

Attachment D
Proposed Rulemaking

affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, any Federal Home Loan Bank; the term "regulated entities" means, collectively, the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and the Federal Home Loan Banks.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Division A of the Housing and Economic Recovery Act of 2008, Public Law 110-289, 122 Stat. 2654 (2008).

§ 1233.3 Reporting.

(a) *Timeframe for reporting.* (1) A regulated entity shall submit to the Director a written report relating to any fraud or possible fraud occurring in connection with a loan, a series of loans or other financial instruments that the regulated entity has purchased or sold, and shall do so promptly after identifying such fraud or possible fraud or is notified about such fraud or possible fraud by law enforcement or other government authority.

(2) In addition to submitting a report in accordance with paragraph (a)(1) of this section, in any situation that would have a significant impact on the regulated entity, the regulated entity shall immediately report any fraud or possible fraud to the Director by telephone or electronic communication.

(b) *Format for reporting.* (1) The report shall be in such format and shall be filed in accordance with such procedures that the Director may prescribe.

(2) The Director may require a regulated entity to provide such additional or continuing information relating to such fraud or possible fraud as the Director deems appropriate.

(3) A regulated entity may satisfy the reporting requirements of this section by submitting the required information on a form or in another format used by any other regulatory agency, provided it has first obtained the prior written approval of the Director.

(c) *Retention of records.* A regulated entity shall maintain a copy of any report submitted to the Director and the original or business record equivalent of any supporting documentation for a period of five years from the date of submission.

(d) *Nondisclosure.* (1) A regulated entity may not disclose to any person that it has submitted a report to the Director pursuant to this section, unless

it has first obtained the prior written approval of the Director.

(2) The restriction in paragraph (d)(1) of this section does not prohibit a regulated entity from—

(i) Disclosing or reporting such fraud or possible fraud pursuant to legal requirements, including reporting to appropriate law enforcement or other governmental authorities; or

(ii) Taking any legal or business action it may deem appropriate, including any action involving the party or parties connected with the fraud or possible fraud.

(e) *No waiver of privilege.* A regulated entity does not waive any privilege it may possess under any applicable law as a consequence of reporting fraud or possible fraud under this part.

§ 1233.4 Internal controls, procedures, and training.

(a) *In General.* Each regulated entity shall establish and maintain adequate and efficient internal controls and procedures and an operational training program to assure an effective system to detect and report fraud in connection with the purchase or sale of a loan or other financial instrument.

(b) *Examination.* The examination by FHFA of fraud reporting programs of each regulated entity must include an evaluation of the extent to which internal policies, procedures, and training programs of the regulated entity minimize risks from fraud and to the extent that fraud or possible fraud is consistently reported to FHFA.

§ 1233.5 Protection from liability for reports.

As provided by section 1379E of the Safety and Soundness Act (12 U.S.C. 4642(b)), a regulated entity that, in good faith, submits a report pursuant to this part, and any entity-affiliated party, that, in good faith, submits or requires a person to submit a report pursuant to this part, shall not be liable to any person under any provision of law or regulation, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement) for such report, or for any failure to provide notice of such report to the person who is the subject of such report, or any other persons identified in the report.

§ 1233.6 Supervisory action.

Failure by a regulated entity to comply with this part may subject the regulated entity or the board members, officers, or employees thereof to supervisory action by FHFA, including

but not limited to, cease-and-desist proceedings and civil money penalties.

CHAPTER XVII—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 1731—[REMOVED]

2. Remove part 1731.

Dated: June 4, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9-14189 Filed 6-16-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AD15

[Docket ID MMS-2008-OMM-0003]

Safety and Environmental Management Systems for Outer Continental Shelf Oil and Gas Operations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The MMS proposes to require operators to develop and implement a Safety and Environmental Management System to address oil and gas operations in the Outer Continental Shelf. The Safety and Environmental Management System would consist of four elements—Hazards Analysis, Management of Change, Operating Procedures, and Mechanical Integrity—that, until now, have not been covered in our regulations. The MMS analyzed accident panel investigation reports, incident reports, and incidents of noncompliance and determined that the root cause of most safety and environmental accidents and incidents is one or more of these four elements. The MMS believes that requiring operators to implement a Safety and Environmental Management System will reduce the risk and number of accidents, injuries, and spills during Outer Continental Shelf activities.

DATES: Submit comments by September 15, 2009. The MMS may not fully consider comments received after this date. Submit comments to the Office of Management and Budget on the information collection burden in this proposed rule by July 17, 2009. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010-AD15 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Under the tab "More Search Options," click "Advanced Docket Search," then select "Minerals Management Service" from the agency drop-down menu, then click the submit button. In the Docket ID column, select MMS-2008-OMM-0003 to submit public comments and to view supporting and related materials available for this rulemaking. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link. The MMS will post all comments.

- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Regulations and Standards Branch (RSB); 381 Elden Street, MS-4024, Herndon, Virginia 20170-4817. Please reference "Safety and Environmental Management Systems for Outer Continental Shelf Oil and Gas Operations, 1010-AD15" in your comments and include your name and return address.

- Send comments on the information collection in this rule to: Interior Desk Officer 1010-AD15, Office of Management and Budget; 202-395-6566 (fax); e-mail: oira_docket@omb.eop.gov. Please also send a copy to MMS.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues contact David Nedorostek, Safety and Enforcement Branch at david.nedorostek@mms.gov or (703) 787-1029.

SUPPLEMENTARY INFORMATION: On May 22, 2006, MMS published an Advance Notice of Proposed Rulemaking (ANPR) in the *Federal Register* (71 FR 29277) to seek comments and information on how to improve our regulatory approach to Safety and Environmental Management Systems (SEMS) for operations conducted in the Outer Continental Shelf (OCS). The ANPR examined a variety of approaches to implementing SEMS from voluntary to mandatory, and from partial SEMS to comprehensive SEMS.

During the ANPR comment period, eight comments were received from the public. One comment recommended keeping SEMS voluntary. Three comments recommended keeping SEMS

voluntary, but if MMS decided to mandate a SEMS, it should be a partial SEMS requirement due to the number of accidents that are related to the four critical elements identified. A partial SEMS would consist of: Hazards Analysis, Management of Change, Operating Procedures, and Mechanical Integrity. The other four comments received recommended that MMS move forward with a comprehensive SEMS approach, *i.e.*, the 12 elements listed in American Petroleum Institute's (API) Recommended Practice (RP) 75, *Development of a Safety and Environmental Management Program for Offshore Operations and Facilities, Third Edition, May 2004*. A comprehensive SEMS would consist of:

- Safety and environmental information;
- Hazards analysis;
- Management of change;
- Operating procedures;
- Safe work practices;
- Training;
- Mechanical integrity;
- Pre-startup review;
- Emergency response and control;
- Investigations of incidents;
- Auditing; and
- Records and documentation.

Most comments expressed that API RP 75 provides excellent guidance on developing a SEMS plan, and allows operators and contractors to tailor the program to their individual needs and corporate cultures. The commenters do not support MMS approving SEMS plans, rather, a third party should determine or certify whether a SEMS plan is viable, because MMS may not have the resources and expertise to approve a minimum of one plan for each OCS operator.

