the SWA should have discussions with co-workers,

supervisors, and/or safety representatives to attempt to resolve any safety issues that are causing the imminent danger or risk. When a work stoppage occurs, the final rule provides that the person in charge of the conducted activity is responsible for ensuring the work is stopped in an orderly and safe manner. The final rule further provides that work may be resumed when the individual on the facility with UWA determines that the imminent danger or risk does not exist or no longer exists.

The BSEE now requires the operator to conduct training on their SWA procedures as part of orientations for all new personnel who perform activities on the OCS. Additionally, the SWA procedures must be reviewed as part of all safety-focused meetings related to facilities subject to SEMS.

*Comment:* Commenters stated that the SWA program should remain voluntary rather than mandatory. In past OCS accidents, the SWA program did not function as designed because personnel hesitated to implement this provision due to fear of reprisal.

*Response:* The BSEE believes that a mandatory program is necessary to promote safety on the OCS and ensure that all personnel are aware of their responsibility to implement the program.

*Comment:* A commenter stated that the individual with UWA on a facility may not always be the appropriate party to authorize the startup of activities following a work stoppage, and that the immediate task supervisor would be a more appropriate individual to make the decision.

*Response:* The BSEE disagrees. The individual with the UWA is responsible for overall facility safety and operations. Therefore, this individual is best qualified to make the decision regarding when a crew should return to work.

*Comment:* There was a recommendation to remove the word *drill* at the end of proposed subsection (d) and make JSA plural.

*Response:* The BSEE agrees and made the suggested corrections.

*Comment:* A commenter stated that the term *safety meetings* is not defined and potentially includes non-safety topics when a brief introductory item related to safety is provided as a matter of course. The commenter suggested alternative language to this proposed subsection to read as follows: “\* \* \* review of the SWA policy must be completed as part of all meetings relating to facilities subject to SEMS for which safety is the primary topic of the meeting.”

The commenter also proposed that the references in this section to *SWA policy and program* and *SWA policy* should be replaced with *SWA procedures*, which is the term used in § 250.1930(a).

*Response:* The BSEE agrees with the comments. The BSEE has always intended for this section to apply to meetings where safety is the primary subject. It is not intended that SEMS be included in meetings where safety is addressed as a passing or indirect reference. The regulatory text has been changed in § 250.1930(e) to read as follows:

“You must conduct training on your SWA procedures as part of orientations for all new personnel who perform activities on the OCS. Additionally, the SWA procedures must be reviewed during meetings focusing on safety on facilities subject to this subpart.”

*Comment:* Several commenters stated that most operations present some level of danger when they are being conducted. However, the commenters asserted that the risk can be managed and mitigated through the application of barriers or controls. The commenters stated that the draft text should therefore be qualified to show that SWA is applicable when a threat or danger is outside of the ordinary. Commenters also recommended changing the wording of SWA to not only address imminent risk or danger, but risk or danger that is also significant. The commenters recommend changing the wording to “and witness any activity that creates an imminent and significant risk or danger.”

*Response:* The BSEE agrees in part. Most OCS operations present a level of danger; however, the quantification of risk as *significant* is difficult. Consistent with the philosophy used in the development of the SEMS rule, BSEE made the determination that the operator has flexibility to determine which activities and associated risks need to be addressed in a SWA program; therefore, BSEE did not adopt this proposed change.

#### **What must be included in my SEMS program for UWA? (§ 250.1931)**

The final rule now requires that an operator's SEMS program specify who has the UWA on the operator's facilities. This requirement could be met, for instance, by posting a notice in an easily accessible public location. The individual with UWA will be the individual on the facility with the final responsibility for making decisions. The individual with UWA has a key role in assuring that the operator's SEMS program is implemented in a manner

that addresses personnel safety and environmental protection.

Under the final rule, the operator's SEMS program must identify and designate the individual with the UWA on the facility. Only a single individual will have UWA at any given time, so operators must take into consideration all applicable USCG regulations that deal with designating a *person in charge* (in accordance with USCG regulations) of a MODU or a floating facility on the OCS.

Section 250.1931(c) in the proposed rule was removed from the final rule. Since *facility* is now defined to include fixed and floating facilities, there was no need to explicitly state that the SEMS program applies to these facilities. The final rule requires that an operator implements all provisions of its SEMS program at all times on all facilities as defined in the final rule.

*Comment:* One commenter stated that for unmanned facilities where personnel may be working on a daily basis and not spending the night, the individual with UWA may not be located on that facility but located somewhere else (either offshore or onshore). To eliminate this confusion, the commenter recommended removing the requirement for the individual with UWA to be located on the facility.

*Response:* The BSEE disagrees. All facilities need to have an individual identified by the operator located onsite as the one with UWA. This requirement applies to *unmanned facilities*, as well as when a crew is performing work on those facilities.

*Comment:* Several commenters stated that the proposed Subpart S regulation fails to address UWA in situations where multiple facilities are attached (e.g., a jack-up MODU performing drilling, well-workover, well-completion, or well-servicing operations over a fixed platform) or in close proximity to each other when conducting OCS operations.

*Response:* The BSEE agrees. The intent of the regulation is to assure that the individual with UWA is identified in an operator's SEMS program for all facilities. Recognizing that compliance with this requirement is complex when facilities are attached or in close proximity to one another, this final rule clarifies that the operator needs to identify an individual with overall UWA for all the facilities involved in a common operation. The BSEE added the following sentence at the end of § 250.1931(a), “In the event that multiple facilities, including a MODU, are attached and working together or in close proximity to one another to perform an OCS operation, your SEMS

program must identify the individual with the UWA over the entire operation, including all facilities.”

*Comment:* One commenter stated that the bridging arrangements contemplated by the proposed API/IADC Technical Bulletin (TB) 97, *Well Construction Interface Document*, could be used in a flexible manner so as to assure the identification of the individual or position having UWA, both for stand-alone and for combined operations.

*Response:* The BSEE will review the API/IADC TB 97 for possible incorporation by reference into our operating regulations when it is complete. For operations conducted from a MODU, TB 97 could present a viable alternative to meet the intent of the UWA regulation if this document is identified by an operator as being part of its SEMS program.

*Comment:* Several commenters stated that rather than identify an individual person with UWA, identifying the position with UWA would be more appropriate. This specification would alleviate possible confusion associated with crew changes/rotations for the individual designated as having UWA. All personnel would know that a particular position retains the UWA rather than a specific individual.

*Response:* The final rule states that the operator must identify the individual or position with UWA in its SEMS program. The operator has discretion to decide to identify an individual or a position with the UWA.

*Comment:* One commenter suggested relocating the language in § 250.1931(c) to a different section of Subpart S.

*Response:* This section does not apply to UWA and was removed from the rule because it is already covered in § 250.1902. Because of this change, BSEE redesignated § 250.1931(d) to now be § 250.1931(c).

#### **What are my EPP requirements? (§ 250.1932)**

This rule now requires operators to develop and implement an EPP. Under this rule, an operator who performs regulated activities on the OCS will be required to consult with its employees regarding the development, implementation, and modification of its SEMS program. The operator will also have to develop a written plan of action regarding how appropriate onshore and offshore employees will participate in the SEMS program development and implementation. The operator will have to provide its personnel access to relevant sections of the SEMS program.

