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**Mark E. Matthews,**  
Deputy Commissioner for Services and Enforcement.

Approved: February 3, 2005.

**Eric Solomon,**  
Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 05-2816 Filed 2-11-05; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### 30 CFR Part 250

RIN 1010-AC95

#### Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS)—Document Incorporated by Reference—American Petroleum Institute (API) 510

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Final rule.

**SUMMARY:** MMS is adding a document to be incorporated by reference into the regulations governing oil and gas and sulphur operations in the OCS. The new document, API 510, is titled "Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration." This incorporation will ensure that lessees use the best available and safest technologies while maintaining, repairing and altering pressure vessels in use on the OCS.

**DATES:** This rule is effective March 16, 2005. The incorporation by reference of the publication listed in the regulation is approved by the Director of the Federal Register as of March 16, 2005.

#### FOR FURTHER INFORMATION CONTACT:

Richard Ensele, Regulations and Standards Branch, at (703) 787-1583.

**SUPPLEMENTARY INFORMATION:** MMS uses standards, specifications, and recommended practices developed by standard-setting organizations and the oil and gas industry for establishing requirements for activities on the OCS. This practice, known as incorporation by reference, allows us to incorporate the provisions of technical standards into the regulations without increasing

the volume of the Code of Federal Regulations (CFR). The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued regulation, then has the force and effect of law. MMS holds lessees and operators accountable for complying with the documents incorporated by reference in our regulations. The regulations found at 1 CFR part 51 govern how MMS and other Federal agencies incorporate various documents by reference. Agencies can only incorporate by reference through publication in the **Federal Register**. Agencies must also obtain approval from the Director of the Federal Register for each publication incorporated by reference. Incorporation by reference of a document or publication is limited to the specific edition, or specific edition and supplement or addendum, cited in the regulations.

The rule will incorporate by reference the provisions of the Eighth Edition of API 510 into MMS regulations. MMS has reviewed this document and has determined that the eighth edition should be incorporated into the regulations to ensure the use of the best available and safest technologies.

The proposed rule was published on December 27, 2001 (66 FR 66848) with a 60-day comment period. We received comments from two parties concerning the proposed rule to incorporate API 510. One commenter felt that the National Board Inspection Code (NBIC) was a better document to incorporate for the inspection, repair, rating, and alteration of pressure vessels. MMS agrees that the NBIC is an excellent document. However, we have chosen to adopt the API document. As we stated in the proposed rule, it is the intention of both API and NBIC that their respective scopes not overlap. NBIC advises in its scope that "It is recognized that an American Petroleum Institute Inspection Code, API-510, exists covering the maintenance inspection, repair, alteration and re-rating procedures for pressure vessels used by the petroleum and chemical process industries, which is applicable in these special circumstances. It is the intent that this Inspection Code (NBIC) cover installations other than those covered by API-510 unless the jurisdiction rules otherwise."

The second commenter, an industry trade organization, recommended the incorporation of API 510 into the regulations, with the exception of sections 6 and 8.5. Section 6 of API 510 is entitled, "Inspection and Testing of Pressure Vessels and Pressure Relieving

Devices." Section 8 is entitled, "Alternative Rules for Exploration and Production Pressure Vessels." Section 6.5 and section 8.5 are both entitled, "Pressure Relieving Devices," with section 8.5 referring back to section 6.5 for specific procedures. The commenter pointed out that MMS has more stringent requirements for pressure relieving devices elsewhere in the regulations (§ 250.804(a)(2) and § 250.1630(a)(1)). MMS agrees. We will incorporate API 510 into the regulations except for sections 6.5 and 8.5, since those two sections pertain specifically to pressure relieving devices. The rest of section 6 pertains to pressure vessels and should be incorporated into the regulations. We will also drop the reference to API 510 that appeared in the proposed rule in 30 CFR 250.803(b)(1)(i) and 30 CFR 250.1629(b)(1)(i), covering pressure safety relief valves.

#### Procedural Matters

##### Regulatory Planning and Review (Executive Order 12866)

This rule is not a significant rule under Executive Order 12866. The Office of Management and Budget (OMB) has determined that it is not a significant rule and will not review the rule.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The rule would have no significant economic impact because the document does not contain any significant revisions that will cause lessees or operators to change their business practices. The document will not require the retrofitting of any facilities. The document may lead to minimal changes in operating practices, but the associated costs will be very minor.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule does not affect how lessees or operators interact with other agencies. Nor does this rule affect how MMS will interact with other agencies.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The rule only addresses the maintenance inspection, rating, repair, and alteration of pressure vessels in use on OCS facilities.

(4) This rule does not raise novel legal or policy issues.

#### *Regulatory Flexibility (RF) Act*

The Department of the Interior (DOI) certifies that this rule will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). This rule applies to all lessees and operators that conduct activities on the OCS. Small lessees and operators that conduct activities under this rule would fall under the Small Business Administration's (SBA) North American Industry Classification System codes 211111, Crude Petroleum and Natural Gas Extraction and 213111, Drilling Oil and Gas Wells. Under these codes, SBA considers all companies with fewer than 500 employees to be a small business. MMS estimates that of the 130 lessees and operators that explore for and produce oil and gas on the OCS, approximately 90 are small businesses (70 percent). However, because of the extremely high cost and technical complexity involved in exploration and development offshore, the vast majority of lessees and operators that will be affected will be companies with larger revenues.

