IMCA TRADING LTD

International Marine Contractors Association
Represents offshore marine and underwater engineering companies

52 Grosvenor Gardens, London SW1W 0AU, United Kingdom

Tel: +44 (0) 20 7824 5520 E-mail: imca@imca-int.com
Fax: +44 (0) 20 7824 5521 Web: www.imca-int.com

14 November 2011

Department of the Interior
Bureau of Safety and Environmental Enforcement (MS 4024)
Attn: Regulations and Standards Branch (RSB)
381 Elden Street
Herndon, VA 20170-4817

Docket number BOEM-2011-0003 (RIN 1010-AD73)

Dear sir or madam,

Revisions to Safety and Environmental Management Systems (SEMS), 1010-AD73

The International Marine Contractors Association (IMCA) is the international association representing offshore, marine and underwater engineering companies. IMCA members operate offshore construction vessels in support of offshore exploration and production activities all over the world, including on the United States Outer Continental Shelf, and our members will be impacted by the contractor management requirements of the Safety and Environmental Management Systems (SEMS) rulings.

We are writing in response to BOEMRE / BSEE notice of proposed rulemaking on 14 September 2011 regarding revisions to Safety and Environmental Management Systems (SEMS) (76 FR 56683 – 56694).

We have the following comments.

General remarks

IMCA members fully support efforts to improve safety and environmental management. Under existing international and United States Coast Guard regulations, vessels are already required to have safety management systems in place, and many of the proposed SEMS elements are accepted industry practice. However, to be effective, safety and environmental management programs must be part of a holistic approach, and SEMS must therefore be part of a broader regulatory strategy, to ensure the effective transition to a goal setting, safety management regime.

In addition, the scope of application of the SEMS requirements must be clarified. We had initially understood that the SEMS requirements specifically addressed the risks related to drilling and production activities, but the proposed revisions include references to well workover, well completion and well servicing activities. These are activities which can be conducted by vessels other than those with drilling capability, and there is therefore confusion about the intended scope of application, concern about the potential jurisdictional conflict, and possible regulatory confusion.

250.1903 – Definitions: Mobile Offshore Drilling Unit or MODU

The proposed rule defines MODU as *'a vessel capable of engaging in drilling, well workover, well completion and well servicing operations for exploring or exploiting subsea oil, gas or other mineral resources.'*

We are concerned about the proposal to reference well workover, well completion and well servicing operations in the definition of MODU. This is at odds with the accepted interpretation of MODU, which is of a vessel primarily engaged in drilling operations, and would conflict with the definition used in existing federal regulations, including United States Coast Guard (USCG) regulations. Given the overlapping jurisdiction with the Coast Guard, this different definition could be a source of confusion.

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

We are concerned that this different definition could result in vessels without 'MODU' classification being prevented from undertaking well servicing operations.

This could also result in a plethora of other regulatory requirements and industry standards for MODUs, which are specifically addressed to vessels engaged in drilling activities, being applied to monohull and other offshore vessel types capable of well service operations but not engaged in drilling operations.

The proposed definition should be identical to that used by the United States Coast Guard i.e.:

'Mobile Offshore Drilling Unit or MODU means a vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources.'

In addition, to avoid confusion, any definition of MODU should apply throughout 250 and not just for subpart S of the regulations.

The scope of application must also be clarified. The proposed text limits the SEMS requirements to OCS activities that are regulated under BOEMRE / BSEE. However, as identified above, the proposed definition of MODU refers to well intervention operations that can be carried out by vessels other than MODUs, whose operations would not fall under the scope of BOEMRE / BSEE. This is a potential source of confusion, particularly regarding areas of overlap with Coast Guard regulations.

The Coast Guard already has regulations in place for Safety Management Systems (33 CFR part 96, Rules for the Safe Operation of Vessels and Safety Management Systems). These regulations implement Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS), 1974, International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code), as required by 46 U.S.C. Chapter 32. The Coast Guard enforces these regulations with respect to self-propelled MODUs and other vessels (regardless of flag) engaged in OCS activities.

The final text must avoid any potential regulatory confusion or overlap between the SEMS requirements and the existing Coast Guard regime in place for vessels, and the scope of application must therefore be clear for each regulation.

250.1911 (b) – What criteria for Hazards Analysis must my SEMS program meet?

(b) Job Safety Analysis (JSA)

The proposed amendments introduce requirements to both recognise and identify hazards and to develop a Job Safety Analysis (JSA) for specific activities. However, the wording does not appear to split out the broader hazard analysis for the overall facility from the detailed JSA for an individual activity.