*Comment:* Several commenters stated that this section is out of sequence with the overall compliance timeline of the

SEMS program. It requires employee participation in the plan with specific requirements for employee consultation and a written plan, among other things. The commenters noted that this new section will be effective at some future date that was not specified in the proposal. Therefore, the commenters asserted, it will be difficult to comply with this employee participation provision since the program elements will already be developed and implemented before the new EPP requirement is finalized and made effective. The commenters stated that industry believes that it could include affected employees in future SEMS modifications. Moreover, the commenters stated that appropriate employee participation will be evident through the audit of an operator's SEMS.

*Response:* The BSEE disagrees. The SEMS is a dynamic program. Requiring the operator to have an EPP will ensure that all employees understand and are involved in updating the SEMS program on an ongoing basis. The EPP adds value to the overall safety of OCS operations because this plan provides employees a stake in the development and implementation of an operator's SEMS program. This program engages employees in the field and in the office, bridging a significant gap between those actually performing OCS operations and those planning, managing, and/or monitoring these operations in an onshore office. The EPP requirements provide the operator with a significant amount of flexibility to tailor this plan to its specific needs. The final rule grants operators one year after the effective date to modify their recordkeeping policies to capture EPP information.

*Comment:* One commenter stated that BSEE should require operators to fund worker safety expert(s) to participate in SEMS program development and implementation. The commenter stated that such experts should be selected by the workers, ideally by the applicable labor union.

*Response:* Operators have complete discretion to hire outside experts, including those affiliated with labor unions, to assist in developing and/or implementing their SEMS program.

*Comment:* Several commenters suggested that BSEE revise this section so that *you* replaces *management* and *your* replaces *their*.

*Response:* The BSEE disagrees. These regulations require management to make the EPP available during an audit; either a BSEE-conducted audit or an ASP audit. The BSEE believes that management is the most appropriate

party to be responsible for this duty. If the term *management* was replaced with the term "*you*" it would allow management to avoid this responsibility.

However, BSEE agrees with the commenter's concern about who *management* is. As a result, BSEE has removed the definition of *Management* from § 250.1903. Removing this definition allows the operator to decide who is considered *management* for the purposes of its EPP. The BSEE will hold the operator responsible to comply with its own determination of who *management* is as part of any SEMS audits conducted on its program.

*Comment:* One commenter stated that an EPP is written into various sections of their overall SEMS. The commenter stated that the best way to prove that employees are participating in the SEMS program is through the audit process, as is already provided under existing rules. The commenter suggested that paragraph (d) be deleted.

*Response:* The BSEE agrees in part. The BSEE has deleted paragraph (d) because it was redundant with § 250.1924(b). However, per § 250.1924(b), BSEE still reserves the right to request a copy of the operator's SEMS program, which could include the EPP element. The BSEE may request these documents regardless of whether BSEE conducts an audit.

*Comment:* One commenter stated that an EPP is necessary. However, the commenter stated, "it is 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. A general consultation by all 'management' (as defined in the regulations) is not needed, nor must it involve all 'employees' at the work site."

*Response:* The BSEE disagrees. While an operator's management is tasked to include appropriate employees in the development and implementation of a SEMS, management must consult with all employees, including both the operator's office employees and employees working on offshore facilities.

**What procedures must be included for reporting unsafe working conditions? (§ 250.1933—Certain language in § 250.1933 was moved to § 250.193 in the Final Rule)**

To address redundancies between the proposed language of this section and § 250.193, certain requirements in the

proposed rule were merged with § 250.193. All personnel are permitted, under § 250.193, to report to BSEE any hazardous or unsafe working conditions and any possible violations of an order, regulation, or any other provision of Federal law relating to offshore safety.

Section 250.1933 of the final rule requires the operator to develop procedures for reporting unsafe working conditions. These procedures must take into account the existing USCG unsafe working conditions reporting requirements currently found at 33 CFR 142.7 and 46 CFR 109.419.

*Comment:* Several commenters suggested adding a requirement to the proposed language for personnel to first notify the operator of unsafe conditions so that such conditions can be addressed and remedied immediately.

*Response:* The BSEE agrees with the comment but sees no need to revise the regulation. There is nothing in this requirement that prevents personnel from first notifying the operator of an unsafe working condition before they notify BSEE, regardless of whether the unsafe condition poses an imminent risk or danger. If personnel are conducting an activity and believe the activity poses an imminent risk or danger, they have the authority to stop work under § 250.1930. Once SWA is activated, management on the facility will be aware of the unsafe condition.

*Comment:* Several commenters objected to the posting of a notice at each work location explaining personnel rights and contact information. These commenters prefer to post this information on their companies' Web site. They believe that posting the information on their Web sites will ensure that the information is readily accessible at all times from any location. They felt that the requirement to provide a card containing BSEE's telephone number for information and reporting of unsafe activities would not accomplish the intended purpose since these cards could be easily lost or misplaced. They believe the distribution of cards will also be very burdensome given the level of activity in the OCS and the constant changing of personnel. The commenters did not object to initial briefings or annual reminders regarding the reporting opportunity and will incorporate this into their current training requirements for personnel.

*Response:* The BSEE disagrees in part. The BSEE requires the posting of notices, convenient and understandable for workers, so that when personnel are working in a potentially unsafe environment, they have access to the information necessary to call or go online to notify BSEE anonymously of

questionable/unsafe activity. There is nothing in this requirement that prohibits an operator from developing a provision in its SEMS program that states this information must be posted on an operator's Web site in addition to posting a notice at the work site that contains the reporting information contained in § 250.193.

We agree with the comment concerning the distribution of cards. We have removed the requirement for personnel to carry an unsafe working condition notification card. Instead, a new BSEE Toll-free Safety Hotline number and reporting Web site were established and are listed in this regulation under § 250.193.

*Comment:* One commenter stated that the proposed language in this section will apply to "contractors providing domestic services to the lessee or other contractors, including domestic services include [sic] janitorial work, food and beverage service, laundry service, housekeeping, and similar activities \* \* \*". The commenter stated that the proposed language appears to be in conflict with existing § 250.1914(a), which excludes "contractors providing domestic services to the lessee or other contractors" from the definition of *contractors*.

*Response:* The BSEE disagrees. Section 250.193 allows all personnel, including contractors providing domestic services, to anonymously report to BSEE a possible violation of any order, standard, or regulation. The BSEE believes that the reporting requirement should include not only the contractors covered in § 250.1914(a), but all contractors on a facility, including a MODU, since individuals involved with any level of responsibility, including housekeeping and janitorial duties, can witness an unsafe act.

*Comment:* One commenter said that the training language in the proposed § 250.1933 states that follow-up training must be provided "not less than once every 12 months thereafter." The proposed language of this subsection does not allow for a precise determination of the date by which follow-up training must be provided. The commenter asked whether 12 months means 365 days, or does it mean that the follow-up training must be conducted during the same month that the initial training was conducted, or either? Several commenters stated that the time allowed for initial training (within 30 days of employment) was inadequate and it should be increased.

*Response:* The BSEE believes the existing training requirements in § 250.1915 are adequate. Therefore, the training frequency requirements in the

proposed § 250.1933(g) have been removed from the final rule.

