



November 14, 2011

Department of the Interior  
Bureau of Safety and Environmental Enforcement (MS 4024)  
Attn: Rules Processing Team (Comments)  
381 Elden Street  
Herndon, VA 20170-4817

Re: RIN 1010-AD 73  
Revisions to Safety and Environmental Management Systems (SEMS)  
76 FR 56683

Ladies and Gentlemen:

The Offshore Operators Committee (OOC), the American Petroleum Institute (API), the International Association of Drilling Contractors (IADC), the Independent Petroleum Association of America (IPAA), the National Ocean Industries Association (NOIA), the International Marine Contractors Association (IMCA) and the Offshore Marine Service Association (OMSA) appreciate this opportunity to provide written comments on BOEMRE/BSEE's proposed rule, *Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Revisions to Safety and Environmental Management Systems*, 76 Fed. Reg. 56683 (Sept. 14, 2011).

These trade associations represent oil and gas producers, contractors and suppliers who conduct essentially all of the OCS oil and gas activities in the Gulf of Mexico. Our members are involved in construction, drilling, exploration, production, transport and support services for the offshore oil and gas industry and will be significantly impacted by this BOEMRE/BSEE rulemaking.

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

Industry shares BOEMRE/BSEE's concern about safety of personnel and protection of the environment, as these are core values to our industry. We have long demonstrated our commitment to a strong safety culture and value the effectiveness of robust safety and environmental management systems to improve the safety of our operations. The offshore oil and gas exploration and production industry has an admirable safety record when compared to other similar industries; and a commitment toward continuous improvement.

BOEMRE/BSEE has significantly underestimated the cost impacts and available resources to implement this proposed rule and the initial SEMS rule. Further, operators with existing SEMS in place and proven effective have had to make significant modifications to meet the new prescriptive requirements of SEMS. Also, with publication of the recent NTL, the agency has added new requirements without going through the rulemaking process. Comments on the recent NTL will be communicated to the agency separately.

There are several key areas of the subject proposed rule which industry feels should be revised. Those areas are identified in the attached table with the most critical issues emphasized further in this letter.

### ***Jurisdiction***

The proposed regulation contains provisions that limit the scope of the regulation to "activities that are regulated under BOEMRE/BSEE jurisdiction." This wording creates considerable and unacceptable ambiguity, particularly with respect to its application to those areas where the Coast Guard has regulatory authority. This is exacerbated by the inclusion of well intervention activities in the proposed definition of mobile offshore drilling unit (MODU).

The SEMS II preamble suggests that companies review various MOUs and MOAs for guidance; however, the rule is not clear on what activities are expected to be covered by the SEMS rule. Industry acknowledges that the current MOU's and MOA's between the agencies were intended for other purposes and are inappropriate to delineate individual and joint responsibilities with respect to safety and environmental management systems. Clarification on jurisdictional boundaries relative to SEMS implementation is required and Industry recommends that this be done with appropriate vetting and in accordance with the rulemaking process.

### ***Definitions §250.1903***

The definition of Mobile offshore drilling units (MODU) as used in this proposed rulemaking is inconsistent with the language in the current MOU and US Coast Guard regulations.

Vessels other than MODUs have the capability to undertake well servicing and workover operations. Many of these may not have drilling capability or a derrick to provide drilling services, so will not be engaged in drilling operations.

Given the overlapping jurisdiction with the Coast Guard, this different definition could be a source of confusion, and could lead to misunderstandings about restrictions on certain units being able to conduct certain activities, and which set of regulations apply.

Industry recommends that the proposed definition of MODU should be consistent with the published definition in the MOU and API RP75, as follows:

*“Mobile Offshore Drilling Unit or MODU means a vessel capable of engaging in drilling operations for exploring or exploiting subsea oil, gas, or other mineral resources”.*

Industry recommends that BOEMRE/BSEE should specify which activities, rather than which types of vessels or units, are subject to the SEMS requirements.

### ***Job Safety Analysis (JSA) -- §250.1911***

Current interpretation of the proposed rule, §250.1911 (c ) and (d), is that the operator is required to provide training to employees and contractor personnel within 30 days of employment and not less than once every 12 months thereafter. The rule further indicates that the operator must verify that contractors have received training and that they understand the training. These two requirements seem to be in conflict as to who is responsible for training the contractor employees.