After reviewing and discussing the comments, MMS proposes to require each offshore lessee/operator to develop, implement, maintain, and operate under a SEMS program composed of the four elements. This decision was based on incident investigation findings, and performance reviews with operators which confirmed that the majority of the accidents on the OCS are related to the four elements in the proposed rule (*i.e.*, Hazards Analysis, Management of Change, Operating Procedures, and Mechanical Integrity). Since the existing regulations (30 CFR 250) do not specifically address these four elements, MMS finds that it is appropriate to cover these SEMS elements in its rule. Each SEMS program would be tailored to the scale and complexity of the company's operation, and structured to include accountability for contractors and subcontractors. The SEMS program

would describe management commitment to safety and the environment, as well as policies and procedures to assure safety and environmental protection while conducting OCS operations (including those operations conducted by contractor and subcontractor personnel). As company management and worker attitudes play a critical role in determining the safety of operations and environmental protection, a SEMS program would play a major role in focusing the attention of top management on safety and the marine and coastal environments. This will assure to the greatest extent possible, a broad organizational commitment to human safety and environmental protection.

The MMS proposes that the SEMS program contain the four elements mentioned above which are described in greater detail as:

Hazards Analyses

This element would require that a hazards analysis (facility level) be conducted for all facilities. The purpose of the analysis is to identify, evaluate, and where unacceptable, reduce the likelihood and/or minimize the consequences of uncontrolled releases of oil and gas and other safety or environmental incidents. With respect to analysis methods, MMS suggests that operators use API RP 14 C, *Recommended Practice for Analysis, Design, Installation, and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Seventh Edition, March 2001*; or API RP 14J, *Recommended Practice for Design and Hazards Analysis for Offshore Production Facilities, Second Edition, May 2001*, as guides, as well as other accepted documents and practices. In addition, this element would also require that a job hazard analysis (operations/task level) be performed to identify and evaluate hazards of a job/task for the purpose of hazards control or elimination.

Management of Change (MOC)

This element would require lessees/operators to document and analyze all proposed facility changes to determine possible adverse safety and environmental impacts, with the exception of replacement in kind. There are a number of specific topics to be covered in this analysis, including changes in: facilities and procedures, personnel, work practices, equipment (including addition of new equipment or modifications to existing equipment), and the safety and environmental implications of these changes.

Operating Procedures

This element would require OCS oil and gas operators' management officials to include requirements for written facility operating procedures designed to enhance efficient, safe, and environmentally sound operations. While operating procedures are reviewed as part of MOC procedures, MMS would also recommend that these procedures be reviewed separately to ensure that they reflect current practices.

Mechanical Integrity

This element would require that procedures are in place to ensure that equipment is designed, fabricated, installed, tested, inspected, monitored, and maintained in a manner consistent with appropriate service requirements, manufacturer's recommendations, and industry standards to promote safe and

environmentally sound operations in the OCS.

The proposed decision to require a SEMS program consisting of the four elements is based on incident investigation findings, an analyses of Incidents of Noncompliance (INC) data, performance reviews with operators, and the fact that existing MMS regulations do not address these four elements. Requiring operators to implement these four elements of an integrated SEMS program would address human factor issues in safety and environmental protection. Most industrial accidents and spills result from human error or organizational errors, not device or equipment failure. These four elements would address these types of accidents by encouraging the use of sound management principles and safety procedures.

The MMS's evaluation of safety information, which led us to the

decision to require a SEMS program, included the following:

Accident Panel Investigation Reports

Accident panel investigation reports are prepared by MMS for select major accidents. An analysis of 33 accident panel reports prepared by MMS from 2000–2007 revealed that many fatalities and injuries occurred while performing routine tasks such as drilling, construction, coil tubing operations, and crane and other lifting events.

In addition, most of these accident panel reports made recommendations that relate to one of the following four SEMS elements: Hazards Analysis, Management of Change, Operating Procedures, and Mechanical Integrity.

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

CONTRIBUTING CAUSES

MMS report	Hazards analysis	Operating procedures	Mechanical integrity	Management of change	Injury number	Fatality number
MMS 2007–058	X	X		X		1
MMS 2007–045	X	X		X		1
MMS 2007–037	X	X				1
MMS 2006–070	X	X	X			1
MMS 2006–058	X	X				
MMS 2006–047	X	X				
MMS 2006–039		X				
MMS 2006–021		X				
MMS 2006–002	X	X				1
MMS 2005–027		X	X	X		
MMS 2005–007		X	X			
MMS 2004–078	X	X		X		1
MMS 2004–075	X	X	X			
MMS 2004–048		X	X			
MMS 2004–046	X	X		X	3	
MMS 2004–010	X					
MMS 2004–004	X					1
MMS 2003–068		X				
MMS 2003–046		X				
MMS 2003–023				X		
MMS 2002–080				X		
MMS 2002–076	X		X	X		1
MMS 2002–075	X					1
MMS 2002–062				X	2	1
MMS 2002–059	X		X		1	1
MMS 2002–040			X			
MMS 2001–084			X	X		
MMS 2001–045			X	X		1
MMS 2001–042	X		X	X		1
MMS 2001–010	X			X	1	
MMS 2001–009		X		X		
MMS 2001–005	X			X		
MMS 2000–089	X		X			1
Total = 33	Total = 19	Total = 18	Total = 12	Total = 15	Total = 7	Total = 14

The table shows that the accidents covered by 16 of the 33 panel reports resulted in a combined 21 fatalities and injuries. The analysis done on the accidents identified six contributing

causes that are related to the four elements: (1) A lack of communication between the operator and contractor(s); (2) no job hazard analysis was conducted prior to beginning work, or

there was a lack of written procedures; (3) an onsite supervisor failed to enforce existing procedures or practices; (4) a lack of written safe work procedural guidelines; (5) integrity of the facilities

and equipment were not maintained according to recommended practices; and (6) workplace hazards were not identified or corrected. The MMS maintains that at least some of these accidents could have been minimized or even prevented if the operator had implemented a SEMS.

Incident Analysis

The MMS also conducted a study of 1,443 incidents that occurred in OCS waters from 2001–2007 to determine if these events were associated with any of the 4 SEMS elements. The events reviewed included 41 fatalities, 302 injuries, 10 losses of well control, 11 collisions, 476 fires, 356 pollution events, and 224 crane and other lifting events (e.g., hoists, winches, etc.).

The majority of incidents occurring in the OCS were related to operational and maintenance procedures or human error. These incidents are not addressed by the hardware-oriented compliance inspections used by MMS OCS inspectors. Additionally, of the 1,443 incidents involving injuries, fires, and pollution on or from production facilities, only 25 were due to failure of a safety device. The majority of the 1,443 incidents had at least 1 of the following 4 elements as a contributing cause for the event occurring:

SEMS element	Number of incidents
Management of Change	108
Hazards Analysis	185

SEMS element	Number of incidents
Mechanical Integrity	475
Operating Procedures	481

OCS Spill Analysis

The MMS performed a root cause analysis of OCS spills over 50 barrels (bbls) from 2001–2007 with respect to the 4 elements. While root causes could be linked to failing to properly implement 1 of 4 elements, operating procedures and mechanical integrity contributed to the greatest number of these spills, and the 4 elements together could account for over ¾ of the OCS spills.

	2001	2002	2003	2004	2005	2006	2007	Sums
Total OCS spills >50 bbl—Multiple spills, each >50 bbl, may occur during a single event. Spill categories include: crude/condensate; refined petroleum (diesel, mineral oil); synthetic-based fluids; and chemical (e.g., ZnBr, Glycol).	8	13	11	26	42	16	5	.....
Spills Related to Weather/Hurricanes .....	.....	4	.....	15	35	4	1	.....
Spill Events Unrelated to Weather	8	9	11	9	7	12	4	.....
Suggested Root Cause—Related to API RP 75:								
Hazards Analysis	1	1	.....	.....	1	1	.....	4
Management of Change .....	.....	1	.....	1	1	1	.....	4
Operating Procedures	3	4	5	5	3	5	1	26
Mechanical Integrity	4	1	2	1	1	2	3	14

Incidents of Noncompliance (INCs)

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

- G-110 (Operations conducted in a safe and workmanlike manner),

- G-111 (Equipment maintained in a safe condition), and
- G-112 (Safety of personnel and all necessary precautions taken to correct and remove any hazards).

