

**Comments on Proposed “SEMS II” Regulations
(76 Fed. Reg. 56683 - 694 (Sept. 14, 2011)):**

§250.1903

Definition of “Management” - Recommend removal of the definition of “Management” based on the recommended revisions to §250.1932 below. Beyond the foregoing comment, the proposed definition of “Management” is ambiguous and potentially overbroad. For example, the proposed definition arguably extends to those persons who provide training to operational personnel, even where those trainers otherwise have no managerial duties or responsibilities. Also, it is unclear whether the last clause of the definition - “... including but not limited to...” - refers to “operational personnel” or “team of individuals.” Also, the term “company” is undefined.

Definition of “Designated and qualified personnel” - Recommend removal of the definition of “Designated and qualified personnel” based on the recommended revisions to §250.1926 below.

§250.1911

(b) - Recommend revising the proposed third sentence to read as follows: “The JSA must include all personnel involved with the activity being conducted.”

(b)(3) - Recommend that BOEMRE allow electronic signature of JSAs.

(b)(2) and (b)(3) - For MODUs, the supervisor of the crew, the crew themselves, and “[t]he person onsite designated by the operator as the person in charge” could be employees of a “contractor.” The proposed paragraphs therefore potentially impose SEMS regulatory requirements on “contractors.” Is that so intended?

(c) - This proposed subsection says that: “...all employees and contractors... must be trained on... the development and implementation of your JSA.” The proposed language should be revised to read that “all employees and contractors... must be trained on... the development and implementation of JSAs.” The term “your JSA” implies that there is a single JSA that is prepared by the operator. That is not the case; multiple JSAs are prepared, depending on the specific job. Moreover, the revised language would be consistent with the language of proposed §250.1915.

The proposed subsection also says that: “You must provide training to these personnel within 30 days of employment...” The proposed language should be revised to say, “You must ensure these personnel have received training within 30 days of employment...” This revision would make proposed subsections (c) and (d) consistent in the requirement to verify that contractors have received training.

§250.1915

Introductory text - The proposed phrase “that are regulated under BOEMRE jurisdiction” should be revised to read: “that work on facilities subject to SEMS.” As BOEMRE has indicated, certain vessels may be performing work on the OCS that is regulated by BOEMRE, even where those vessels would not be subject to SEMS because they are not “facilities” as that term is defined in § 250.1911 and RP 75 App. D.

Is the proposed introductory text supposed to include the last two sentences of the existing §250.1915 (*i.e.* “You must document the qualifications of your instructors. Your SEMS program must address:”) ?

§250.1920

(a) - This subsection proposes to require an audit to be conducted “within two years of the initial implementation of the SEMS program...” How do we determine the date of the “initial implementation of the SEMS program”? Presumably each operator has two years after its “initial implementation,” a date that may be different for each operator. Also, when is the audit deemed to have been conducted in order to determine whether the deadline has been met? For example, if an operator conducts “initial implementation” of its SEMS program on January 1, 2012 and commences an audit on January 1, 2014, is that timely? Or must the audit report be submitted to BOEMRE on or before January 1, 2014? Or is there some other measure of when the audit is considered to have been undertaken for purposes of demonstrating compliance with the deadline. Also, is “two years” considered to be 730 calendar days?

The proposal requires follow-up audits to be conducted “at least once every three years thereafter.” The proposed language of this subsection does not allow for a precise determination of when the three year period begins or when an audit would be deemed to have been conducted for purposes of meeting the proposed three year deadline. For instance, the three year period could begin upon the commencement of the initial audit, or when the auditor determines the initial audit is complete, or when the audit findings and conclusions from the initial audit are submitted to or received by BOEMRE, or when BOEMRE notifies the operator that it accepts the initial audit report under proposed §250.1926(e). Similarly, the follow-up audit could be deemed to have been conducted at the commencement of the follow-up audit or at the completion of the follow-up audit or at the time that the follow-up audit report is submitted to BOEMRE. On the latter point, we recommend that the follow-up audit would be timely if it is commenced within the three year period.

