DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 140, 141, 142, 143, 144, 145, 146, and 147

[Docket No. USCG-2012-0779]

RIN 1625-AC05

Safety and Environmental Management System Requirements for Vessels on the U.S. Outer Continental Shelf

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard intends to promulgate regulations that will require vessels engaged in OCS activities (defined in 33 CFR Chapter I, Subchapter N) to develop, implement, and maintain a vessel-specific Safety and Environmental Management System (SEMS) that incorporates the management program and principles of the American Petroleum Institute's Recommended Practice for Development of a Safety and Environmental Management Program for Offshore Operations and Facilities, Third Edition, May 2004 (API RP 75). The Coast Guard intends for this SEMS to be developed and implemented by the vessel’s owner or operator and compatible with a designated lease operator’s SEMS required under Bureau of Safety and Environmental Enforcement (BSEE) regulations. The Coast Guard seeks

comments on whether a SEMS that incorporates the management program and principles of API RP 75 is appropriate for vessels engaged in OCS activities, would reduce risk and casualties, and improve safety on the OCS. Comments should address the feasibility of implementing a SEMS that incorporates API RP 75, the compatibility with BSEE SEMS regulations, potential methods of oversight, safety issues, costs and regulatory burdens, and other issues of concern to the regulated community and general public. The Coast Guard would use such comments to assist in developing these new regulations.

DATES: Comments and related material must either be submitted to our online docket via http://www.regulations.gov on or before [**INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**] or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG-2012-0779 using any one of the following methods:

(1) Federal eRulemaking Portal: http://www.regulations.gov.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor,

Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this advance notice of proposed rulemaking, call or e-mail LCDR Marc J. Montemerlo, U.S. Coast Guard; telephone 202-372-1387, e-mail Marc.J.Montemerlo@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Public Participation and Request for Comments

We encourage you to respond to this advance notice of proposed rulemaking by submitting comments and related materials. All comments received will be posted, without change, to http://www.regulations.gov and will include any personal information you have provided.

A. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0779), indicate the specific question number under Section V. of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to http://www.regulations.gov, insert "USCG-2012-0779" in the "Search" box, and click "Search." Filter the search results by placing a check in the box next to "notice" under the "Document Type" filter on the left side of the

page. A link to this notice will appear in the results list. Click the "Comment Now" box next to the entry for this notice to submit your comment online. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

B. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to http://www.regulations.gov, insert "USCG-2012-0779" in the "Search" box, and click "Search." You can filter the results by document type using the filter options on the left side of the page. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the

Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

D. Public meeting

We do not now plan to hold a public meeting, but you may submit a request for one to the docket using one of the methods specified under ADDRESSES. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

II. Abbreviations

API RP 75	American Petroleum Institute's Recommended Practice for Development of a Safety and Environmental Management Program for Offshore Operations and Facilities, Third Edition, May 2004
BOEM	Bureau of Ocean Energy Management
BSEE	Bureau of Safety and Environmental Enforcement
CFR	Code of Federal Regulations
DHS	Department of Homeland Security

FOI	Floating Offshore Installation
FPSO	Floating Production and Storage Offload Units
FR	Federal Register
ISM Code	International Safety Management Code
MODU	Mobile Offshore Drilling Unit
OCS	Outer Continental Shelf
OCSLA	Outer Continental Shelf Lands Act
OSV	Offshore Supply Vessel
SEMS	Safety and Environmental Management System
SMS	Safety Management System
SOLAS	International Convention for the Safety of Life at Sea 1974, as amended
USCG	United States Coast Guard

III. Background

A. General

Under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 – 1356a) (OCSLA), the Coast Guard is responsible for developing and implementing regulations to protect the safety of life, property, and the environment on Outer Continental Shelf (OCS) installations, vessels, and units engaged in OCS activities[1], including the regulation of workplace safety and health.[2] The Coast Guard's regulatory authority extends to matters relating to safety of life and property on OCS units attached to the seabed for the purpose of engaging in OCS activities, as well as units on the waters adjacent thereto (i.e., units, whether attached

[1] An OCS activity is any offshore activity associated with the exploration for, or development or production of, the minerals of the Outer Continental Shelf (33 CFR 140.10).
[2] 43 U.S.C. 1347(c).