*Comment:* One commenter stated that the proposed language of § 250.1933(g) and (h) only applies to *employees* and not to *contractors*. It is the commenter's understanding that the intent is to limit the applicability of these proposed subsections to operator employees.

*Response:* The BSEE disagrees in part. Proposed § 250.1933(g) and (h) were removed from the final rule. However, BSEE maintains its position that training and safety requirements apply to all personnel as stated in § 250.1915. The definition of *personnel* in § 250.1903 includes contractors.

*Comment:* One commenter stated that this portion of the rule should be deleted since it is similar to the existing § 250.193.

*Response:* The BSEE agrees in part. The BSEE agrees that some parts of this section were redundant with § 250.193 and moved the relevant language to § 250.193.

*Comment:* One commenter stated that BSEE should clarify whether the reporting hotline is *toll-free*. If not, then BSEE should say so and state that it is going to make provisions for assuming any usage charges associated with calls from offshore locations to the numbers provided in the regulations.

*Response:* The BSEE disagrees. The final rule uses the term *toll-free*; its common meaning is that there are no long-distance fees charged for calling the hotline. Since the area code for the hotline is not a traditional 1-800 prefix, *toll-free* must be retained in order to ensure that personnel who wish to call in a report know that the hotline will not charge long-distance fees. However, users may still be responsible to their own communication service provider for applicable charges.

*Comment:* One commenter stated that 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.

*Response:* The BSEE disagrees in part. A supplemental notice of proposed rulemaking is not necessary to resolve this concern. This language in the final rule has been moved to § 250.193. When a possible violation is reported, BSEE will investigate the matter and take appropriate action, which could include referral to other agencies.

## Procedural Matters

### Regulatory Planning and Review (Executive Orders (E.O.) 12866 and 13563)

This final rule is a significant rule as determined by the Office of Management and Budget (OMB) and is subject to review under E.O. 12866.

(1) This final rule will not have an annual effect of \$100 million or more on the economy.

(2) It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(3) This final rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(4) This final rule will not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(5) This final rule might raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

The E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. The E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Executive Order 13563 requires each agency to account for "among other things, and to the extent practicable, the costs of cumulative regulations." The BSEE is using the Paperwork Reduction Act (PRA) Burden Table for Subpart S to estimate the cumulative cost of SEMS regulations. Due to this rulemaking, BSEE estimates a program increase of 186,629 burden hours imposed on private sector operators and a non-hour cost burden of \$1,250,000. The total PRA hour burden inventory for the SEMS program required in 30 CFR 250 subpart S is estimated to be 651,728 hours inclusive of this rulemaking. The total non-hour burden is estimated to be \$1,250,000 for the cost of paying

independent parties to audit SEMS implementation.

The full annual E.O. 13563 analysis costs of the SEMS requirements in Subpart S (this rulemaking and existing

requirements) is summarized in the following Table.

#### E.O. 13563 SUMMARY COST

	Burden hours	Est. annual cost
PRA @ \$86/hr. ....	651,728	\$56,048,608
Non-Hour Cost Burden .....		\$ 1,250,000
TOTAL: .....		\$57,298,608

The BSEE has prepared an RIA for this rulemaking. The full analysis can be found on the Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). In the entry titled *Enter Keyword or ID*, enter BSEE-2012-0011 then click search. Follow the instructions to view the RIA and submit public comments for this rulemaking.

The BSEE estimates the average annual cost of complying with this rulemaking is approximately \$17 million, spread across all OCS oil and gas operators with active operations. The benefits of the SEMS provisions in this rulemaking will come from enhanced safety for offshore workers and greater protection of the marine environment. These benefits will be realized through additional employee participation in safety procedures, training programs, notification obligations as well as strengthened safety and SEMS auditing procedures.

The protection of human life and the environment are the top priorities and objectives of this rule. It is difficult to quantify the benefits of lives saved and risks avoided due to this regulation. However, implementing these requirements will further the goal of avoiding accidents that may result in injuries, fatalities or serious environmental damage.

The compliance cost for managing a comprehensive SEMS program is estimated to be very minor compared to the costs associated with major accidents. For example, in 1987, prior to industry's development of a safety management template for offshore operations, the Mississippi Canyon 311, A (Bourbon), platform in the Gulf of Mexico was tilted to one side by an extensive underground blowout. The cost associated with this incident alone was \$274,000,000. In 1989, a fire associated with a pipeline repair killed 7 people and destroyed a major production facility. The 2010 *Deepwater Horizon* explosion and oil spill killed 11 people, destroyed the drilling rig, and caused billions of dollars in damages. A SEMS plan will implement procedures

and evaluations that may prevent or mitigate the adverse consequences of these types of events. The BSEE concludes that these additional requirements will further enhance the existing safety management program on OCS facilities.

#### Regulatory Flexibility Act: Final Regulatory Flexibility Analysis

The BSEE has prepared a Final Regulatory Flexibility Analysis (FRFA) in conjunction with this final rule.

The FRFA for this final rule is available as part of the RIA. The FRFA can be found on the Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). In the entry titled *Enter Keyword or ID*, enter BSEE-2012-0011 then click search. Follow the instructions to view the RIA and FRFA, and submit public comments for this rulemaking.

The changes in the final rule will affect lessees and operators of leases and pipeline right-of-way holders on the OCS. This group could include about 130 active Federal oil and gas lessees. Small lessees that operate under this rule fall under the Small Business Administration's North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 65 percent of these companies are considered small. This final rule, therefore, will affect a substantial number of small entities.

Small entities are represented in all activity levels of OCS operations (high, moderate, and low based on the number of offshore complexes the entity operates). Small companies will bear approximately 43 percent of the costs of this final rulemaking. While 43 percent is greater than small companies' percentage share of OCS leases, small companies hold 45 percent of leases in the shallow water depths where most production facilities are located (98

percent of active platforms are in shallow water).

The operating risk for small companies to incur safety or environmental accidents is not lower than it is for larger-sized companies. Offshore operations are highly technical and can be hazardous. The risk level along with the adverse consequences in the event of incidents is the same regardless of the operator's size. The BSEE evaluated a number of alternatives based on the size of an operator including those provided through comments but was unable to identify provisions that will impose lesser requirements on some operators and still achieve the same safety objectives.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of BSEE, call 1-888-734-3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

#### Small Business Regulatory Enforcement Fairness Act

The final rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*). This final rule:

- Will not have an annual effect on the economy of \$100 million or more.
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

The requirements will apply to all entities operating on the OCS.

#### Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

#### Takings Implication Assessment (E.O. 12630)

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

#### Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this final rule does not have federalism implications. This final rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this final rule will not affect that role. A Federalism Assessment is not required.

#### Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

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

#### Consultation With Indian Tribes (E.O. 13175)

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

#### Paperwork Reduction Act (PRA) of 1995

This rule contains a collection of information that was submitted to OMB for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The title of the information collection (IC) for this rule

is 30 CFR Part 250, Subpart S, *Safety and Environmental Management Systems for Outer Continental Shelf Oil, Gas, and Sulphur Operations*. The OMB approved the collection under Control Number 1014-0017, expiration 3/31/2016, 651,728 hours, \$1,250,000 non-hour cost burdens. Respondents primarily are Federal OCS oil, gas, and sulphur lessees and/or operators or other independent third parties. The frequency of response varies, but is primarily annual. Responses to this IC are mandatory.

The BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 522) and its implementing regulations (43 CFR part 2), and 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection* and 30 CFR part 252, *OCS Oil and Gas Information Program*. The BSEE will use the information to evaluate the effect of industry's continued improvement of OCS safety and environmental management and its compliance with the regulations. It should be noted that while this rulemaking adds additional burden hours to industry, the vast majority of these hours stem from expanding their current SEMS program, along with documenting and recordkeeping relative to these expanded requirements, and to address issues raised in testimony, hearings, and reports being released about the *Deepwater Horizon* explosion and oil spill.

As stated in the preamble, BSEE received 35 sets of comments from individual entities (companies, industry organizations, or private citizens). In response to the comments, we made adjustments to both hour and non-hour cost burdens from the burdens published in the preamble of the proposed rule. The changes and reasons for making them are as follows:

- §§ 250.1900–250.1933 Operator Activity: Changes from the proposed to final rule incorporate refresher training requirements to coincide with audits, once every 3 years. These changes result in the following burden increases:
  - (1) High Activity operator (+10,504 hours).
  - (2) Moderate Activity operator (+8,405 hours).
  - (3) Low Activity operator (+2,128 hours).
- § 250.1911(b)—Expanded the requirement to include additional signatures but we deem that the current and proposed hour burden is sufficient to adequately cover the requirement.

—§ 250.1922—Added a new requirement—Organization requests approval for AB; submits documentation for assessing, approving, maintaining, and withdrawing accreditation of ASP (+48 hours).

—§ 250.1925(a)—The BSEE directed audit non-hour cost burdens were adjusted to be aligned with the audit costs in § 250.1920(a). We have determined that since an ASP will be part of the audit process, audits will be more objective; therefore, there will be less likelihood for as many BSEE-directed audits as was previously determined (–\$15,000 non-hour cost burdens).

—§ 250.1926—Removed independent third-party requirements [–129 hours], but moved conflict of interest [+3 hours] to § 250.1922, for a total net reduction (–126 hours).

—§ 250.1932(d), (e)—Removed the requirement, upon request, to provide BSEE a copy of your EPP; make plan available during an audit (–43 hours).

—§ 250.1933(c)—[in this rule now § 250.1933(a)] Removed the requirement for employees to report unsafe practices and/or health violation since we have reporting of violations in current § 250.193 (–1 burden hour).

—§ 250.1933(f) [in this rule now § 250.1933(b)]—The requirement remains the same; recalculated the hour burden—Post notice where personnel can view their rights for reporting unsafe practices (–863 hours).

—§ 250.1933(h)—Removed—Create and distribute to all personnel unsafe activities card with relevant information (–10,500 hours).

The following requirement, § 250.1920(a), was in the proposed rule but the non-hour cost burdens for the requirements were inadvertently omitted from the burden table.

—§§ 250.1920(a), (b), and 250.1921—You must have your SEMS program audited by an ASP according to the requirements of this subpart and API RP 75, Section 12 (incorporated by reference as specified in § 250.198) within two years of the initial implementation of the SEMS program and at least once every three years thereafter. [Since we revised the requirement to no longer allow for in-house qualified personnel to lead an audit, we added non-hour cost burdens for each operator activity to cover the costs of engaging ASPs to conduct audits once every 3 years (+\$974,000 non-hour cost burdens)].

This final rulemaking also removes all the non-hour cost burdens for the initial implementation of SEMS required by the existing Subpart S regulation. Operators were required to have their SEMS implemented by November 15,

2011, which was after this proposed rule was published, so BSEE had to account for the non-hour cost burdens in this proposed rule. Now that operators have implemented their SEMS, we no longer need to account for

that non-hour cost burden; therefore, we removed the non-hour cost burdens pertaining to implementation (– \$12,642,000).

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BURDEN TABLE

[Italics show expansion/revision of existing requirements; bold indicates new requirements; current regulations are regular font.]

Citation 30 CFR 250 Subpart A	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Additional annual burden hours
193 .....	Report possible hazardous, unsafe working conditions, violations, or non-compliance issues; if possible submit information/supporting documentation.	Burden included under 30 CFR 250, Subpart A—1010–0114.		0
Citation 30 CFR 250 Subpart S	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Additional annual burden hours
1900–1933 <i>Expanded.</i>	High Activity Operator: Have a SEMS program, and maintain all documentation and records pertaining to your SEMS program, according to API RP 75, ISO/IEC 17011 in their entirety, the COS–2–01, 03, and 04 documents as listed in §250.198, and all the requirements as detailed in 30 CFR 250, Subpart S. Make your SEMS available to BSEE upon request.	18,708 ..... 3,656 .....	13 operators .....	243,204 47,528
1900–1933 <i>Expanded.</i>	Moderate Activity Operator: Have a SEMS program, and maintain all documentation and records pertaining to your SEMS program, according to API RP 75, the three COS documents in their entirety, and all the requirements as detailed in 30 CFR 250, Subpart S. Make your SEMS available to BSEE upon request.	2,528 ..... 2,393 .....	41 operators .....	103,648 98,113
1900–1933 <i>Expanded.</i>	Low Activity Operator: Have a SEMS program, and maintain all documentation and records pertaining to your SEMS program, according to API RP 75, the three COS documents in their entirety, and all the requirements as detailed in 30 CFR 250, Subpart S. Make your SEMS available to BSEE upon request.	899 ..... 128 .....	76 operators .....	68,324 9,728
1928(d), (e); 1929.	Submit Form BSEE–0131. Maintain a contractor employee injury/illness log in the operation area, retain for 2 years, and make available to BSEE upon request (this requirement is included in the form burden). Inform contractors of hazards.	10 .....	130 operators ...	1,300
1911(b) <i>Expanded.</i>	Immediate supervisor must conduct a JSA, sign the JSA, and ensure all personnel participating sign the JSA. The individual designated as being in charge of facility approves and signs all JSAs before job starts. NOTE: If activity is repeated, the 1st signed JSA is allowed .....	10 mins. .... 1 min. ....	130 operators × 365 days × 6 = 284,700*	47,450 4,745
1920(a), (b); 1921 Revised.	ASP audit for High Activity Operator ..... ASP audit for Moderate Activity Operator ..... ASP audit for Low Activity Operator ..... NOTE: An audit once every 3 years.	13 operators × \$60,000 audit = \$780,000/3 = \$260,000		
		41 operators × \$30,000 audit = \$1,230,000/3 = \$410,000		
		76 operators × \$12,000 audit = \$912,000/3 = \$304,000		
1920 .....	Notify BSEE with audit schedule 30 days prior to conducting your audit.	1 .....	130 operators/ once every 3 years = 43	43 (rounded)
1920(c); 1925; ..	Submit to BSEE after completed audit, an audit report of findings and conclusions, including deficiencies and required supporting information/documentation.	3 .....	44 operators .....	132
1920(d); 1925(b);	Submit/resubmit a copy of your CAP that will address deficiencies identified in audit.	4 .....	10 submissions	40