Recommend revising the second sentence of existing subsection (a) to reflect that the SEMS program now contains 17 elements, as opposed to 13.

(c) - Recommend adding a sentence to the end of proposed subsection (c) to read as follows: “You may submit comments on the audit report to BOEMRE within 30 days after receiving the audit report from the independent third party auditor pursuant to

§250.1926(e), and BOEMRE will consider those comments prior to accepting or rejecting the audit report.”

Recommend the addition of a provision clarifying that enforcement would not be initiated by BOEMRE for “deficiencies” identified in the audit report, where those deficiencies are corrected by the operator within an accepted schedule for correction of such deficiencies, as provided by existing subsection (d).

Under this proposed subsection, the independent third party auditor is required to submit the audit report to BOEMRE “within 30 days of the audit completion date.” Likewise, under proposed §1950.1926(e), the auditor is required to submit the audit report to BOEMRE and the operator. However, under existing §250.1920(d), the operator is required to submit its plan for addressing deficiencies “within 30 days of completion of the audit.” These existing and proposed sections, when read together, indicate that the operator may not receive a copy of the audit report until the end of the time period in which it is allowed to submit its plan for addressing deficiencies. In effect, any delay in providing the audit report would cut short the time available to prepare a plan for addressing deficiencies. The operator should be allowed time to both submit comments (*see* comment above) on the audit report and to develop a proper plan for correcting any deficiencies.

§250.1926

(b) - This proposed subsection would prohibit a third party from auditing your SEMS program if that third party “developed and/or maintains your SEMS program...” As BOEMRE recognizes, some operators developed the basic components of SEMS programs (*e.g.*, RP 75 and other safety and environmental management systems) years before the promulgation of the SEMS regulations. In many cases, third parties were used to develop or assist in the development of one or more of those components. The foregoing prohibition potentially applies to a large portion of the third party work force used by operators over the years and may significantly reduce the number of third parties who would be available to conduct a SEMS audit. We recommend conditioning this conflict-of-interest restriction with a minimum period of time during which an independent third party is ineligible to conduct a SEMS audit. For example, the second sentence of the proposed subsection could be revised to read as follows: “If an independent third party has developed and/or maintained your SEMS program within the prior two years, then that person and/or its subsidiaries cannot audit your SEMS program.”

(c) - Recommend adding a 30 day period for BOEMRE to approve/disapprove the third party auditor nomination, or, alternatively, a period of time after which the nomination is deemed approved.

(d) - Recommend allowing for an extension of time in which to conduct the audit if an operator has to submit a new nomination.

(e) - Recommend that the last sentence be revised to read as follows: “BOEMRE will notify the operator if BOEMRE accepts or rejects the audit report within 30 days after BOEMRE receives the audit report from the independent third party auditor. If BOEMRE rejects the audit report, the rejection notice shall state the reasons for the rejection and allow the operator and the independent third party auditor to amend the audit. In the event that BOEMRE rejects the audit, the operator and independent third party auditor shall have 30 days from the time that the operator receives the rejection notification to submit a revised audit report to BOEMRE that addresses the reasons for the rejection. BOEMRE shall have 30 days after receiving the revised audit report to notify the operator that it either accepts or rejects the revised audit report.”

§250.1928

(f) - Does the term “reviews” refer to the “review of the SWA Policy” to be completed at each safety meeting as stated in proposed §250.1930(e) ?

(g) - Recommend removing the word “development” since not all employees will have participated in the development of the SEMS program. We would propose alternative language to read as follows: “... your employees participated in the implementation of the SEMS program and were provided an opportunity to participate in the development of any revisions or amendments to the existing SEMS program.”

§250.1930

(a) - As proposed, this language would impose liability on every individual worker who fails to stop work meeting certain criteria. The potential for personal liability may reduce the willingness of competent persons to undertake OCS work.