or unattached), that are engaged in OCS activities in support of attached units.[3]

The exploration, development, and production of oil and gas on the OCS require the careful coordination of multiple phases of complex activities. These activities are typically accomplished by a network of technical experts and specialists working for different companies, using a variety of technologies and procedures on vessels and facilities that are often operating simultaneously in close proximity to one another. For example, a floating offshore installation (FOI) producing oil and gas, a mobile offshore drilling unit (MODU) drilling a well, and other service vessels providing well stimulation and logistical support might work in close proximity to one another, and can create significant risk to personnel, the environment, property, and infrastructure. As illustrated by the Deepwater Horizon incident on April 20, 2010, the consequences of accidents and mishaps, though infrequent, can be severe. The Coast Guard believes that vessels engaged in OCS activities (whether attached to the seabed or in the waters adjacent thereto) should be required to develop, implement and maintain a vessel-specific SEMS program that proactively manages the risks inherent in OCS

[3] 43 U.S.C. 1333(d)(1).

activities. This approach should be overseen by the Coast Guard and be compatible with the designated lease operator's SEMS program that BSEE requires.

In 1991, the Coast Guard, along with the Minerals Management Service (MMS, now BSEE) promoted the concept of a management system called a Safety Environmental Management Program. This concept was further developed by API, which, with assistance from the Coast Guard and MMS, published API RP 75 in 1993. API RP 75 provides an example of a systematic and proactive management approach that will assist vessel owners and operators to safely plan, design, manage, and conduct offshore oil, gas and sulphur operations. However, only a limited subset of vessels that engage in OCS activities in support of offshore oil, gas and sulphur operations are required to implement a SEMS based on this standard, as illustrated in Table 1 of Part B of this section. Some of these vessels implement a SMS based on the ISM Code, but this Code assumes a vessel's mission is international transportation of cargo, not OCS activities. API RP 75 is a more appropriate standard and the Coast Guard intends to promulgate regulations that would expand the number of vessels required to have a vessel-specific SEMS based on API RP 75.

Implementing a vessel-specific SEMS that incorporates the management program and principles of API RP 75 would start with an assessment of operating and design requirements as well as a hazards analysis. Under regulations contemplated by this ANPRM, the SEMS would establish vessel-specific safe operating procedures, work practices, management-of-change procedures, and associated training. The SEMS would also incorporate procedures to ensure that the design, fabrication, installation, testing, inspection, monitoring, and maintenance of equipment comply with all applicable safety regulations (e.g., 33 CFR Subchapter N). Additionally, the SEMS would be subject to periodic safety audits, and would include procedures for emergency response and vessel owner/operator internal incident investigations to help mitigate risk and prevent future mistakes.

The Coast Guard estimates that approximately 2,200 foreign and domestic vessels engaged in OCS activities could be affected by this regulatory action, including: 1,800 Offshore Supply Vessels (OSVs), 150 liftboats, 125 MODUs, and 125 other vessels. The Coast Guard requests comments from the public regarding the accuracy of these population estimates.

B. Relationship to BSEE Regulations

BSEE works to promote safety, protect the environment, and conserve resources offshore through vigorous regulatory oversight and enforcement. Existing BSEE regulations in 30 CFR part 250, subpart S (30 CFR 250.1900 et seq.) require designated lease operators to develop, implement, and maintain a SEMS program based on API RP 75. These regulations also require designated lease operators to ensure that contractors have their own written safe work practices. While the designated lease operator's SEMS program required by BSEE includes elements of API RP 75, this program is focused on overall lease activities and the offshore oil, gas and sulphur operations of facilities on the lease. When a facility is also a vessel, the designated lease operator's SEMS is not focused on the unique nature of the facility/vessel and its marine support mission.

The majority of vessels engaged in OCS activities, including but not limited to, MODUs, well stimulation vessels, accommodation vessels, OSVs, and floating production and storage offload units (FPSOs) are contracted by designated lease operators. These vessels conduct a variety of tasks, such as seismic activities, exploration and completion drilling, production, well servicing, well stimulation, installation and construction, dive support,

and supply and logistical services for one or multiple designated lease operators. Although BSEE's SEMS regulations hold the designated lease operators accountable for the overall safety of operations conducted on the OCS lease, the Coast Guard believes that vessel owners and operators should be responsible for developing a vessel-specific SEMS because the owners and operators manage vessel-based personnel, operations, maintenance, equipment, emergency responses, and alterations. This regulatory action would place such requirements on vessel owners and operators and seek to align Coast Guard regulations with current BSEE SEMS, both of which would incorporate the management program and principles of API RP 75.