The MMS issued 3,132 of these types of G-INCs during 2003–2007 for drilling and production activities. Of these 3,132 G-INCs, 2,964 (approximately 95

percent) were directly related to one or more of the following four SEMS elements: Hazards Analysis (including job hazard analysis), Operating Procedures, Mechanical Integrity, and Management of Change. The following table depicts the G-INCs written for drilling and production activities:

G-INCS ISSUED FROM 2003–2007

SEMS elements	Drilling percentage	Production percentage
Management of Change	10	11
Hazards Analysis	25	16
Operating Procedures	26	24
Mechanical Integrity	39	49

The MMS also reviewed records of violations of Environmental INCs (E-INCs). The E-INCs focus on water quality as it relates to mud/oil/chemical spills and marine debris (E-100 thru E-202). Over the past 7 years, MMS has issued about 150 E-INCs for non-compliant production and drilling

operations during field inspections each year. The data indicate no discernible trend of improvement by industry over the past 7 years (see the following tables covering 2001–2007).

The MMS has issued many other INCs that relate to environmental protection, including those that address flaring and

venting violations, broad-based non-compliance with lease stipulations, approved plans, and permit applications. Similar trends to those previously described for the issuance of E-INCs are also observed in the issuance of other INCs that address environmental concerns.

RATIO OF TOTAL PRODUCTION OPERATION E-INCIDENTS AND NUMBER OF COMPONENTS INSPECTED PER YEAR

Year	Total E-INCIDENTS	Components inspected	Ratio *
2001	156	66,065	0.0024
2002	173	68,355	0.0025
2003	134	66,056	0.0020
2004	141	67,267	0.0021
2005	122	61,520	0.0020
2006	133	56,930	0.0023
2007	111	46,384	0.0024

* Rounded.

RATIO OF TOTAL DRILLING OPERATION E-INCIDENTS AND NUMBER OF WELLS SPUD PER YEAR

Year	Total E-INCIDENTS	Wells spud	Ratio *
2001	19	1,264	0.015
2002	4	941	0.004
2003	10	893	0.011
2004	11	915	0.012
2005	10	817	0.012
2006	8	763	0.010
2007	7	607	0.012

* Rounded.

As a result of MMS research conducted on accident panel investigations and reports, incident analysis, and INCs, it appears that equipment failure is rarely the primary cause of the incident or accident. This is due to technological advances which have provided industry with very efficient and reliable equipment for finding, producing, and transporting offshore oil and gas. However, in most cases, accidents and oil spills can be traced to human error and/or organizational failures. For that reason, operators must ensure that safe and environmentally sound operating practices are followed. The MMS finds it important to focus our efforts on ensuring that those who use the equipment do so safely and responsibly. More progress can be made toward achieving our goal of clean and safe OCS operations by concentrating on human behavior. The MMS regulations, historically, have focused on the installation, operation, testing, and inspection of safety and pollution prevention equipment, and risk based safety practices related to personnel. Ensuring proper equipment operation, however, does not necessarily ensure clean and safe operations. The research consistently points to the disproportionate contribution of human and organizational errors to accidents and oil spills. The MMS believes that operations are safer when management systematically encourages individuals to be safety conscious, provides adequate resources, fosters safe worksite practices, promotes good housekeeping

habits, and assures that workers are properly trained. The MMS believes that if OCS oil and gas operations are better planned and organized, then the likelihood of injury to workers and the risk of environmental pollution will be further reduced.

While this proposed rule requires each offshore lessee/operator to develop, implement, maintain, and operate a SEMS program consisting of the 4 elements identified in this proposed rule, nothing prohibits the lessee/operator from adopting a more comprehensive SEMS approach as set forth in API RP 75. The MMS encourages industry to incorporate the comprehensive elements in their SEMS program.

In addition to industry complying with the 4 elements and electing to model their SEMS program after a comprehensive SEMS program such as API RP 75, lessees and operators are also encouraged to consider implementing the International Organization of Standardization (ISO) 9001, *Quality Management Systems—Requirements*; and ISO 14001, *Environmental Management Systems—Requirements*.

This proposed rule would require lessees and operators to have their SEMS program audited at least once every 3 years by either an independent third party or by qualified personnel designated within the company. A knowledgeable and experienced auditor would audit the SEMS program to determine if an OCS lessee and operator is complying with the SEMS plan.

These audits would be conducted in an office environment and/or in the field, and cover both a broad range of activities or be focused on a particular area (e.g., records, gas compressors, blowout preventers, or documentation) as appropriate. Auditors must meet the qualifications as proposed in this rule.

The MMS may, at our discretion, evaluate independent third parties, meet with lessees and operators to periodically review the results of SEMS program audits, and conduct announced or unannounced evaluations with MMS personnel and/or independent third parties to determine SEMS plan compliance and effectiveness. The MMS would be more inclined to conduct a SEMS evaluation on an operator that has a history of poor performance. Poor performance may be based on the number and/or type of incidents of non-compliance, civil or criminal penalties, injuries, fatalities, accidents, fires, losses of well control, explosions, collisions, pollution incidents, and/or damage to the marine environment. Lessees and operators would be responsible for all costs associated with any independent third party evaluation of their SEMS plan.

In this proposed rule, MMS would require operators, on an annual basis, to submit the number of hours worked for all company and contract employees (people on the facility) during production, drilling, pipeline, and construction activities (which includes the adding or removing of equipment and/or facility modifications). This information is submitted on Form

MMS-131 on an annual basis. We use the "hours worked" information to calculate Occupational Safety and Health Administration-style safety and health indices. The MMS considers the information to be significant to help us evaluate industry's continued improvement of safety and environmental management in the OCS. Information on Form MMS-131 includes company identification, number of company/contractor injuries and/or illnesses suffered, company/contractor hours worked, EPA National Pollutant Discharge Elimination System (NPDES) permit non-compliances and oil spill volumes for spills less than 1 barrel. All pieces of information are reported as collected during one calendar year. We use the information obtained from this form to develop industry average incident rates that help to describe how well the offshore oil and gas industry is performing. Using the produced data allows MMS to better focus our regulatory and research programs on areas where the performance measures indicate that operators are having difficulty meeting our expectations.

Additionally, operators can use the data to make individual comparisons and evaluate trends. Knowing how the offshore industry as a whole is doing, and where their own company ranks, provides company management with information to focus on safety and environmental improvement efforts. This information also provides offshore operators with a credible data source to demonstrate how industry and individual operators are performing.

The MMS does not want the SEMS program to be a paperwork exercise conducted solely to meet regulatory requirements. Such an effort would defeat the purpose of the proposed rule, which is to promote an attitude, or performance mentality, that helps to achieve operational safety and environmental protection through awareness and planning. The MMS knows that many lessee/operators have already integrated similar management programs into their operations and expects that most of the remaining operators have some type of informal or undocumented management program that addresses safety and environmental policies and procedures. The MMS understands that the development and implementation of this type of program may place an additional burden on some OCS operators, in the short-term. However, MMS believes that a SEMS program would benefit all lessees/operators in that it would identify and mitigate hazards, assure safe work practices, manage changes, and properly

train offshore employees and contractors.