In addition, the third sentence of this section states that *'The JSA must include all personnel involved with or affected by the activity being conducted.'* The proposal for JSAs to include all personnel 'affected by the activity being conducted' is extremely wide ranging, and would be impossible to quantify or enforce. We therefore recommend amending the text to read as follows:

'The JSA must include all personnel involved with the activity being conducted.'

250.1911 (b) (1) (i) – What criteria for Hazards Analysis must my SEMS program meet?

'The steps involved in performing a specific job'.

We would recommend removing the requirement that the JSA record the steps involved in completing the job. Otherwise, this risks confusing the JSA with the procedure for the job itself. Many jobs do require a procedure, but the intent and focus of the JSA should be about hazard identification and mitigation. If a procedure is needed it should be a separate document that is reviewed during the course of completing the JSA.

250.1911 (b) (2) – What criteria for Hazards Analysis must my SEMS program meet?

'The immediate supervisor of the crew conducting the work must conduct the JSA, sign the JSA, and ensure that all personnel participating in the job sign as well'.

While we agree that all personnel participating in the job should be identified, we are not convinced about the practicalities of requiring all personnel to sign a JSA, particularly as some personnel may be located on a vessel. Given the potential confusion about which 'jobs' are under BOEMRE / BSEE's jurisdiction, the current wording could also create difficulties with respect to transfers of personnel and materials between supply boats and platforms/rigs and with helicopter landing operations.

We would therefore recommend amending the proposed text, to make clear all personnel must be identified but not expected to physically sign the JSA.

250.1911 (b) (3) – What criteria for Hazards Analysis must my SEMS program meet?

'The person onsite designated by the operator as the person in charge of the facility must approve and sign the JSA.'

Assigning approval responsibility to one individual may lead to unnecessary work delay and/or the tendency to complete a JSA the day before the task, possibly omitting current conditions or risks that might have been captured just before undertaking the work.

In addition, the person directly in charge of the specific operation is the person most knowledgeable about the activity, and it should be that person who should sign the JSA on behalf of the operator. Approval authority for JSAs should therefore be expanded to include other competent personnel designated by the operator.

BOEMRE / BSEE should also clarify that electronic signatures would be permitted.

250.1911 (b) (4) – What criteria for Hazards Analysis must my SEMS program meet?

'A single JSA remains sufficient provided that the relevant activity is recurring, without major changes to personnel, procedures, equipment environmental conditions or other major issues associated with that activity.'

In the preamble, BOEMRE / BSEE indicates that, should these changes be present, '*the person in charge of the activity could decide that a JSA for each employee engaged in that activity is not required*'.

This would seem to infer that the normal expectation would be that the person in charge **would** undertake a JSA for each person in these circumstances. This methodology would be contrary to many companies' 'Management of Change' procedures and may be administratively burdensome to the person in charge.

The wording '*a single JSA remains sufficient*' should be revised, as it is currently unclear what these words mean within the context of this section.

250.1911 (c) & (d) – What criteria for Hazards Analysis must my SEMS program meet?

This proposed subsection states that: *'…all employees and contractors… must be trained on… the development and implementation of your JSA*.'

The term '*your JSA'* implies that there is one, single JSA that is prepared by the operator. This is not the case; multiple JSAs are prepared, depending on the specific job. The proposed language should therefore be revised to read that '*all employees and contractors… must be trained on… the development and implementation of JSAs'*.

In addition, the proposed text would appear to make the operator directly responsible for hazard identification training for contractors' employees. In our view, it is not appropriate to suggest that operators should be responsible for managing the training of contractors' employees; instead, the operator's responsibility should be limited to verifying that contractors are managing their competency programs effectively.

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.

250.1920 (a) – What are the auditing requirements for my SEMS program?

'You must have your SEMS program audited by an independent third party according to the requirements of this subpart and API RP 75.'

This is a new requirement, which will take time to bed in. Appropriate numbers of suitably skilled and knowledgeable third party auditors will not be available immediately. Also, it will take time for the industry to become familiar with the new requirements and for operators' and auditors' personnel to be able to interact sufficiently, to go beyond strict regulatory compliance and be able to gauge SEMS' programs' operational safety effectiveness.

Given concerns voiced by other industry organisations regarding capacity and availability of resources, some kind of phase in of this requirement might be the most pragmatic approach.

250.1930 (a) – What must be included in my SEMS program for 'Stop Work Authority (SWA)?'