Citation 30 CFR 250 Subpart S	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Additional annual burden hours
1922 NEW .....	Organization requests approval for AB; submits documentation for assessing, approving, maintaining, and withdrawing accreditation of ASP.	16 .....	3 .....	48
1922 NEW .....	Make available to BSEE upon request, conflict of interest procedures.	15 mins .....	12 requests .....	3
1924(b) .....	Make available to BSEE upon request, evaluation documentation and supporting information relating to your SEMS.	2 .....	130 operators ...	260
1924(c) .....	Explain and demonstrate your SEMS during site visit if required; provide evidence supporting your SEMS implementation.	8 .....	6 explanations ..	48
1925(a); .....	Pay for all costs associated with BSEE directed ASP audit approximately 10 percent per operator per category: 1 required audit for high operator (\$60,000 per audit × 1 audit = \$60,000); 4 required audits for moderate operator (\$30,000 per audit × 4 audits = \$120,000; and 8 required audits for low operator (\$12,000 per audit per 8 audits = \$96,000) = 13 required audits per year.	13 BSEE directed ASP audits—for a total of \$276,000.		
1928 Expanded	(1) Document and keep all SEMS audits for 6 years (at least 2 full audit cycles) at an onshore location. (2) JSAs must have documented results in writing and kept onsite for 30 days, or until release of the MODU; retain records for 2 years. (3) All MOC records (API RP Sec 4) must be documented, dated, and retained for 2 years. (4) SWA documentation must be kept onsite for 30 days; retain records for 2 years. (5) Documentation of employee participation must be retained for 2 years. (6) All documentation included in this requirement must be made available to BSEE upon request.	5 .....	130 operators ...	650
		2hrs/mo × 12 mos/yr = 24 hrs	1,007 manned facilities	24,168
		30 mins .....	2,447 unmanned facilities	1,224 (rounded)
1930(c) NEW ....	Document decision to resume SWA activities .....	8 .....	Once every 2 wks = 26	208
1933(a) NEW ....	Procedures for personnel reports unsafe practices and/or possible violations.	Burden covered under 30 CFR 250, Subpart A 1010–0114.		0
1933(b) NEW ...	Post notice where personnel can view reporting information pertaining to possible violations.	15 mins .....	3,454 facilities	864
CURRENT SUBPART S BURDEN			285,469 Responses	465,099 Hours
			\$12,933,000 Non-Hour Cost Burdens	
NEW and EXPANDED BURDEN added to 30 CFR 250, Subpart S			6,946 responses	186,629 hours
			\$1,250,000 non-hour cost burdens	
COMBINED [current, new, and expanded] TOTAL SUBPART S			292,415 Responses	651,728 Hours
			\$1,250,000 Non-Hour Cost Burdens	

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

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An agency may not conduct or sponsor, and you are not required to respond to, a collection of information

unless it displays a currently valid OMB control number. The public may comment, at any time, on the accuracy

of the IC burden in this rule and may submit any comments to DOI/BSEE; ATTN: Regulations and Standards

Branch; HE-3313; 381 Elden Street; Herndon, Virginia 20170-4817.

### National Environmental Policy Act of 1969

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

Most sections of the rule address strictly administrative, technical, and/or procedural matters. Specific examples include definitions of terminology, scope and timing of documentation, recordkeeping, transfer of information, and general descriptions of what is to be included in written procedures. The rule does not create the potential for environmental effects as a result of new technologies, technology configurations, or technological procedures as such measures are not part of the rule. For aspects of the rule dealing with mechanical integrity and inspections, the requirements are procedural as the rule covers the content of the written procedures. While the rule identifies the requirement, it allows the operator to choose the means to accomplish the end as long as it is consistent with the SEMS requirements.

Other subsections require activities in addition to administrative tasks, advance planning, and procedural documentation, such as training, emergency response drills, and corrective procedural actions that address human errors identified in investigations. These requirements are also considered procedural in nature since the subsections describe general and ordered steps that operators must undertake to have and maintain a compliant SEMS program. Sections that require training or drilling of personnel are procedural in that they target the cognitive skills and knowledge of personnel (e.g., § 250.1915(b)) and/or clarify the purpose and/or scope of training (e.g., § 250.1918(c)). For

example, in § 250.1918, BSEE requires training and drills for personnel to exercise elements in the Emergency Action Plan that focus on response, control, and evacuation procedures and reporting. The principal purpose of this is to ensure retention and refinement of the skills, knowledge, and abilities of personnel.

Each section and subsection has also been reviewed to ensure that no potentially relevant extraordinary circumstances apply to the final action that will warrant the preparation of an environmental assessment or environmental impact statement. All extraordinary circumstances were considered in accordance with 43 CFR 46.215, but only the following ones are potentially applicable:

- (1) Have significant impacts on public health or safety.
- (2) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
- (3) Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

The BSEE has analyzed this rule to determine if it meets any of the extraordinary circumstances that will require an Environmental Assessment or an Environmental Impact Statement as set forth in 516 Departmental Manual 2.3, and Appendix 2. The BSEE concluded that this rule does not meet any of the criteria for extraordinary circumstances as set forth in 43 CFR 46.215.

### Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554, app. C § 515, 114 Stat. 2763, 2763A-153-154).

### Effects on the Nation's Energy Supply (E.O. 13211)

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

### List of Subjects in 30 CFR Part 250

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

Dated: March 28, 2013.

**Tommy P. Beaudreau,**

*Acting Assistant Secretary—Land and Minerals Management.*

For the reasons stated in the preamble, the Bureau of Safety and Environmental Enforcement (BSEE) is amending 30 CFR part 250 as follows:

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

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

**Authority:** 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

- 2. In § 250.105, under the definition for “facility,” add paragraph (5) to read as follows:

#### § 250.105 Definitions.

\* \* \* \* \*

*Facility* means:

\* \* \* \* \*

(5) As used in Subpart S of this part, all types of structures permanently or temporarily attached to the seabed (e.g., mobile offshore drilling units (MODUs); floating production systems; floating production, storage and offloading facilities; tension-leg platforms; and spars) that are used for exploration, development, and production activities for oil, gas, or sulphur in the OCS. Facilities also include DOI-regulated pipelines.

\* \* \* \* \*

- 3. Revise § 250.193 to read as follows:

#### § 250.193 Reports and investigations of possible violations.

(a) Any person may report to BSEE any hazardous or unsafe working condition on any facility engaged in OCS activities, and any possible violation or failure to comply with:

- (1) Any provision of the Act,
- (2) Any provision of a lease, approved plan, or permit issued under the Act,
- (3) Any provision of any regulation or order issued under the Act, or
- (4) Any other Federal law relating to safety of offshore oil and gas operations.

(b) To make a report under this section, a person is not required to know whether any legal requirement listed in paragraph (a) of this section has been violated.

(c) When BSEE receives a report of a possible violation, or when a BSEE employee detects a possible violation, BSEE will investigate according to BSEE procedures and notify any other Federal agency(ies) for further investigation, as appropriate.

(d) BSEE investigations of possible violations may include:

- (1) Conducting interviews of personnel;
  - (2) Requiring the prompt production of documents, data, and other evidence;
  - (3) Requiring the preservation of all relevant evidence and access for BSEE investigators to such evidence; and
  - (4) Taking other actions and imposing other requirements as necessary to investigate possible violations and assure an orderly investigation.
- (e)(1) Reports should contain sufficient credible information to establish a reasonable basis for BSEE to investigate whether a violation or other hazardous or unsafe working condition exists.