Comments on this proposed SEMS rule are requested. Commenters are encouraged to submit detailed comments with justifications or background information supporting their responses. In addition, we intend to conduct at least one public workshop on this proposed SEMS rule during the upcoming comment period. We will announce the time and location in a separate document.

Procedural Matters

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

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

(1) This proposed rule would not have an annual effect of \$100 million or more on the economy. The MMS estimates that it would cost OCS oil and gas lessees and operators \$12,673,967 to comply with the requirements in the proposed rulemaking. This estimate includes the initial startup and development costs for lessees and operators to develop and implement the proposed four elements of a SEMS. This is a one-time cost of approximately \$4,590,000. The MMS estimates that annual recurring cost of the proposed rulemaking to be approximately \$8,083,967 for maintaining SEMS after implementation. Details on the estimated costs for this rulemaking are further discussed in the Regulatory Flexibility Act section. The proposed rulemaking would 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.

(2) This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This proposed rule would not raise novel legal or policy issues arising out of legal mandate, the President's priorities, or the principles set forth in E.O. 12866.

Regulatory Flexibility Act

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

Small lessees/operators that operate under this rule fall under the Small Business Administration's (SBA) North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 70 percent (91 operators) of them are considered small. This proposed rule, therefore, would affect a substantial number of small entities.

Assumptions

In order to more accurately represent costs associated with implementing this rule, MMS made the following assumptions concerning the costs associated with the requirements in the proposed rulemaking.

- Because of the wide variation in company size, we have grouped operators into three classes (High, Moderate, and Low Activity).
- We have used the results of 10 years of voluntary SEMS Performance Measures reporting by OCS operators to determine that 70 of the 130 operators, at a minimum, are using SEMS. We suspect, however, that this number is higher based on previous Annual Performance Review Meetings where voluntary SEMS was a discussion topic.
- We have used actual costs from safety management system vendors to derive our estimated costs for industry.
- We assume there are no new costs for the estimated 70 operators who are currently using SEMS, as their systems have already been developed and they are expending funds to manage this process. However, we have calculated costs associated with compliance that require new work on their behalf and continued maintenance/recordkeeping activities.
- The estimated cost for the 60 remaining operators to implement, develop, and manage the SEMS program is based on the operator having an internet-based system, which has been determined to be the most common approach used by operators.
- Many operators are of such a modest size that a purchased template from a safety management system vendor would meet their needs and would comply with the proposed regulation. They would not need to spend additional money to customize a template for their use.

High, Moderate, and Low Activity Definitions

Oil and gas operators in the OCS vary substantially in size and the degree in which they are engaged in extracting oil

from the OCS. Of the 130 identified operators, there is a range in OCS oil and gas activity from as little as 1 complex to nearly 500 facilities; and from as low as 15,000 barrels of oil equivalent (BOE) annual production to more than 300 million BOE annual production. Because of this tremendous variation in activity, MMS divides operators into high, moderate, and low activity for the purpose of measuring their performance. Using these same criteria (following this paragraph), we have used these size categories to estimate costs associated with developing, managing, and fulfilling reporting requirements for the proposed SEMS rule.

The criteria that categorizes an operator as a high, moderate, or low activity is as follows:

- An operator that qualifies under the high activity category would need to meet the following criteria:
 - Produce at least 10 million or more BOE (MMBOE) per year.
 - Operate a minimum of 1,000 in-service components or more during the year.
- An operator that qualifies under the moderate activity category would need to meet the following criteria:
 - Produce at least 1 MMBOE, but less than 10 MMBOE, per year.
 - Operate a minimum of 100 in-service components, but less than 1,000 in-service components during the year.
- An operator that qualifies under the low activity category would need to meet the following criteria:
 - Produce less than 1 MMBOE per year.

- Operate less than 100 in-service components during the year.

Development of SEMS Program

After reviewing the voluntary SEMS submittals (OCS Performance Measures Data, Form MMS-131) received from 1996-2006, an average of 70 operators (54 percent = 70/130) reported having a SEMS-type program in-place. The other 60 operators (46 percent = 60/130) may not have a SEMS program in-place or may have a SEMS program but are not participating in the voluntary SEMS program.

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

Activity category	Number of operators without SEMS	Number of operators with SEMS	Total number of operators by activity
High	0	13	13
Moderate	12	29	41
Low	48	28	76
Total	60	70	130

As shown from the table, all high activity operators have a SEMS program in-place; the moderate activity shows over 70 percent are currently participating in a SEMS program; and finally, the low activity shows almost 40 percent are using a SEMS program.

Information received from consultants and vendors stated that the cost for an operator to buy a generic SEMS template is approximately \$2,500. If an operator decided to modify the generic SEMS template to make it specific to their use, the cost would be an

additional \$10,000. As mentioned in the assumptions, many operators would not spend the additional \$10,000 to customize a SEMS program for their use because it would not be necessary.

If the 60 operators without a SEMS program decided to buy a SEMS template, the cost would be \$150,000 (\$2,500 × 60). If all 60 operators needed to modify the generic plans for their specific OCS operations, which would be unlikely, an additional cost of \$600,000 (\$10,000 × 60) would be incurred to perform these modifications.

The total for all 60 operators to buy a template and then modify the template to their philosophy is estimated at \$750,000 (\$150,000 + \$600,000).

SEMS Implementation

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

Activity category	Average no. of components (per complex)	Average no. of complexes
High	21	139
Moderate	15	29
Low	16	6

The total cost for implementing the SEMS program considers only the 60 operators that do not have a functional SEMS program. The other 70 operators are already managing their SEMS program throughout the company.

Moderate Activity Category

A breakdown of the cost to implement and manage a SEMS program consisting of the four elements (i.e., hazards analysis, management of change, operating procedures, and mechanical

integrity) was calculated for a moderate activity operator as follows:

- A hazards analysis for a moderate activity operator at the complex level (facility risk assessment) would cost approximately \$102,000 for 29 facilities. This is a one-time implementation cost. In following years, this cost would be less because the rule requires that a hazards analysis be performed for changes in the process or the equipment on a facility. We estimate that the annual cost for a moderate activity

operator to update a hazards analysis for the 29 facilities would be approximately \$10,000 for 3 facilities (10 percent of 29 facilities).

- The job hazard analysis at the task level includes data collection, analysis, and report development. This cost is included in the hazards analysis.
- The MOC cost is based on one change request per month and it is dependent on the complexity of the change. The MOC cost will be determined by the physical state of the

facilities, the status of technology, and the turnover of personnel. The MOC would cost approximately \$20,000 per year (includes the year to implement SEMS) which also includes MOC data collection, evaluation, and documentation update.

- Based on information from consultants and vendors, a lessee/operator would need to evaluate the operating procedures of their facility each year. Also, the operating procedure cost would be determined by the maintenance of such procedures. For most operators, no formal evaluation is necessary since changes will be identified through the job hazard analysis process and managed through the MOC process. Operating procedures will cost approximately \$18,000 per year (includes the year to implement SEMS) which also includes data collection, evaluation, documentation update, and recordkeeping.

- The mechanical integrity cost is based on the assumption that mechanical integrity is achieved through preventive maintenance. The preventive maintenance program is defined prior to the commissioning of the facility. The cost of maintenance is not included in this assessment, only the cost of managing the program. Mechanical integrity will cost approximately \$20,000 per year (includes the year to implement SEMS), which includes the quality assurance inspection plan, evaluation of schedule appropriateness, communication of maintenance program, salaries, maintenance and inspection reports, and recordkeeping.

- Auditing of the SEMS program is required once every 3 years and this cost would be approximately \$15,000, for an average of \$5,000 per year. This cost includes developing audit protocols, planning, performing audits, and recordkeeping. This is an annual cost after implementation of SEMS.