Recommend revising paragraphs (c) and (d) to read “(c) As part of your SEMS program you must provide training to your employees who perform activities on the OCS that are regulated under BOEMRE/BSEE jurisdiction on the methods of recognizing and identifying hazards, and the development and implementation of JSAs, prior to executing any JSA and not less than once every 12 months thereafter. (d) You must verify that contractors have been trained in methods of recognizing and identifying hazards, and the development and implementation of JSAs, prior to the contractor performing work.

### ***The Proposed Requirement for the Use of “Independent Third Party Auditors (I3Ps)”- §250.1920***

Many of our members have used I3P companies to help develop, implement and audit their safety and environmental management systems. Just as we hire outside engineering firms to outsource engineering work, we have “outsourced” to I3P companies. Since the establishment of safety management systems, offshore operators have hired a cadre of highly qualified individuals as additional resource to develop, implement and audit their SEMS – as we have hired engineering expertise internally.

Through the Center for Offshore Safety (COS), an effort is underway to establish criteria for qualification of independent third parties – and companies that are audit service providers (ASPs). COS has indicated that it will take some time before COS is able to identify ASPs and I3Ps that meet the criteria – certainly not in time for compliance with the SEMS 2 rule as proposed. While we support this approach within the COS, we do not support the immediate application of this approach by BOEMRE/BSEE – resources do not currently exist.

It is apparent from discussions with and presentations by BOEMRE/BSEE staff that little effort was made by the Agency to assess the availability of I3Ps to meet compliance with the proposed rule. The numbers of I3Ps are small. The few that BOEMRE/BSEE staff has mentioned in presentations have performed extensive work for the offshore industry in developing different aspects of company SEMS – a factor that would make them unqualified to perform audits as I3Ps. Also, the assertion that a professional auditor employed by an operating company is less credible than an “independent” auditor that is contracted with and paid by the operating company has not been demonstrated by the agency in its proposal – nor was it suggested in any investigation or report that stemmed from the DWH incident.

We would recommend that before moving forward with a final rule requiring the I3P audits, the agency:

- 1) Undertake an assessment of the available resources (I3Ps) that would be qualified to do this work and a clear justification for mandating this unprecedented regulatory requirement;
- 2) Consistent with common industry practice, reconsider and define the criteria that would allow an established internal workforce to continue to conduct audits;
- 3) Establish a realistic timeline for when such a requirement would be put in place; and
- 4) Consider a program where an I3P would assess the effectiveness and validity of an operator’s internal audit program.

#### ***Employee Participation -- §250.1932***

The proposed §250.1932 is out of sequence with the overall SEMS program. It requires employee participation in the program with specific requirements for employee consultation and a written plan among other things. This new section would be effective at some future date that was not specified in the proposal, but the overall SEMS program has been finalized and will be effective on November 15, 2011. Knowing that the agency finalized the SEMS rule with a November 15, 2011, implementation date, industry has been working for months in preparation for this deadline. The proposed new section does not include a proposed effective date, it would be difficult to comply with this employee participation provision since all of the program elements will already be developed and implemented before the new requirement for employee participation is finalized and made effective. Industry believes that it could include affected employees in future modifications to the SEMS. Appropriate employee participation will be evident through the audit of an Operator’s SEMS. Further this requirement is unfounded as neither OSHA nor EPA employee participation regulations require documentation of those employees involved in the development and implementation of their respective program.

Industry recommends that this section be deleted in its entirety and replaced with the following:

*What are my employee participation requirements?*

*You must include appropriate employees in the development and revision of your SEMS.*

- a. *You must have a written plan of action for how you include appropriate employees in the future development and revisions of your SEMS program.*
- b. *You must provide access to hazards analyses and to all other information required to be developed under this subpart.*

### ***Reporting of Unsafe Work Conditions -- §250.1933***

This appears to be a more detailed requirement similar to the existing 30 CFR 250.193 – Reports and investigations of apparent violations. This section in the existing rule reads as follows:

*“Any person may report to BOEMRE/BSEE an apparent violation or failure to comply with any provision of the Act, any provision of a lease, license, or permit issued under the Act, or any provision of any regulation or order issued under the Act. When BOEMRE/BSEE receives a report of an apparent violation, or when a BOEMRE/BSEE employee detects an apparent violation after making an initial determination of the validity, BOEMRE/BSEE will investigate according to BOEMRE/BSEE procedures”*