(2) To report hazardous or unsafe working conditions or a possible violation:

- (i) Contact BSEE by:
  - (A) Phone at 1-877-440-0173 (BSEE Toll-free Safety Hotline),
  - (B) Internet at [www.bsee.gov](http://www.bsee.gov), or
  - (C) Mail to: U.S. DOI/BSEE, 1849 C Street NW., Mail Stop 5438, Herndon, VA 20240 Attention: IRU Hotline Operations.

(ii) Include the following items in the report:

- (A) Name, address, and telephone number should be provided if you do not want to remain anonymous;
- (B) The specific concern, provision or Federal law, if known, referenced in (a) that a person violated or with which a person failed to comply; and
- (C) Any other facts, data, and applicable information.

(f) When a possible violation is reported, BSEE will protect a person's identity to the extent authorized by law.

■ 4. Amend § 250.198 by adding paragraphs (m) and (n) to read as follows:

**§ 250.198 Documents incorporated by reference.**

\* \* \* \* \*

(m) International Organization for Standardization (ISO), 1, ch. De la Voie-Creuse, Case postale 56, CH-1211, Geneva 20, Switzerland; [www.iso.org](http://www.iso.org); phone: 41-22-749-01-11.

(1) ISO/IEC (International Electrotechnical Commission) 17011, Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies, First edition 2004-09-01; Corrected version 2005-02-15; incorporated by reference at §§ 250.1900, 250.1903, 250.1904, and 250.1922.

(2) [Reserved].

(n) Center for Offshore Safety (COS), 1990 Post Oak Blvd., Suite 1370, Houston, TX 77056; [www.centerforoffshoresafety.org](http://www.centerforoffshoresafety.org); phone: 832-495-4925.

(1) COS Safety Publication COS-2-01, Qualification and Competence Requirements for Audit Teams and Auditors Performing Third-party SEMS Audits of Deepwater Operations, First Edition, Effective Date October 2012; incorporated by reference at §§ 250.1900, 250.1903, 250.1904, and 250.1921.

(2) COS Safety Publication COS-2-03, Requirements for Third-party SEMS Auditing and Certification of Deepwater Operations, First Edition, Effective Date October 2012; incorporated by reference at §§ 250.1900, 250.1903, 250.1904, and 250.1920.

(3) COS Safety Publication COS-2-04, Requirements for Accreditation of Audit Service Providers Performing SEMS Audits and Certification of Deepwater Operations, First Edition, Effective Date October 2012; incorporated by reference at §§ 250.1900, 250.1903, 250.1904, and 250.1922.

- 5. Amend § 250.1900 by:
- a. Removing paragraphs (a) and (b),
  - b. Redesignating paragraphs (c) and (d) as (a) and (b) respectively, and
  - c. Revising newly redesignated paragraph (a) to read as follows:

**§ 250.1900 Must I have a SEMS program?**

\* \* \* \* \*

(a) If there are any conflicts between the requirements of this subpart and API RP 75; COS-2-01, COS-2-03, or COS-2-04; or ISO/IEC 17011 (incorporated by reference as specified in § 250.198), you must follow the requirements of this subpart.

\* \* \* \* \*

■ 6. In § 250.1901, revise paragraph (a) to read as follows:

**§ 250.1901 What is the goal of my SEMS program?**

\* \* \* \* \*

(a) To accomplish this goal, you must ensure that your SEMS program identifies, addresses, and manages safety, environmental hazards, and impacts during the design, construction, start-up, operation (including, but not limited to, drilling and decommissioning), inspection, and maintenance of all new and existing facilities, including mobile offshore drilling units (MODUs) when attached to the seabed and Department of the Interior (DOI) regulated pipelines.

- \* \* \* \* \*
- 7. Amend § 250.1902 by:
- a. Revising paragraphs (a)(12) and (13),
  - b. Adding paragraphs (a)(14) through (17); and
  - c. Revising paragraph (b).
- The revisions and additions read as follows:

**§ 250.1902 What must I include in my SEMS program?**

- \* \* \* \* \*
- (a) \* \* \*
    - (12) Auditing (Audit of Safety and Environmental Management Program Elements) (*see* § 250.1920)
    - (13) Recordkeeping (Records and Documentation) and additional BSEE requirements (*see* § 250.1928)
    - (14) Stop Work Authority (SWA) (*see* § 250.1930)
    - (15) Ultimate Work Authority (UWA) (*see* § 250.1931)
    - (16) Employee Participation Plan (EPP) (*see* § 250.1932)
    - (17) Reporting Unsafe Working Conditions (*see* § 250.1933).
  - (b) You must include a job safety analysis (JSA) for OCS activities identified or discussed in your SEMS program (*see* § 250.1911).

\* \* \* \* \*

■ 8. Revise § 250.1903 to read as follows:

**§ 250.1903 Acronyms and definitions.**

Definitions listed in this section apply to this subpart and supersede definitions in API RP 75, Appendices D and E; COS-2-01, COS-2-03, and COS-2-04; and ISO/IEC 17011 (incorporated by reference as specified in § 250.198).

- (a) *Acronyms* used frequently in this subpart have the following meanings:
- AB* means Accreditation Body,
  - ASP* means Audit Service Provider,
  - CAP* means Corrective Action Plan,
  - COS* means Center for Offshore Safety,
  - EPP* means Employee Participation Plan,
  - ISO* means International Organization for Standardization,
  - JSA* means Job Safety Analysis,
  - MODU* means Mobile Offshore Drilling Unit,
  - OCS* means Outer Continental Shelf,
  - SEMS* means Safety and Environmental Management Systems,
  - SWA* means Stop Work Authority,
  - USCG* means United States Coast Guard, and
  - UWA* means Ultimate Work Authority.

(b) *Terms* used in this subpart are listed alphabetically as follows:

*Accreditation body (AB)* means a BSEE-approved independent third-party organization that assesses and accredits ASPs.

*Audit service provider (ASP)* means an independent third-party organization that demonstrates competence to conduct SEMS audits in accordance with the requirements of this subpart.

*Corrective action plan (CAP)* means a scheduled plan to correct deficiencies

identified during an audit and that is developed by an operator following the issuance of an audit report.

*Personnel* means direct employee(s) of the operator and contracted workers.

*Ultimate Work Authority (UWA)* means the authority assigned to an individual or position to make final decisions relating to activities and operations on the facility.

■ 9. Revise § 250.1904 to read as follows:

**§ 250.1904 Special instructions.**

(a) For purposes of this subpart, each and every reference in COS-2-01, COS-2-03, and COS-2-04 (incorporated by reference as specified in § 250.198) to the term *deepwater* means the entire OCS, including all water depths.

(b) The BSEE does not incorporate by reference any requirement that you must be a COS member company. For purposes of this subpart, each and every reference in COS-2-01, COS-2-03, and COS-2-04 to the phrase *COS member company(ies)* means you, whether or not you are a COS member.

(c) For purposes of this subpart, each and every reference in the relevant sections of COS-2-01, COS-2-03, and COS-2-04 (incorporated by reference as specified in § 250.198) to the *Center for Offshore Safety* or *COS* means *accreditation body* or *AB*.