- The cost for report development, meetings, data collection, recordkeeping, and analysis would be approximately \$13,000 per year. This is an annual cost after implementation of SEMS.

The estimated cost for a moderate activity operator to implement SEMS is \$160,000. The estimated cost for the 12 moderate activity operators to implement SEMS is \$1,920,000 (\$160,000 × 12 operators). The itemized cost is:

• Hazards analysis	\$102,000
• Management of Change	20,000
• Operating Procedures	18,000
• Mechanical Integrity	20,000
Total	\$160,000

The estimated average cost for a moderate activity operator to maintain their SEMS program is \$86,000 a year. The estimated cost for the 12 moderate activity operators to initially maintain their SEMS program is \$1,032,000. The itemized cost is:

• Hazards analysis	\$10,000
• Management of Change	20,000
• Operating Procedures	18,000
• Mechanical Integrity	20,000
• Audits	5,000
• Report development and meetings	13,000
Total	\$ 86,000

Once all moderate operators have a SEMS program implemented, the estimated cost to maintain their SEMS program will be approximately \$3,526,000 (\$86,000 per operator × 41 moderate activity operators = \$3,526,000).

Low Activity Category

A breakdown of the cost to implement and manage a SEMS program consisting of the four elements (i.e., hazards analysis, management of change, operating procedures, and mechanical integrity) was calculated for a low activity operator as follows:

- A hazards analysis for a low activity operator at the complex level (facility risk assessment) would cost approximately \$22,000 for 6 facilities. This is a one-time implementation cost. In following years, this cost would be less because the rule requires that a hazards analysis be performed for changes in a process or equipment on a facility. We estimate that the annual cost for a low activity operator to update a hazards analysis would be approximately \$2,000 for 1 facility.

- The job hazard analysis at the task level includes data collection, analysis, report development, and recordkeeping. This cost is already included in the hazards analysis.

- The MOC cost is based on one change request per month and it is dependent on the complexity of the change. The MOC cost would be determined by the physical state of the facilities, the status of technology, and the turnover of personnel. The MOC would cost approximately \$5,000 per year (includes the year to implement SEMS) which also includes MOC data collection, evaluation, documentation update, and recordkeeping.

- Based on information from consultants and vendors, a lessee/operator would need to evaluate the operating procedures of their facility each year. Also the operating procedure cost would be determined by the maintenance of such procedures. For

most operators, no formal evaluation is necessary since changes will be identified through the job hazard analysis process and managed through the MOC process. Operating procedures will cost approximately \$5,000 per year (includes the year to implement SEMS) which also includes data collection, evaluation, documentation update, and recordkeeping.

- The mechanical integrity cost is based on the assumption that mechanical integrity is achieved through preventive maintenance. The preventive maintenance program is defined prior to the commissioning of the facility. The cost of maintenance is not included in this assessment, only the cost of managing the program. Mechanical integrity will cost approximately \$8,000 per year (includes the year to implement SEMS), which also includes the quality assurance inspection plan, evaluation of schedule appropriateness, communication of maintenance program, maintenance, salaries, inspection reports, and recordkeeping.

- Auditing of the SEMS program is required once every 3 years and this cost would be approximately \$6,000, for an average of \$2,000 per year. This cost includes developing audit protocols, planning, performing audits, and recordkeeping. This is an annual cost after implementation of SEMS.

- The cost for report development, meetings, recordkeeping, and data collection and analysis would be approximately \$6,000 per year. This is an annual cost after implementation of SEMS.

The estimated cost for a low activity operator to implement SEMS is \$40,000. The cost for the 48 low activity operators to implement SEMS is \$1,920,000 (\$40,000 × 48 operators). The itemized cost is:

• Hazards analysis	\$ 22,000
• Management of Change	5,000
• Operating Procedures	5,000
• Mechanical Integrity	8,000
Total	\$40,000

The estimated cost for a low activity operator to maintain their SEMS program is \$28,000 a year. The cost for the 48 low activity operators to maintain SEMS is \$1,344,000. The itemized cost is:

• Hazards analysis	\$ 2,000
• Management of Change	5,000
• Operating Procedures	5,000
• Mechanical Integrity	8,000
• Audits	2,000
• Report development and meetings	6,000
Total	\$ 28,000

Once all low operators have a SEMS program implemented, the cost to maintain their SEMS program will be approximately \$2,128,000 (\$28,000 per operator × 76 low activity operators = \$2,128,000).

Cost to Submit to MMS

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

- A letter notifying the Regional Supervisory Field Office (RSFO) when an operator plans on conducting an audit of their SEMS program in order for MMS to participate as observers would cost approximately \$3,827 each year (see proposed § 250.1910). This cost is based on one-third of all 130 operators sending a notification letter each year, with an estimated burden time of 1 hour.

- A report must be sent to the RSFO within 30 days of the audit completion date, once every 3 years. The report must outline the results of the audit including deficiencies identified, a time-table or schedule for implementing corrections to deficiencies, and the person responsible for correcting each identified deficiency including their job title (see proposed § 250.1910). The annual cost would be approximately \$15,308. This cost is based on one-third of the all 130 operators submitting a report each year.

- On an annual basis, Form MMS-131 (Performance Measures Data) must be submitted to MMS which would cost approximately \$92,560. This cost is based on all 130 operators with an estimated time of 8 hours per response.

- The MMS would conduct evaluations of SEMS programs. We would require you to demonstrate and explain the procedures and policies in your program and produce evidence, if needed, to support your explanation which would cost approximately \$4,272 a year (see proposed § 250.1913). This cost is based on conducting six evaluations a year.

The total cost for required paperwork being submitted to MMS would be approximately \$115,967.

Summary of Annual Costs to Implement and Maintain SEMS

The total cost to implement and maintain SEMS is approximately \$12,673,967. This total includes an estimated \$2,314,000 for high activity operators (13) to maintain their SEMS program. We estimated the cost to maintain SEMS for the high activity operator to be \$178,000 per year. This

estimated cost is greater than the low and moderate activity operators because of the increased complexity of their operations. We did not discuss this cost in detail because all the high activity operators already have a SEMS program in place. A summary of all the costs are shown below.

Buy/develop and implement SEMS Plan for operators without a SEMS Implementation cost	\$ 750,000
• High activity operator cost (already implemented)	\$ -0-
Moderate activity operator cost (\$160,000 × 12)	1,920,000
• Low activity operator cost (\$40,000 × 48)	1,920,000
Total first year cost	\$4,590,000
Maintain SEMS (Annual Cost after Implementation).	
• High activity operator cost (\$178,000 × 13)	\$2,314,000
• Moderate activity operator cost (\$86,000 × 41) ...	3,526,000
• Low activity operator cost (\$28,000 × 76)	2,128,000
Submittals required by MMS (annual cost)	115,967
Total annual costs after implementation	\$8,083,967

Benefits of SEMS

The ultimate goal of SEMS is to promote safety and environmental protection in the OCS during all offshore activities. Moreover, increasing a system's level of safety leads to reduced material losses and enhanced productivity. This supports the concept that safety is good for business.

Some further benefits include:

- Logical prioritization of safety needs—SEMS emphasizes risk mitigation actions that provide the biggest impact on safety.
- More efficient maintenance scheduling and resource utilization—Effective hazard reporting in SEMS allows proactive scheduling of maintenance tasks when resources are available, increasing the likelihood that maintenance is performed on time and more efficiently.

- Compliance with legal responsibilities for safety—MMS certification requirements mandate a number of safety processes and standards that can be included in an organization's SEMS.

