



## **DEPARTMENT OF LABOR**

### **Occupational Safety and Health Administration**

**[Docket No. OSHA-2012-0033]**

#### **Expert Forum on the Use of Performance-based Regulatory Models in the U.S. Oil and Gas Industry, Offshore and Onshore**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of stakeholder meeting.

**SUMMARY:** The Department of Labor, Occupational Safety and Health Administration (OSHA); Department of Interior, Bureau of Safety and Environmental Enforcement (BSEE); Department of Homeland Security, United States Coast Guard (USCG); Environmental Protection Agency (EPA); and Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) invite interested parties to participate in a co-sponsored stakeholder meeting, and submit comments on the use and implementation of performance-based regulatory models for enhanced safety and environmental performance in the United States oil and gas industry. The meeting will take place at the College of the Mainland, and hosted by the Gulf Coast Safety Institute. Speakers will address the current regulatory landscape and discuss the challenges and benefits of non-prescriptive, outcome-based approaches to reduce the frequency and severity of harmful events. Public attendees will have the opportunity to make comments at the meeting, and all members of the public may submit comments in writing. The purpose of the meeting is to gather information from experts and stakeholders to help inform the consideration of future applications of performance-based regulatory approaches in the oil and gas sector. The agencies involved are soliciting input on

potential concepts and options, and are not proposing specific changes to existing regulations at this time.

**DATES:** The stakeholder meeting will be held on September 20-21, 2012. The meeting will run from 9:00 a.m. to 4:00 p.m., CDT on September 20, and 9:00 a.m. to 1:00 p.m., CDT on September 21. The agencies will post a more detailed agenda for the meeting on the registration website (see REGISTRATION section).

**ADDRESSES:** The meeting will take place at College of the Mainland, Learning Resource Center, Room 131, 1200 Amburn Road, Texas City, Texas 77511. On-site parking will be available.

**REGISTRATION:** The deadline for registration to attend the meeting is September 5, 2012. Please register online at <https://primis.phmsa.dot.gov/meetings/mtghome.mtg?mtg=79>. Registrations will be available for 150 public seats. The meeting also will be webcast live for online viewing. Instructions and information for the webcast, a detailed meeting agenda, and additional information will be available on the registration website.

**PUBLIC COMMENT:** You are invited to submit comments that address the topics for consideration listed in Section II of this notice. The docket will remain open until October 22, 2012. You may submit comments and additional materials electronically, or by facsimile (fax) or hard copy.

*Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>. Follow the instructions on-line for making electronic submissions.

Fax: If your submissions, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

Mail, hand delivery, express mail, or messenger or courier service: You may submit comments and attachments to the OSHA Docket Office, Docket No. 2012-0033, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. The Docket Office will accept deliveries (hand, express mail, or messenger or courier service) during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., EST.

Instructions: All submissions must identify the Agency name and the OSHA docket number for this meeting (OSHA Docket No. 2012-0033). You may supplement electronic submissions by uploading document attachments and files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit a copy to the OSHA Docket Office. The additional materials must clearly identify your electronic submissions by name, date, and docket number so OSHA can attach them to your submissions.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning the delivery of materials by hand delivery, express mail, or messenger or courier service, please contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627).

Docket: To read or download submissions or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket are listed in the <http://www.regulations.gov> index; however,

some information (*e.g.*, copyrighted material) is not publicly available to read or download through the Website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

**FOR FURTHER INFORMATION CONTACT:**

- *For press inquiries:* Mr. Frank Meilinger, Director, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-1999; e-mail: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).
- *For general and technical information about the meeting:* Ms. Lisa Long, Director, Office of Engineering Safety, OSHA, Directorate of Standards and Guidance, Room N-3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-2222; e-mail: [long.lisa@dol.gov](mailto:long.lisa@dol.gov).
- *For copies of this Federal Register notice:* Electronic copies of this Federal Register document are available at <http://www.regulations.gov>. This document, as well as news releases and other relevant information, also are available at OSHA's Webpage at <http://www.osha.gov>.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Multiple agencies share Federal health, safety, and environmental regulation of the U.S. oil and gas industry, from drilling to refining, both onshore and offshore. The oil and gas industry engages in operations that include, but are not limited to, exploration, drilling, completion, servicing, production, transportation, and refining. While the

technical aspects of these operations can vary greatly, many hazards to both employees and the general public are similar. However, regulatory requirements between the various agencies often differ, and the agency that has jurisdiction over an operation can vary by either type of operation or location; in some cases, jurisdiction may overlap. For instance, BSEE, USCG, and the EPA regulate drilling and production activities offshore, PHMSA regulates hazardous material transportation both onshore and offshore, and OSHA has standards regulating safety and health in workplaces that include oil and gas drilling, production, and refining. Currently, Federal agencies involved in the regulation of the oil and gas sector employ regulatory regimes that have some elements of both prescriptive and performance-based approaches; the agencies are continually evaluating how to improve the effectiveness of these regulations and standards.