The proposed standard for stopping work is: “any conditions [sic] activities or practices... that could reasonably be expected to cause: (1) Death or serious physical harm immediately or before the risk or danger can be eliminated through enforcement procedures; or (2) Significant, imminent harm to land, air, aquatic, marine or subsea environments or resources.” This proposed language is too vague to allow individuals to consistently apply it in on-the-job settings. Individual workers will not feel comfortable making the types of nuanced judgment calls required by the proposed language.

(d) - Recommend removing the word “drill” at the end of proposes subsection (d) and making JSA plural.

(e) - The term “safety meetings” is not defined and potentially includes non-safety topic business meetings where a brief introductory item related to safety is provided as a matter of course. We propose alternative language to this proposed subsection to read as follows: “... review of the SWA policy must be completed as part of all meetings relating to facilities subject to SEMS for which safety is the primary topic of the meeting.”

This proposed subsection refers to “SWA Policy and Program” and “SWA Policy.” These terms should be replaced with “SWA procedures,” which is the term used in §250.1930(a).

§250.1931

(a) - This proposed subsection includes a requirement that: “Your SEMS program must clearly define who is in charge at all times.” Would this proposed requirement be satisfied by a document that identifies a specific “role” that would be in charge, as opposed to identifying a particular individual by name? The individual person in charge may change frequently, depending upon rotation, illness, shift change, etc. Under the proposed language, the foregoing changes would necessitate equally frequent updates to the SEMS program. Further, the example given in subsection (a) has the potential to confuse the application of Ultimate Work Authority as described in subsection (b). To eliminate this potential confusion, we recommend the removal of the following language: “*i.e.* the person located on the facility or MODU with the final responsibility for making decisions relating to activity and operations on the facility.”

(c) - Recommend relocating the language of this proposed subsection to a different section of Subpart S.

§250.1932

Recommend the following revisions:

(a) - “You” replaces “Management” and “your” replaces “their” so that it would read as follows: “(a) You must consult with your employees on the development and implementation of your SEMS program.”

(b) - “You” replaces “Management” and “your” replaces “their” so that it would read as follows “(b) You must develop a written plan of action..., will participate in your SEMS program development and implementation.”

(d) - “You” replaces “Management” and “your” replaces “their” so that it would read as follows: “(d) You must provide BOEMRE a copy of your employee participation program upon request.”

(e) - “You” replaces “Management” and “your” replaces “their” so that it would read as follows: “(e) You must assure that your employee participation program is made available during an audit.”

As noted in the comments to §250.1903 above, if the term “management” is replaced with the term “you” in the foregoing section, then the definition of “management” in §250.1903 is no longer necessary.

(d) and (e) - Is the “employee participation program” the same thing as the “written plan of action” referred to in proposed subsection (b) ?

§250.1933

(a) - This subsection refers to reporting “requirements” in 33 CFR §142.7 and 46 CFR §109.419. However, 33 CFR §142.7 does not include any requirement on persons to report or on operators. 46 CFR §109.419 applies only to MODUs. Is it the intent of the proposal to expand the applicability of §109.419 to facilities other than MODUs?

(b) - The proposed language would apply this section to “contractors providing domestic services to the lessee or other contractors, including domestic services [sic] include [sic] janitorial work, food and beverage service, laundry service, housekeeping, and similar activities...” The proposed language appears to be in conflict with existing §250.1914(a), which excludes “contractors providing domestic services to the lessee or other contractors” from the definition of “contractors.”

(g) - The proposed language says that follow-up training must be provided “not less than once every 12 months thereafter.” The proposed language of this subsection does not allow for a precise determination of the date by which follow-up training must be provided. Does “12 months” mean 365 days or does it mean that the follow-up training must be conducted during the same month that the initial training was conducted, or either?

(g) and (h) - The proposed language of these subsections states that they apply only to “employees” and not to “contractors.” We understand the intent is to limit the applicability of these proposed subsections to employees of the operator.