(d) For purposes of this subpart, each and every reference in ISO/IEC 17011 (incorporated by reference as specified in § 250.198) to *conformity assessment body (CAB)* means *ASP*.

■ 10. Amend § 250.1911 by:

- a. Revising the section heading, the introductory text, and paragraphs (a) introductory text;
- b. Adding paragraph (a)(4);
- c. Revising paragraph (b); and
- d. Adding paragraph (c).

The revisions and additions read as follows:

**§ 250.1911 What hazards analysis criteria must my SEMS program meet?**

You must ensure that a hazards analysis (facility level) and a JSA (operations/task level) are developed and implemented for all of your facilities and activities identified or discussed in your SEMS. You must document and maintain a current analysis for each operation covered by this section for the life of the operation at the facility. You must update the analysis when an internal audit is conducted to ensure that it is consistent with your facility's current operations.

(a) *Hazards Analysis (facility level)*. The hazards analysis must be appropriate for the complexity of the operation and must identify, evaluate,

and manage the hazards involved in the operation.

\* \* \* \* \*

(4) A single hazards analysis can be performed to fulfill the requirements for simple and nearly identical facilities, such as well jackets and single well caissons. You can apply this single hazards analysis to simple and nearly identical facilities after you verify that any site-specific deviations are addressed in each of your SEMS program elements.

(b) *JSA*. You must ensure a JSA is prepared, conducted, and approved for OCS activities that are identified or discussed in your SEMS program. The JSA is a technique used to identify risks to personnel associated with their job activities. The JSAs are also used to determine the appropriate mitigation measures needed to reduce job risks to personnel. The JSA must include all personnel involved with the job activity.

(1) You must ensure that your JSA identifies, analyzes, and records:

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

(2) The immediate supervisor of the crew performing the job onsite must conduct the JSA, sign the JSA, and ensure that all personnel participating in the job understand and sign the JSA.

(3) The individual you designate as being in charge of the facility must approve and sign all JSAs before personnel start the job.

(4) If a particular job is conducted on a recurring basis, and if the parameters of these recurring jobs do not change, then the person in charge of the job may decide that a JSA for each individual job is not required. The parameters you must consider in making this determination include, but are not limited to, changes in personnel, procedures, equipment, and environmental conditions associated with the job.

(c) All personnel, which includes contractors, must be trained in accordance with the requirements of § 250.1915. You must also verify that contractors are trained in accordance with § 250.1915 prior to performing a job.

■ 11. In § 250.1914, revise the introductory text and paragraph (a) to 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 operations, maintenance, 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 record and environmental performance. You must ensure that contractors have their own written safe work practices. Contractors may adopt appropriate sections of your SEMS program. You and your contractor must document an agreement on appropriate contractor safety and environmental policies and practices before the contractor begins work at your facilities.

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

\* \* \* \* \*

■ 12. In § 250.1915, revise the section heading, the introductory text, and paragraphs (c) and (d) to read as follows:

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

Your SEMS program must establish and implement a training program so that all personnel are trained in accordance with their duties and responsibilities to work safely and are aware of potential environmental impacts. Training must address such areas as operating procedures (§ 250.1913), safe work practices (§ 250.1914), emergency response and control measures (§ 250.1918), SWA (§ 250.1930), UWA (§ 250.1931), EPP (§ 250.1932), reporting unsafe working conditions (§ 250.1933), and how to recognize and identify hazards and how to construct and implement JSAs (§ 250.1911). You must document your instructors' qualifications. Your SEMS program must address:

\* \* \* \* \*

(c) Communication requirements to ensure that personnel will be informed of and trained as outlined in this section whenever a change is made in any of the areas in your SEMS program that impacts their ability to properly understand and perform their duties and responsibilities. Training and/or

notice of the change must be given before personnel are expected to operate the facility.

(d) How you will verify that the contractors are trained in the work practices necessary to understand and perform their jobs in a safe and environmentally sound manner in accordance with all provisions of this section.

■ 13. Amend § 250.1920 by revising paragraphs (a), (b)(5), (b)(6), (c), and (d) and removing paragraph (e).

The revisions read as follows:

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

(a) Your SEMS program must be audited by an accredited ASP according to the requirements of this subpart and API RP 75, Section 12 (incorporated by reference as specified in § 250.198). The audit process must also meet or exceed the criteria in Sections 9.1 through 9.8 of *Requirements for Third-party SEMS Auditing and Certification of Deepwater Operations* COS–2–03 (incorporated by reference as specified in § 250.198) or its equivalent. Additionally, the audit team lead must be an employee, representative, or agent of the ASP, and must not have any affiliation with the operator. The remaining team members may be chosen from your personnel and those of the ASP. The audit must be comprehensive and include all elements of your SEMS program. It must also identify safety and environmental performance deficiencies.

(b) \* \* \*

(5) Section 12.5 Audit Frequency, except your audit interval, must not exceed 3 years after the 2-year time period for the first audit. The 3-year auditing cycle begins on the start date of each comprehensive audit (including the initial implementation audit) and ends on the start date of your next comprehensive audit.

(6) Section 12.6 Audit Team. Your audits must be performed by an ASP as described in § 250.1921. You must include the ASP's qualifications in your audit plan.

(c) You must submit an audit report of the audit findings, observations, deficiencies identified, and conclusions to BSEE within 60 days of the audit completion date.

(d) You must provide BSEE with a copy of your CAP for addressing the deficiencies identified in your audit within 60 days of the audit completion date. Your CAP must include the name and job title of the personnel responsible for correcting the identified deficiency(ies). The BSEE will notify you as soon as practicable after receipt of your CAP if your proposed schedule

is not acceptable or if the CAP does not effectively address the audit findings.

■ 14. Add §§ 250.1921 and 250.1922 to read as follows:

**§ 250.1921 What qualifications must the ASP meet?**

(a) The ASP must meet or exceed the qualifications, competency, and training criteria contained in Section 3 and Sections 6 through 10 of *Qualification and Competence Requirements for Audit Teams and Auditors Performing Third-party SEMS Audits of Deepwater Operations*, COS–2–01, (incorporated by reference as specified in § 250.198) or its equivalent;

(b) The ASP must be accredited by a BSEE-approved AB; and

(c) The ASP must perform an audit in accordance with 250.1920(a).

**§ 250.1922 What qualifications must an AB meet?**

(a) In order for BSEE to approve an AB, the organization must satisfy the requirements of the International Organization for Standardization's (ISO/IEC 17011) *Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies*, First Edition 2004–09–01; Corrected Version 2005–02–15 (incorporated by reference as specified in § 250.198) or its equivalent.

(1) The AB must have an accreditation process that meets or exceeds the requirements contained in Section 6 of *Requirements for Accreditation of Audit Service Providers Performing SEMS Audits and Certification of Deepwater Operations*, COS–2–04 (incorporated by reference as specified in § 250.198) or its equivalent, and other requirements specified in this subpart. Organizations requesting approval must submit documentation to BSEE describing the process for assessing an ASP for accreditation and approving, maintaining, and withdrawing the accreditation of an ASP. Requests for approval must be sent to DOI/BSEE, ATTN: Chief, Office of Offshore Regulatory Programs, 381 Elden Street, HE–3314, Herndon, VA 20170.

(2) An AB may be subject to BSEE audits and other requirements deemed necessary to verify compliance with the accreditation requirements.