On January 18, 2011, President Obama issued Executive Order 13563, which called for improvements in the nation's regulatory system to promote predictability and reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. Specifically, the Executive Order requests that agencies review existing and proposed standards and regulations to ensure they effectively protect “public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.” The Executive Order also sets forth agency requirements for promulgating regulations and standards, including provisions addressing public participation, integration and innovation, flexible approaches, and retrospective analysis of existing rules. With respect to retrospective analysis, the Executive Order states:

To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules

that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.

The Executive Order emphasizes that, to the extent feasible, regulations and standards should: specify performance objectives rather than specifying the behavior or manner of compliance that regulated entities must adopt; and be adopted through a process that involves public participation. Consistent with these objectives, BSEE, EPA, OSHA, PHMSA and USCG are soliciting views from the public regarding opportunities to improve the efficiency and effectiveness of safety and environmental regulations and standards in the oil and gas industry while enhancing interagency coordination. The goal of such improvements is to further the safety of oil and gas industry operations, while increasing environmental and economic benefits to society.

#### *Types of Regulatory Models*

BSEE, EPA, OSHA, PHMSA, and the USCG are particularly interested in stakeholder views regarding the most effective regulatory models to address the issues noted above. There are many regulatory models for agencies to consider, ranging from prescriptive regulations and standards to more performance-based regulations and standards. Prescriptive models, sometimes referred to as “command and control” regulation, generally prescribe precise requirements. Performance-based models, often referred to as “outcome-based” or “market-based” regulation, specify an outcome to be achieved without prescribing the specific requirements to reach that outcome.

One popular regulatory model in the U.S., the “management-based” regulation, falls somewhere on the spectrum between prescriptive and performance-based models. Regulators using this model generally require the implementation of management systems and practices that ensure a desired outcome. Regulations and standards

developed under this model may specify the elements of the management system, but do not prescribe specific technical requirements.

BSEE, EPA, OSHA, PHMSA, and the USCG have a mix of regulations and standards that incorporate prescriptive and performance-based requirements, including some management-based models. In addition to these regulations and standards, there are several examples of regulatory models in the U.S. and abroad that incorporate varying degrees of performance-based approaches that include, but are not limited to:

- U.S. Nuclear Regulatory Commission (NRC) regulations;
- Contra Costa County California Industrial Safety Ordinance;
- United Kingdom, Health and Safety Executive (HSE) Offshore Installation (Safety Case) Regulations; and
- 2005 Norway, Petroleum Safety Authority (PSA), Framework HSE, Management, Technical and Operational, Facilities and Activities regulations.

## **II. Topics for Consideration**

The Federal agencies sponsoring this stakeholder meeting are exploring a number of topics that will help inform whether and how to further incorporate performance-based regulatory approaches into their current regulatory systems. These topics include:

- the advantages and disadvantages of performance-based, prescriptive, and management-based regulatory approaches;
- whether these models could create synergies between multiple agencies; and
- what types of models or combinations of models could result in long-term economic benefits.

To elicit specific feedback on these topics, participating agencies are requesting comment from stakeholders regarding the following questions:

1. What are some benefits of using a performance-based regulatory regime to regulate the oil and gas industry? What are some drawbacks? In making this evaluation, consider health, safety, environmental, and economic impacts, as well as implementation challenges, cost to regulatory agencies, and long-term hazard-reduction effectiveness. Refer to specific models and provide data, when appropriate.
2. Could there be a balance of performance vs. prescriptive regulations and standards in the U.S. oil and gas industry and, if so, what should it be? Does this balance vary for certain types of operations, business sizes, etc.?
3. Is there a way to advance the use of performance-based regulations and standards in the U.S. oil and gas Industry? If so, what is the best way? Consider means, cost to regulatory agencies, cost for industry, and expected changes in developing your response.
4. Could uniform implementation of performance-based regulations and standards improve efficiency and reduce duplication in a hazardous industry regulated by multiple agencies? If so, how?
5. What are the biggest challenges to successful implementation of performance-based regulations in the U.S. oil and gas industry?
6. How can risk assessment best be used in performance-based regulations while still ensuring adequate levels of safety? If risk assessments are used in a performance-based regulation, should acceptable risk levels be established?



7. How have authorities that currently use performance-based regulatory models ensured effective oversight (*e.g.*, use of metrics, audit programs)?
8. Are there limits to the use of performance-based regulatory models? For example, do performance-based regulatory models increase or decrease challenges for small businesses in comparison to prescriptive models? Are prescriptive components needed/desirable, and if so, under what situations?

### **III. Meeting Format**

The meeting will include opening remarks, presentations by the agencies and expert speakers, time for public comments, and closing remarks. The agencies will discuss their areas of jurisdiction, regulations and standards, and efforts in the oil and gas industry. Expert speakers will discuss the topics for consideration and issues related to performance-based regulations. In the time designated for public comments, meeting attendees will have an opportunity to make comments that provide the agencies with additional information that may assist them with their future performance-based regulatory efforts.

### **Authority and Signature**

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice.

Signed at Washington, DC, on August 10, 2012.

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**David Michaels,**  
*Assistant Secretary of Labor for Occupational Safety and Health.*

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