- Avoiding incident investigation costs and operational disruptions—Improved communication and risk mitigation will prevent many accidents from occurring.

- Reduction of the direct and indirect costs of accidents—Civil penalties,

repair costs, damage claims, and increased insurance premiums are a few of the potential economic consequences of an accidental mishap.

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

- Continuous improvement of operational processes—SEMS allows for lessons learned to be incorporated into the system and lead to superior operations.

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

The financial burden estimated for developing and managing a SEMS program is minor compared to the costs associated with major accidents. For example, in 1987 prior to industry having developed a safety management template for offshore operations, the Mississippi Canyon 311, A (Bourbon), platform in the Gulf of Mexico was tilted to one side by an extensive underground blowout. The cost associated with this incident alone was \$274,000,000. In 1989, a fire associated with a pipeline repair killed 7 people and destroyed a major production facility. A SEMS plan would have implemented several procedures and evaluations that may have prevented these accidents. A SEMS plan is not a guarantee of avoiding all accidents but MMS believes that a mandatory SEMS program (4 elements) will reduce the likelihood of the types of accidents and incidents discussed here and in the Preamble and will also serve to raise the safety awareness of all personnel in the office and field.

The proposed requirement for SEMS would not have a significant economic effect on a substantial number of small entities. The MMS estimates that over 40 percent of the small entities currently operating on the OCS have already implemented a SEMS program that meets the requirements under these proposed regulations. These small entities (28 low activity and 10 medium activity operators) implemented SEMS because it improved the efficiency and safety of their OCS operations. The cost for the remaining 60 percent of small entities to implement (approximately \$52,500) and maintain (approximately \$28,000) SEMS is very small compared to the average annual revenues they would generate (\$28,000,000) from the production of oil and gas. The MMS estimated the annual revenue by multiplying the average production for a small entity (700,000 BOE) times a conservative price for a barrel of oil

(\$40). Therefore, this proposed rulemaking would not have a significant economic effect on a substantial number of small entities.

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

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2) of the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

- a. Would not have an annual effect on the economy of \$100 million or more.
- b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Would 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.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The proposed rule would 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 proposed rule does not have significant takings implications. The proposed 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 proposed rule does not have federalism

implications. This proposed rule would 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 proposed rule would 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 proposed rule and determined that it has no substantial effects on federally recognized Indian tribes. There are no Indian or tribal lands in the OCS.

Paperwork Reduction Act (PRA)

This proposed rule contains a collection of information that has been submitted to the Office of Management and Budget (OMB) for review and approval under 44 U.S.C. 3507(d). As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. If you wish to comment on the information collection aspects of this proposed rule, you may send your comments directly to OMB (see the ADDRESSES section of this notice). Please identify your comments with 1010-AD15. Send a copy of your comments to the Regulations and Standards Branch (RSB), Attn: Comments; 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference *30 CFR Part 250, Subpart S, Safety and Environmental Management Systems for Outer Continental Shelf Oil and Gas Operations*, 1010-AD15 in your comments. You may obtain a copy of the supporting statement for the new collection of information by contacting the Bureau's Information Collection Clearance Officer at (202) 208-7744.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB is required to make a decision

concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by July 17, 2009. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

The title of the collection of information for the rule is *30 CFR Part 250, Subpart S, Safety and Environmental Management Systems for Outer Continental Shelf Oil and Gas Operations*. Respondents are approximately 130 Federal OCS lessees, operators, and/or other independent third-parties. The MMS will use the information to: Evaluate the effect of industry's continued improvement of safety and environmental management of the OCS; develop an industry average that helps to describe how well the offshore oil and gas industry is performing; and judge the reasonableness of company requests for any specific regulatory relief. Responses to this collection are mandatory. The frequency of response varies, but is primarily annual. The information collection (IC) does not include questions of a sensitive nature. The MMS 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*.

During 1997, MMS, the U.S. Coast Guard, and representatives of the OCS oil and gas industry worked together to develop a suite of consensus formulas for gauging the industry's safety and environmental performance. This resulted in the initiation of OMB approved Form MMS-131, Performance Measures Data. With this new subpart, MMS will continue to use the information collected on Form MMS-131 to calculate annually, OCS-wide, performance indices based on those consensus formulas to provide the public with information about performance trends, and allow OCS lease operators to compare their performance with industry averages. The results will be posted by MMS for use by the public.

This rule and IC request also include the hours and requirements already approved for Form MMS-131 in OMB Control Number 1010-0112, (280 hours, expiration 3/31/11). This collection is voluntary, but the rulemaking will make this and the new requirements

mandatory. The current collection under 1010-0112 will be discontinued

when the final regulations become effective.

The following table details the IC burden for the proposed new requirements in subpart S.

Citation 30 CFR 250 subpart S	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Non-hour cost burdens				
1900	Develop and implement a SEMS program. (One time implementation cost of SEMS template).	\$2,500 per implementation × 60 operators = \$150,000.		
1900	In-house modification (one time implementation cost) of the generic SEMS program to meet needs of specific company.	\$10,000 per implementation × 60 operators = \$600,000.		
1900-1915	High Activity Operator: Maintain all records pertaining to your SEMS program (e.g., operating procedures, MOC, mechanical integrity, 3rd party and qualified personnel info, any supporting documentation, etc.), and retain for 5 years; hazards analysis records retain for the life of the operation; upon request, make available to MMS.	2,000	13	26,000
1900-1915	Moderate Activity Operator: Maintain all records pertaining to your SEMS program (e.g., operating procedures, MOC, mechanical integrity, 3rd party and qualified personnel info, any supporting documentation, etc.), and retain for 5 years; hazards analysis records retain for the life of the operation; upon request, make available to MMS.	966	41	39,606
Moderate Activity Operator Implementation. (One time cost to implement SEMS).		\$160,000 per moderate activity implementation × 12 operators = \$1,920,000.		
1900-1915	Low Activity Operator: Maintain all records pertaining to your SEMS program (e.g., operating procedures, MOC, mechanical integrity, 3rd party and qualified personnel info, any supporting documentation, etc), and retain for 5 years; hazards analysis records retain for the life of the operation; upon request, make available to MMS.	315	76	23,940
Low Activity Operator Implementation. (One time cost to implement SEMS).		\$40,000 per low activity implementation × 48 operators = \$1,920,000.		
1910	Notify RSFO with audit schedule in timely manner.	1	130 operators/once every 3 years = 43 responses.	43 (rounded)
1910	Submit audit report, once in every 3 years, within 30 days of audit including required information; retain records for 5 years; upon request, make available to MMS.	4	130 operators/once every 3 years = 43 responses.	172
1913	Demonstrate and explain, as required, the policies and procedures included in your SEMS program; produce supporting documentation if required.	8	6	48
1915	Submit Form MMS-131	8	130	1,040
Total burden			472 Responses	90,849 Hours
			\$4,590,000 Non-Hour Cost Burdens	

The MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for MMS to properly perform its functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the collection of information. Other than the four non-hour cost burdens for developing the program that are listed in the burden table, we have not identified any other costs, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (a) Total capital and startup cost component, and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased:

- (1) Before October 1, 1995;
- (2) To comply with requirements not associated with the information collection;
- (3) For reasons other than to provide information or keep records for the Government; or
- (4) As part of customary and usual business or private practices.

National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it qualifies as a regulation of an administrative and procedural nature, in that the proposed rule only requires that industry develop a SEMS program. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the National Environmental Policy Act.