'and witness any activity that creates an imminent risk or danger'

Most operations present some level of danger when they are being conducted. However, that risk can be managed and mitigated through the application of barriers or controls. The draft text should therefore be qualified, to show that an SWA is applicable when a threat or danger is outside of the ordinary.

We would therefore recommend changing the wording to *'and witness any activity that creates an imminent and significant risk or danger'*.

The revised wording would provide a link to the extent of consequences described in sub section (1) and (2) of this regulation.

250.1930 (c) – What must be included in my SEMS program for 'Stop Work Authority (SWA)?'

'Work may be resumed upon a determination by the person in ultimate work authority that the imminent risk or danger that led to the stoppage does not exist or no longer exists.'

This statement may be contrary to many companies' 'Management of Change' procedures that take authority to restart activities for certain initial risk level changes away from the ultimate work authority and place the responsibility with onshore management.

Placing responsibility on the ultimate work authority for recommencement of activities may place a burden of responsibility that may be better passed to onshore and more senior management. Consideration should be given to amending the wording of this requirement.

In line with our proposed rewording in **250.1930 (a)** (see above), we would recommend changing the wording to *'that the imminent and significant risk or danger that led to the stoppage does not exist or no longer exists'.*

250.1930 (e) – What must be included in my SEMS program for 'Stop Work Authority (SWA)?'

'Additionally a review of the SWA Policy must be completed as part of all safety meetings.'

Requiring a review of the SWA Policy at all safety meetings is impractical, with no tangible safety benefits.

We would recommend rewording this section to read *'Additionally a reiteration of the content, application and responsibilities under the SWA Policy, should be completed as part of all safety meetings'.*

250.1931 – What must be included in my SEMS program for 'Ultimate Work Authority'?

'Your SEMS program must identify the person with the ultimate work authority (UWA), i.e. the person located on the MODU with the final responsibility for making decisions related to activity and operations on the facility. This person must be designated by the operator taking into account all applicable Coast Guard regulations that deal with designating 'a person in charge' (in accordance with USCG definition) of a MODU or OCS facility found in 33 CFR 146.5 and 46 CFR 09.109. Your SEMS program must clearly define who is in charge at all times.'

This requirement fails to address the case of more complex combined operations, where the person with UWA may not necessarily be the person in charge of the MODU. This is particularly the case if the SEMS requirements are to also apply to activities conducted by other offshore units, as neither 33 CFR 146.5 not 46 CFR 109.109 would be applicable to some of the vessels that would be considered a MODU under the proposed definition (see our comments under 250.1903).

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'.*

250.1932 (a) – What are my employee participation program requirements?

The proposed text states that '*Management must consult with their employees on the development and implementation of the company's SEMS program'.*

Not all employees can be expected to participate in the development of the SEMS program. Instead, the requirement should reflect that relevant input.

The use of the term "employees" could be a potential source of confusion given the distinction between employees and contracted workers in the existing §250.1903 definitions of "Designated and qualified personnel" and "personnel" and the lack of a definition of "employee" applicable to subpart S.

250.1933 (c) – What criteria must be included for reporting unsafe work conditions?

'Any person may report to BOEMRE a possible violation of any BOEMRE order, standard or regulation in this subchapter, or other Federal Law relating to offshore safety, or any other hazardous or unsafe working condition on any facility.'

This statement may contradict the SWA requirements stated in 30 CFR 250.1930. The ability of an individual to potentially bypass the Operator's mandated SWA system may leave the worksite and its people exposed to unnecessary risk.

Consider rewording the statement to include '*any individual reporting to BOEMRE / BSEE must give cognizance to the requirements of CFR 250.1930 Stop Work Authority and report immediately unsafe working conditions to the operator of the facility before reporting to BOEMRE'.*

Also the use of the definition 'unsafe work conditions' in these circumstances differs from the widely held industry definition that may include conditions from 'untidy workplaces' to 'equipment about to catastrophically fail'. Reporting to BOEMRE / BSEE of all hazardous conditions may deluge BOEMRE / BSEE in reports of small significance to the safety of personnel on the facility and the protection of the environment. Consideration should be given to amending this section to include *'any other hazardous or unsafe working condition of significant hazard or risk on any facility'*. This change may more effectively link SWA and unsafe working conditions.

IMCA appreciates the opportunity to provide a response to this proposed rulemaking. We would be happy to provide any necessary clarification on any of these points, and request that our comments be taken into account.

Yours faithfully,

Hugh Williams
Chief Executive