The agency should consider deleting this from the proposed Subpart S revisions and consider revising 250.193 to read as follows:

*Any affected person may anonymously report to BOEMRE/BSEE, an apparent violation or failure to comply with any provision of the Act, any provision of a lease, license, or permit issued under the Act, or any provision of any regulation or order issued under the Act. Any affected person may anonymously report to BOEMRE/BSEE an unsafe or hazardous condition, including unsafe and hazardous conditions reportable to the Coast Guard as required at 33 CFR 142.7 and 46 CFR 109.419. When BOEMRE/BSEE receives a report of an apparent violation, or when a BOEMRE/BSEE employee detects an apparent violation after making an initial determination of the validity, BOEMRE/BSEE will investigate according to BOEMRE/BSEE procedures. All operators must post a notice of this regulation in a visible location frequently visited by personnel. This posting shall include The BOEMRE/BSEE Safety Hotline phone number (1-877-440-0173 or 202 208-5646), and the mailing address for the US Dept of Interior, Bureau of Safety and Environmental Enforcement, Investigations and Review Unit, 1849 C Street, NW., MS-5560, Washington, DC 20240.*

### ***Closing Comments***

It is important to note that many in Industry had voluntarily embraced API RP75 and had already implemented and evolved their safety and environmental management systems prior to the SEMS rulemaking. For those operators that had, many were required to go back and modify or change those systems in place and proven effective, specifically to comply with new prescriptive requirements. Changes to programs that have been in place and working effectively we believe are contrary to the intent of the rule and supports the need for flexibility in implementation to adapt and adjust in accordance with a company’s individual needs. As a regulator it also means an in-depth understanding will be required of a company’s system prior to the Agency drawing conclusions on its sufficiency in meeting the spirit and intent of the rule.

One item absent from both the SEMS and SEMS II rulemakings is how the Agency will assess the effectiveness of an Operator’s SEMS and delineate the purpose of SEMS audits of critical

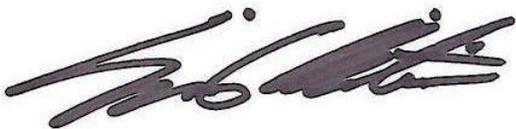
processes from typical Agency compliance inspections. It is important to recognize that SEMS audits are designed to interrogate the robustness of and validate the implementation of processes critical to safe operations on the OCS. In keeping with the spirit of API RP75 and the intent of the SEMS rule, the Industry believes that it is paramount that the Agency carefully administer its oversight of SEMS implementation in a manner to foster the desired result of continuous improvement and to promote best practice sharing. The Industry is concerned that should the Agency reconcile its role with an enforcement oriented approach, rather than seek to understand the Operator's programs in place and the actions planned/taken to properly address and reach closure, then the ultimate goal of the SEMS rule will likely be compromised. This concern is well established in the foundational recommendation set forth for the development of the first SEMP. An excerpt found on the Offshore Energy & Minerals Management SEMP Website is provided:

*The SEMP was developed in response to the 1990 finding of the National Research Council's Marine Board that MMS's prescriptive approach to regulating offshore operations had forced Industry into a compliance mentality. The Marine Board found further that this compliance mentality was not conducive to effectively identifying all the potential operational risks or developing comprehensive accident mitigation. As a result, the Marine Board recommended and MMS concurred that a more systematic approach to managing offshore operations was needed.*

It is important that this intent is not lost in the implementation of the rule.

As we have previously stated, Industry shares the Agency's goal of safe and environmentally sound operations and welcomes the opportunity to continue our work with BOEMRE/BSEE and the USCG to achieve this stated objective. We thank you again for allowing us to comment on the proposed rule and remain available to answer any questions concerning our comments.

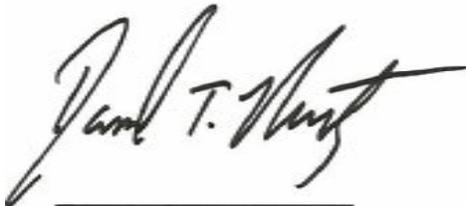
Sincerely,



Erik Milito, API



Alan Spackman, IADC



Daniel Naatz, IPAA



Randall Luthi, NOIA



Allen Verret  
Offshore Operators Committee



James Adams  
Offshore Marine Services Association



Hugh Williams  
International Marine Contractors Association

Attachment