Table 1 shows the current state of safety management system regulations on the OCS as it pertains to vessels:

Table 1

<table>
<tr><th></th><th colspan="2">BSEE</th><th colspan="2">USCG</th><th>OSHA</th></tr>
<tr><td></td><td>Falls within the scope of 30 CFR 250.1900-.1901 and meets the definition of “facility” in 30 CFR 250.105</td><td>Does not fall within the scope of 30 CFR 250.1900-.1901 and does not meet the definition of “facility” in 30 CFR 250.105</td><td>Meets the applicability of 33 CFR 96.110, 96.210 (i.e. self-propelled over 500 gross tons, engages on international voyages).</td><td>Does not meet the applicability of 33 CFR 96.110, 96.210</td><td rowspan="7">No SEMS or SMS</td></tr>
<tr><td>Mobile Offshore Drilling Unit</td><td rowspan="3">Designated lease operator must have a SEMS based on API RP 75</td><td rowspan="3">No SEMS directly required but may or may not be subject to a designated lease operator’s SEMS</td><td rowspan="6">Vessel owner/operator must have vessel-Specific SMS based on ISM Code</td><td rowspan="6">No SMS required</td></tr>
<tr><td>Well Stimulation Vessel</td></tr>
<tr><td>Floating Production Storage Offloading Unit</td></tr>
<tr><td>Shuttle Tanker</td><td colspan="2" rowspan="3">No SEMS directly required but may or may not be subject to a designated lease operator’s SEMS</td></tr>
<tr><td>Offshore Supply Vessel</td></tr>
<tr><td>Accommodation Vessel</td></tr>
</table>

IV. Advance Notice of Proposed Rulemaking Discussion

The Coast Guard intends to promulgate regulations that will require all domestic and foreign-flagged vessels engaged in OCS activities to develop, implement, and maintain a SEMS that incorporates the management program and principles of API RP 75. As discussed in Section III, the Coast Guard would require a vessel-specific SEMS because vessel owners and operators manage vessel-specific risks. This requirement would apply to MODUs, well stimulation vessels, FPSOs, shuttle tankers, OSVs accommodation vessels, and other vessels engaged in OCS activities. One goal of a Coast Guard-required SEMS is to

complement existing prescriptive vessel design, equipment, and operation safety standards and regulations. A Coast Guard-required SEMS would also help to prevent accidents, injuries, and environmental damage by reducing the probability and severity of uncontrolled releases and other undesirable events. By incorporating the management program and principles of API RP 75 as the basis for the Coast Guard's SEMS requirements for vessels, this regulatory action would leverage industry safety expertise and harmonize with BSEE's regulations for designated lease operators.

The Coast Guard recognizes that there are vessels currently operating on the OCS that comply with the Safety Management System (SMS) standards of the International Safety Management (ISM) Code (International Maritime Organization Resolution A.741(18)), and we believe that any new SEMS requirements for vessels based on API RP 75 should take this into account. In 1997, the Coast Guard promulgated SMS regulations (33 CFR part 96) for responsible persons and their vessels engaged on international and domestic voyages. The purpose of these regulations was to establish a national SMS standard that was consistent with Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS) 1974, as

amended, which requires that all vessels subject to SOLAS have an effective SMS to meet the performance elements of the ISM Code. The Coast Guard regulations followed the ISM Code by setting broad performance standards designed to be flexible and applicable to a wide variety of activities and vessel-types, including large cruise ships, container ships, and MODUs. Certain vessels that engage in OCS activities, including self-propelled MODUs, drillships, heavy lift vessels, and OSVs that engage in international voyages are currently required to comply with the ISM Code. The Coast Guard estimates that there are approximately 185 total vessels subject to the ISM Code currently engaged in OCS activities.