(b) An AB must have procedures in place to avoid conflicts of interest with the ASP and make such information available to BSEE upon request.

■ 15. Amend § 250.1924 by revising paragraphs (a) and (b)(2) and removing paragraph (d).

The revisions read as follows:

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

(a) The BSEE, or its authorized representative, may evaluate or visit your facility(ies) to determine whether your SEMS program is in place, addresses all required elements, is effective in protecting worker safety and health and the environment, and preventing incidents. The BSEE, or its authorized representative, may evaluate any and all aspects of your SEMS program as outlined in this subpart. These evaluations or visits may be random and may be based upon your performance or that of your contractors.

(b) \* \* \*

(2) Your audit team's qualifications.

\* \* \* \* \*

■ 16. Revise § 250.1925 to read as follows:

**§ 250.1925 May BSEE direct me to conduct additional audits?**

(a) The BSEE may direct you to have an ASP audit of your SEMS program if BSEE identifies safety or non-compliance concerns based on the results of our inspections and evaluations, or as a result of an event. This BSEE-directed audit is in addition to the regular audit required by § 250.1920. Alternatively, BSEE may conduct an audit.

(1) If BSEE directs you to have an ASP audit, you are responsible for all of the costs associated with the audit, and

(i) The ASP must meet the requirements of §§ 250.1920 and 250.1921 of this subpart.

(ii) You must submit an audit report of the audit findings, observations, deficiencies identified, and conclusions to BSEE within 60 days of the audit completion date.

(2) If BSEE conducts the audit, BSEE will provide you with a report of the audit findings, observations, deficiencies identified, and conclusions as soon as practicable.

(b) You must provide BSEE a copy of your CAP for addressing the deficiencies identified in the BSEE-directed audit within 60 days of the audit completion date. Your CAP must include the name and job title of the personnel responsible for correcting the identified deficiency(ies). The BSEE will notify you as soon as practicable after receipt of your CAP if your proposed schedule is not acceptable or if the CAP does not effectively address the audit findings.

**§ 250.1926 [Removed and Reserved]**

■ 17. Remove and reserve § 250.1926

■ 18. Amend § 250.1928 by:

■ a. Revising paragraph (b);

- b. Redesignating paragraph (f) as paragraph (h); and
- c. Adding new paragraphs (f) and (g).  
The revision and additions read as follows:

**§ 250.1928 What are my recordkeeping and documentation requirements?**

\* \* \* \* \*

(b) For JSAs, the person in charge of the job must document the results of the JSA in writing and must ensure that records are kept onsite for 30 days. In the case of a MODU, records must be kept onsite for 30 days or until you release the MODU, whichever comes first. You must retain these records for 2 years and make them available to BSEE upon request.

\* \* \* \* \*

(f) For SWA, you must document all training and reviews required by § 250.1930(e). You must ensure that these records are kept onsite for 30 days. In the case of a MODU, records must be kept onsite for 30 days or until you release the MODU, whichever comes first. You must retain these records for 2 years and make them available to BSEE upon request.

(g) For EPP, you must document your employees' participation in the development and implementation of the SEMS program. You must retain these records for 2 years and make them available to BSEE upon request.

\* \* \* \* \*

- 20. Add §§ 250.1930 through 250.1933 to read as follows:

**§ 250.1930 What must be included in my SEMS program for SWA?**

(a) Your SWA procedures must ensure the capability to immediately stop work that is creating imminent risk or danger. These procedures must grant all personnel the responsibility and authority, without fear of reprisal, to stop work or decline to perform an assigned task when an imminent risk or danger exists. Imminent risk or danger means any condition, activity, or practice in the workplace that could reasonably be expected to cause:

- (1) Death or serious physical harm; or
- (2) Significant environmental harm to:
  - (i) Land;
  - (ii) Air; or
  - (iii) Mineral deposits, marine, coastal, or human environment.

(b) The person in charge of the conducted work is responsible for ensuring the work is stopped in an orderly and safe manner. Individuals who receive a notification to stop work must comply with that direction immediately.

(c) Work may be resumed when the individual on the facility with UWA

determines that the imminent risk or danger does not exist or no longer exists. The decision to resume activities must be documented in writing as soon as practicable.

(d) You must include SWA procedures and expectations as a standard statement in all JSAs.

(e) You must conduct training on your SWA procedures as part of orientations for all new personnel who perform activities on the OCS. Additionally, the SWA procedures must be reviewed during all meetings focusing on safety on facilities subject to this subpart.

**§ 250.1931 What must be included in my SEMS program for UWA?**

(a) Your SEMS program must have a process to identify the individual with the UWA on your facility(ies). You must designate this individual taking into account all applicable USCG regulations that deal with designating a person in charge of an OCS facility. Your SEMS program must clearly define who is in charge at all times. In the event that multiple facilities, including a MODU, are attached and working together or in close proximity to one another to perform an OCS operation, your SEMS program must identify the individual with the UWA over the entire operation, including all facilities.

(b) You must ensure that all personnel clearly know who has UWA and who is in charge of a specific operation or activity at all times, including when that responsibility shifts to a different individual.

(c) The SEMS program must provide that if an emergency occurs that creates an imminent risk or danger to the health or safety of an individual, the public, or to the environment (as specified in § 250.1930(a)), the individual with the UWA is authorized to pursue the most effective action necessary in that individual's judgment for mitigating and abating the conditions or practices causing the emergency.

**§ 250.1932 What are my EPP requirements?**

(a) Your management must consult with their employees on the development, implementation, and modification of your SEMS program.

(b) Your management must develop a written plan of action regarding how your appropriate employees, in both your offices and those working on offshore facilities, will participate in your SEMS program development and implementation.

(c) Your management must ensure that employees have access to sections of your SEMS program that are relevant to their jobs.

**§ 250.1933 What procedures must be included for reporting unsafe working conditions?**

(a) Your SEMS program must include procedures for all personnel to report unsafe working conditions in accordance with § 250.193. These procedures must take into account applicable USCG reporting requirements for unsafe working conditions.

(b) You must post a notice at the place of employment in a visible location frequently visited by personnel that contains the reporting information in § 250.193.

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 103**

[DoD-2008-OS-0124; 0790-AI37]

**Sexual Assault Prevention and Response (SAPR) Program**

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This part implements Department of Defense (DoD) policy and assigns responsibilities for the SAPR Program on prevention, response, and oversight to sexual assault. It is DoD policy to establish a culture free of sexual assault by providing an environment of prevention, education and training, response capability, victim support, reporting procedures, and accountability that enhances the safety and wellbeing of all persons covered by this regulation.

**DATES:** This rule is effective April 5, 2013.

**FOR FURTHER INFORMATION CONTACT:** Diana Rangoussis, Senior Policy Advisor, Sexual Assault Prevention and Response Office (SAPRO), (703) 696-9422.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

This rule:

a. Incorporates all applicable congressional mandates from Section 113 of Title 10, United States Code (U.S.C.), and Public Laws 109-364, 109-163, 108-375, 106-65, 110-417, and 111-84; and all applicable recommendations from the IG, DoD; Government Accountability Office; and Defense Task Force on Sexual Assault in the Military Services;

b. Establishes the creation, implementation, maintenance, and