Data Quality Act

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

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

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

Clarity of This Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ADDRESSES section. To better help us revise the

rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 30 CFR 250

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

Dated: June 4, 2009.
Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, Minerals Management Service (MMS) proposes to amend 30 CFR part 250 as follows:

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

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

- Authority:** 31 U.S.C. 9701, 43 U.S.C. 1334.
- 2. In § 250.197, redesignate, in the table, paragraphs (a)(7) through (10) as paragraphs (a)(8) through (11), and add new paragraph (a)(7) to the table for Form MMS-131, Performance Measures Data, to read as follows:

§ 250.197 Data and information to be made available to the public or for limited inspection.

* * * * *
 (a) * * *

On form * * *	Data and information not immediately available are * * *	Excepted data will be made available * * *
*	*	*
(7) MMS-131, Performance Measures Data	Company Name(s); Operator Code(s); Contact Name; E-mail Address; Telephone (Number); Fax (Number).	Aggregate data collected yearly will be published one month after submission deadline; no individual company's data will be made available to the public.
*	*	*

* * * * *
 3. Amend § 250.198 by adding the following document to the table in paragraph (e) in alphanumerical order to read as follows:
 § 250.198 Documents incorporated by reference.
 * * * * *
 (e) * * *

Title of documents	Incorporated by reference at
API RP 75 Development of a Safety and Environmental Management Program, for Offshore Operations and Facilities, Third Edition, May 2004, Product No. G07503.	250.1903.

4. Revise § 250.199(e)(17) to read as follows:
 § 250.199 Paperwork Reduction Act statements-information collection.
 * * * * *

30 CFR subpart, title and/or MMS Form (OMB Control Number)	Reasons for collecting information and how used
(17) Subpart S, Safety and Environmental Management Systems (1010-xxxx), including Form MMS-131, Performance Measures Data.	The information collected is to gather the raw Performance Measures Data relating to risk and number of accidents, injuries, and oil spills during OCS activities. We use the information obtained from this form to develop an industry average that helps to describe how well the offshore oil and gas industry is performing in a safe manner.

5. Add new subpart S to read as follows:

Subpart S—Safety and Environmental Management Systems (SEMS)

Sec.

§ 250.1900 Must I have a SEMS program?

§ 250.1901 What is the goal of my SEMS program?

§ 250.1902 When must I comply with the regulations in this subpart?

§ 250.1903 May I use an industry standard to develop my SEMS program?

§ 250.1904 What are my general responsibilities for SEMS?

§ 250.1905 What criteria for Hazards Analyses must my SEMS program meet?

§ 250.1906 What criteria for Operating Procedures must my SEMS program meet?

§ 250.1907 What criteria for Mechanical Integrity must my SEMS program meet?

§ 250.1908 What criteria for Management of Change must my SEMS program meet?

§ 250.1909 What criteria must be documented in my SEMS program for contractor selection?

§ 250.1910 What are my responsibilities when conducting a SEMS audit?

§ 250.1911 What are my documentation and recordkeeping requirements?

§ 250.1912 What qualifications must an independent third party or my designated and qualified personnel meet?

§ 250.1913 How will MMS determine if my SEMS program is effective?

§ 250.1914 What happens if MMS finds shortcomings in my SEMS program?

§ 250.1915 What are my responsibilities for submitting OCS performance measure data?

§ 250.1900 Must I have a SEMS program?

You must develop, implement, and maintain a SEMS program. Your SEMS program must address the following four elements:

(a) Hazards Analysis (including job hazard analysis), (b) Operating Procedures, (c) Management of Change, and (d) Mechanical Integrity.

§ 250.1901 What is the goal of my SEMS program?

(a) The goal of your SEMS program must be to promote safety and environmental protection in the OCS during all offshore activities.

(b) To accomplish this goal, you must ensure that your SEMS program identifies, addresses, and manages safety and environmental hazards and impacts during the design, construction, startup, operation, inspection, and maintenance of new and existing OCS facilities and DOI regulated pipelines.

§ 250.1902 When must I comply with the regulations in this subpart?

You must comply with the provisions of this subpart on or before [THE DATE 1 YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

§ 250.1903 May I use an industry standard to develop my SEMS program?

Your SEMS program must meet the minimum criteria outlined in this subpart and should be modeled after the requirements in:

(a) API RP 75, Development of a Safety and Environmental Management Program, for Offshore Operations and Facilities, Third Edition, May 2004 (incorporated by reference as specified in § 250.198).

(b) Other standards or guidelines (e.g., ISO 9001, 14001) that meet or exceed the API RP 75 standard.

§ 250.1904 What are my general responsibilities for SEMS?

(a) You are responsible for the development, support, and continued improvement of your SEMS program.

(b) You must provide resources to implement and maintain your SEMS program.

(c) You must appoint a management official to serve as the operator's Management System Coordinator who will be responsible for the following:

(1) Establishing, implementing, and maintaining SEMS program procedures, (2) Reporting to your management annually on the performance of the SEMS program and the need for improvement, and (3) Reinforcing awareness of safety and environmental protection

requirements throughout the organization.

§ 250.1905 What criteria for Hazards Analyses must my SEMS program meet?

You must develop and implement a hazards analysis (facility level) and a job hazard analysis (operations/task level) for all of your facilities. For this subpart, facilities include all types of offshore structures permanently or temporarily attached to the seabed (*i.e.*, mobile offshore drilling units; floating production systems; floating production, storage and offloading facilities; tension-leg platforms; and spars) used for exploration, development, production, and transportation activities for oil, gas, or sulphur from areas leased in the OCS. Facilities also include DOI regulated pipelines. The purpose of both the facility level and operations/task level hazards analyses is to identify accident scenarios which could lead to worker injuries, fatalities, property damage, discharges and emissions, coastal and marine environmental impacts, or other adverse consequences. You must document and maintain current analyses for each operation covered by this section for the life of the operation at the facility. The analyses must be updated when an internal audit is conducted to assure that it is consistent with the current operations on your facility.

(a) *Hazards Analysis (facility level)*. For a hazards analysis (facility level), you must perform an initial hazards analysis on each facility on or before [THE DATE 1 YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE]. The hazards analysis must be appropriate to the complexity of the operation and must identify, evaluate, and manage the hazards involved in the operation.

(1) The hazards analysis must address the following:

- (i) Hazards of the operation;
 - (ii) Previous incidents related to the operation you are evaluating. Special attention should be given in your hazards analysis to any incident in which you were issued an Incident of Noncompliance, civil, or criminal penalty;
 - (iii) Control technology applicable to the operation your hazards analysis is evaluating;
 - (iv) A qualitative evaluation of the possible safety and health effects on employees, and potential impacts to the coastal and marine environments, which may result if the control technology fails; and
- (2) The hazards analysis must be performed by a person(s) with

experience in the operations being evaluated. These individuals also need to be experienced in the hazards analysis methodologies being employed.

(3) You should assure that the recommendations in the hazards analysis are resolved and that the resolution is documented.

(b) *Job Hazard Analysis (operations/task level)*. Job hazard analysis (operations/task level) must be conducted for each work project and activity.

(1) You must keep a copy of the most recent job hazard analysis at the job site, and they must be readily accessible to employees.

(2) You must complete and maintain an index naming the task, the date the job hazard analysis was completed, and the date the analysis was revised.

§ 250.1906 What criteria for Operating Procedures must my SEMS program meet?