The Coast Guard believes that many elements of API RP 75 and the ISM Code are similar. In crafting regulatory requirements, the Coast Guard would consider whether ISM Code compliance should be an alternative means of satisfying elements of API RP 75. The Coast Guard is also aware that some vessels may be voluntarily implementing a safety management system based on frameworks other than API RP 75 or the ISM Code. These may include the International Association of Drilling Contractors Health Safety and Environmental Case (IADC HSE Case) or the International Standards Organization 9001 (ISO 9001:2008). The Coast

Guard is currently researching whether compliance with these management programs would be appropriate alternatives to API RP 75.

V. Information Requested

1. Should the Coast Guard require a SEMS based on API RP 75 for vessels engaged in OCS activities?

2. Should the Coast Guard require that each SEMS be subject to a certification process? If so, who should certify the SEMS programs, and what should the certification process entail?

3. How can the Coast Guard ensure that its SEMS requirements are consistent with BSEE's SEMS requirements?

4. Should Coast Guard-required SEMS programs be subject to independent third-party audits? If so, how frequently should audits take place (e.g., ISM audits annually)? To what types of qualifications, certifications, and authorizing processes should independent third-party auditors be subject?

5. What are the differences and similarities between API RP 75 and the ISM Code? What would be required to bring ISM-compliant vessels into compliance with API RP 75? Please provide cost estimates if available.

6. Should the Coast Guard consider IADC HSE Case, ISO 9001:2008, or any other performance-based safety management

alternatives or equivalencies to the proposed SEMS requirements outlined in this ANPRM? If so, what alternatives or equivalencies should the Coast Guard consider? Please provide specific details, if possible.

7. For vessel owners and operators, how many of your vessels have an active Safety Management Certificate issued under the ISM Code or employ another type of safety management system? Do any components of API RP 75 conflict with the ISM Code or vice versa? If employing a non-ISM Code SMS, please provide information on the management system.

8. For vessel owners and operators, is there a safety officer or similar position(s) dedicated to the management of safety onboard your vessels?

9. For vessel owners and operators, if you have an active Safety Management Certificate issued under the ISM Code or employ another type of safety management system, what costs have you incurred in implementing the safety management system? Please provide the cost for your company and per vessel if possible, including the following:

a. Costs for an assessment of operating and design requirements.

b. Costs for a hazards analysis.

c. Costs to establish safe operating procedures, work practices, and management-of-change procedures.

d. Costs for training on the SMS.

e. Costs for procedures to ensure that the design, fabrication, installation, testing, inspection, monitoring, and maintenance of equipment meet safety standards.

f. Costs for periodic safety audits, including procedures for emergency response and incident investigation.

10. For vessel owners and operators, if you have an active Safety Management Certificate issued under the ISM Code or employ another type of safety management system, have you seen improvements in safety and operation from implementing the SMS? If so, please specify and provide any supporting data if available.

11. For vessel owners and operators, if you have an active Safety Management Certificate issued under the ISM Code or employ another type of safety management system do you have any information or data, qualitative or quantitative, for any cost savings from operating with a safety management system? For vessel owners and operators that voluntarily implement an API RP 75-compliant SEMS, are there any cost savings of complying with API RP 75? Please provide cost

savings information based on type and size of your operations, if possible.

12. For vessel owners and operators, if you do not have an active safety management system, what costs would you expect to incur per vessel for implementing a Coast Guard-required SEMS based on API RP 75?

13. For vessel owners or operators, what are the reasons not to use a SEMS? What type of operations may not benefit from a SEMS? Are there any operations (such as small or limited operations) that may not necessitate a SEMS and why? Besides costs, what is the downside of using a SEMS?

14. Are there any data, literature, or studies that show that implementation of a SEMS leads to a reduction in oil spills, property damage, injury or deaths, or other casualties?

15. The Occupational Safety and Health Administration (OSHA) held a public meeting on September 20-21, 2012, on the use of performance-based regulatory models in the U.S. oil and gas industry, offshore and onshore (see 77 FR 50172). If you submitted comments during that public meeting or to the docket [OSHA-2012-0033] and want them considered in this rulemaking, please resubmit those comments to this docket [USCG-2012-0779].

16. Please provide any additional information or comments on the proposals in this ANPRM.

Dated: 16 August 2013

ROBERT J. PAPP, JR.
Admiral, U.S. Coast Guard.
Commandant

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