(a) You must develop and implement written operating procedures that provide instructions for conducting safe and environmentally sound activities involved in each operation addressed in your SEMS program. These procedures must address the following:

- (1) Initial startup;
- (2) Normal operations;
- (3) Temporary operations;
- (4) Emergency operations;
- (5) Normal shutdown;
- (6) Startup following a turnaround, or after an emergency shutdown;
- (7) Bypassing and flagging;
- (8) Safety and environmental consequences of deviating from your equipment operating limits and steps required to correct or avoid this deviation;
- (9) Properties of, and hazards presented by, the chemicals used in the operations;
- (10) Precautions you will take to prevent the exposure of chemicals used in your operations to personnel and the environment. The precautions must include control technology, personal protective equipment, and measures to be taken if physical contact or airborne exposure occurs;

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

(12) Control of hazardous chemical inventory; and

(13) Coastal and marine environmental impacts identified through your hazards analysis.

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

(c) Operating procedures must be reviewed as often as necessary to assure

they reflect any changes made to your operations.

(d) You must develop and implement safe and environmentally sound work practices for identified hazards during operations.

§ 250.1907 What criteria for Mechanical Integrity must my SEMS program meet?

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

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

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

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

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

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

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

(g) The modification of existing equipment and systems. The procedures must assure that they are modified for

the application for which they will be used.

(h) The verification that inspections and tests are being performed. The procedures must be appropriate to assure that equipment and systems are installed consistent with design specifications and the manufacturer's instructions.

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

§ 250.1908 What criteria for Management of Change must my SEMS program meet?

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

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

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

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

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

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

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

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

§ 250.1909 What criteria must be documented in my SEMS program for contractor selection?

Your SEMS program must document contractor selection criteria. When selecting a contractor, you must obtain and evaluate information regarding the contractor's safety and environmental performance.

(a) A contractor is anyone performing work for the lessee. However, these requirements do not apply to contractors providing domestic services

to the lessee or other contractors. Domestic services include janitorial work, food and beverage service, laundry service, housekeeping, and similar activities.

(b) You must document that your contracted employees are competent in the work practices necessary to perform their job in a safe and environmentally sound manner, and have policies and practices in place that are consistent with your SEMS program. Documentation of each contracted employee's competency to perform his/her job and a copy of the contractor's SEMS program must be kept by the operator and the contractor at the facility where the contracted operations are being performed.

§ 250.1910 What are my responsibilities when conducting a SEMS audit?

(a) You must perform an audit of your entire SEMS program at least once every 3 years to evaluate compliance with the requirements of this subpart, and to identify areas in which safety and environmental performance needs to be improved. You must have your SEMS program audited by either an independent third party or your designated and qualified personnel (see § 250.1912).

(b) Representatives from MMS may participate in your SEMS audit as observers. You must notify the Regional Supervisory Field Office (RSFO) at least 30 days prior to conducting your audit so that MMS may make arrangements to participate in the audit.

(c) You must submit a report to the RSFO within 30 days of the audit completion date. The report must outline the results of the audit including deficiencies identified, a timetable or schedule for implementing corrections to deficiencies, and the person responsible for correcting each identified deficiency including their job title.

(d) The MMS may verify that corrective actions have been undertaken and that these actions effectively address the audit findings. Upon request, you must make available for MMS review:

- (1) Your SEMS program, including information about your contractors;
- (2) The qualifications of your designated and qualified personnel or your independent third party;
- (3) The SEMS report prepared by your designated and qualified personnel or your independent third party;
- (4) The SEMS audits conducted of your program; and
- (5) Other supporting documents or information.

(e) You must retain copies of either the independent third party's SEMS records or self audit for a period of 5 years.

§ 250.1911 What are my documentation and recordkeeping requirements?

(a) Your SEMS program procedures must ensure that records and documents are maintained for a period of 5 years in an effective manner. Effective document and record control includes the means of identifying, collecting, indexing, filing, storing, maintaining, and retrieving the documents and records.

(b) Records must be dated, signed, and include information on compliance with applicable legal requirements and the results of SEMS audits and reviews. Details of deficiencies, corrective and preventative actions, participation in training, permits, licenses, or other forms of legal authorization, inspection and calibration activity, and results of operational controls (maintenance, design, and manufacture) should also be included.

§ 250.1912 What qualifications must an independent third party or my designated and qualified personnel meet?

(a) An independent third party or designated and qualified personnel must possess the following qualifications:

- (1) Previous experience with SEMS, or similar management related programs;
 - (2) Technical capabilities of the individual or organization for the specific project;
 - (3) In-house availability of or access to technology, including computer programs or hardware to be used for this specific project;
 - (4) Ability to perform the independent third party functions for the specific project considering current commitments;
 - (5) Previous experience with MMS regulatory requirements and procedures; and
 - (6) Procedures to avoid conflicts of interest with the SEMS program they are reviewing.
- (b) You must document the qualifications for the independent third party or your designated and qualified personnel.
- (c) The MMS reserves the right to evaluate independent third parties as needed.

§ 250.1913 How will MMS determine if my SEMS program is effective?

(a) The MMS or its authorized representative may evaluate or visit your facility to determine whether your SEMS program is in place, adequate,

and effective in protecting the safety and health of workers, the environment, and preventing incidents. These evaluations or visits may be random or based upon the OCS lease operator's or contractor's performance.

(b) The MMS or its authorized representative may evaluate your SEMS program, including documentation of contractors, independent third parties, and designated and qualified personnel, and audit reports to assess your SEMS program.

(1) You must be prepared to explain and demonstrate the procedures and policies included in your SEMS program and produce evidence to support your explanation.

(2) The MMS or its authorized representative may conduct a site visit on your facility to verify that personnel are following your SEMS program and can explain and demonstrate the procedures and policies included in your SEMS program and produce evidence to support their explanation for a specific task.

(3) If MMS directs you to do an evaluation, you will be responsible for all costs associated with the evaluation of your SEMS program.

§ 250.1914 What happens if MMS finds shortcomings in my SEMS program?

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

- (a) Issue an Incident(s) of Noncompliance;
- (b) Require you to revise and submit to MMS your plan to address identified deficiencies in your SEMS program;
- (c) Assess civil/criminal penalties; or
- (d) Initiate probationary or disqualification procedures from serving as an OCS operator.

§ 250.1915 What are my responsibilities for submitting OCS performance measure data?

You must submit Form MMS-131 on an annual basis, for the previous calendar year, by March 31 of each year.

[FR Doc. E9-14211 Filed 6-16-09; 8:45 am]

BILLING CODE 4310-MR-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[EPA-HQ-OPPT-2007-0490; FRL-8416-8] RIN 2070-AJ34

Testing of Certain Nonylphenol and Nonylphenol Ethoxylate Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: On June 6, 2007, the Environmental Law and Policy Center, the Sierra Club, the Pacific Coast Federation of Fishermen's Associations, the Washington Toxics Coalition, Physicians for Social Responsibility, and UNITE HERE (hereinafter "petitioners"), petitioned EPA under section 21 of the Toxic Substances Control Act (TSCA) to initiate rulemaking proceedings under section 4 and section 6 of TSCA for the substances nonylphenol (NP) and nonylphenol ethoxylates (NPEs). EPA granted the petitioners' request for chronic aquatic toxicity testing and a few other aspects of the petitioners' TSCA section 4 request, but denied all of the petitioners' section 6 requests. Subsequently, on October 24, 2007, the petitioners filed suit in the U.S. District Court for the Northern District of California challenging EPA's denial of their TSCA section 21 petition. The lawsuit was mediated and, in an agreement signed on December 30, 2008, the parties settled the case. EPA is now providing this advance notice of proposed rulemaking (ANPRM) for aquatic and sediment toxicity testing under TSCA section 4 for these substances, and is also requesting comment on gathering data under TSCA and through other means to facilitate the evaluation of industrial laundry worker exposure to NPEs.

DATES: Comments must be received on or before September 15, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2007-0490, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg.,

Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2007-0490. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPPT-2007-0490. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301