The API document proposed for incorporation into MMS regulations covers pressure vessels on offshore structures. Offshore structures can cost hundreds of millions of dollars to build and install. The document to be incorporated by this rule has been used by the industry for many years and the latest edition represents the current state-of-the-art industry practices. Boilers and pressure vessels currently being built are being constructed according to the requirements in the American Society of Mechanical Engineers Code. Existing pressure vessel equipment is being inspected and maintained to the requirements of API 510. Additional costs, if any, are already accepted by the industry. As discussed above, MMS does not believe that this rule will have a significant impact on the lessees or operators who explore for and produce oil and gas on the OCS, including those that are classified as small businesses.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call 1-888-REG-FAIR

(1-888-734-3247). You may comment to the SBA without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), SBREFA. This rule:

(a) Does not have an annual effect on the economy of \$100 million or more. The proposed rule will not cause any significant costs to lessees or operators. The only costs will be the purchase of the new document and minor revisions to some operating and maintenance procedures. The minor revisions to operating and maintenance procedures may result in some minor costs.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The minor increase in cost will not change the way the oil and gas industry conducts business, nor will it affect regional oil and gas prices. Therefore, it will not cause major cost increases for consumers, the oil and gas industry, or any government agencies.

(c) Does not have significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. All lessees and operators, regardless of nationality, must comply with the requirements of this rule. The rule will not affect competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Paperwork Reduction Act (PRA) of 1995*

There are no information collection requirements associated with this rule. DOI has determined that this regulation does not contain information collection requirements pursuant to PRA (44 U.S.C. 3501 *et seq.*) We will not be submitting an information collection request to OMB.

#### *Federalism (Executive Order 13132)*

According to Executive Order 13132, the rule does not have federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State Governments. This rule will simply add one additional document incorporated by reference to ensure that the industry uses the best and safest technologies. This rule does not impose costs on States or localities. Any costs will be the responsibility of the lessees and operators.

#### *Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)*

In accordance with Executive Order 13175, this rule does not have tribal implications that impose substantial direct compliance costs on Indian tribal governments.

#### *Takings Implication Assessment (TIA) (Executive Order 12630)*

According to Executive Order 12630, this rule does not have significant TIA implications. A TIA is not required. The rule revises existing operating regulations. It does not prevent any lessee or operator from performing operations on the OCS, providing they follow the regulations. Thus, MMS did not need to prepare a TIA according to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### *Energy Supply, Distribution, or Use (Executive Order 13211)*

The rule does not have a significant effect on energy supply, distribution, or use because it merely adds a new standard to be incorporated by reference that will provide for uniform maintenance and inspection practices. Thus, a Statement of Energy Supply, Distribution, or Use is not required.

#### *Civil Justice Reform (Executive Order 12988)*

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

#### *National Environmental Policy Act (NEPA)*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement is not required.

#### *Unfunded Mandates Reform Act (UMRA) of 1995*

This rule does not impose an unfunded mandate on State, local, and tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement, containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*), is not required.

#### **List of Subjects in 30 CFR Part 250**

Environmental impact statements, Environmental protection, Government

contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Outer continental shelf, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: February 2, 2005.

**Rebecca W. Watson,**

Assistant Secretary—Land and Minerals Management.

- For the reasons stated in the preamble, the Minerals Management Service amends 30 CFR Part 250 as follows:

## PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

- 1. The authority citation for part 250 continues to read as follows:

**Authority:** 43 U.S.C. 1331 *et seq.*

- 2. In § 250.198, in the table in paragraph (e), a new entry for document API 510 is added in alphanumeric order to read as follows:

### § 250.198 Documents incorporated by reference.

\* \* \* \* \*

(e) \* \* \*

Title of document	Incorporated by reference at
API 510, Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration, except for Sections 6.5 and 8.5, Eighth Edition, June 1997, API Stock No. C51008.	§ 250.803(b)(1). § 250.1629(b)(1).

- 3. In § 250.803, paragraph (b)(1) introductory text is revised to read as follows:

### § 250.803 Additional production system requirements.

\* \* \* \* \*

(b) \* \* \*

#### (1) Pressure and fired vessels.

Pressure and fired vessels must be designed, fabricated, and code stamped in accordance with the applicable provisions of Sections I, IV, and VIII of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code. Pressure and fired vessels must have maintenance inspection, rating, repair, and alteration performed in accordance with the applicable

provisions of the American Petroleum Institute's Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration API 510 (except Sections 6.5 and 8.5), which is incorporated by reference in § 250.198

\* \* \* \* \*

- 4. In § 250.1629, paragraph (b)(1) introductory text is revised to read as follows:

### § 250.1629 Additional production and fuel gas system requirements.

\* \* \* \* \*

(b) \* \* \*

(1) Pressure and fired vessels must be designed, fabricated, and code stamped in accordance with the applicable provisions of sections I, IV, and VIII of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code. Pressure and fired vessels must have maintenance inspection, rating, repair, and alteration performed in accordance with the provisions of the American Petroleum Institute's Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration, API 510 (except Sections 6.5 and 8.5), which is incorporated by reference in § 250.198.

\* \* \* \* \*

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of the Program (calendar year 2005). A second change clarifies the definition of the insurer deductible for Program Year 3 for certain newly formed insurers to more closely parallel the language of the Act.

**DATES:** This final rule is effective February 14, 2005.

#### FOR FURTHER INFORMATION CONTACT:

David Brummond, Legal Counsel, or Howard Leikin, Senior Insurance Advisor, Terrorism Risk Insurance Program, (202) 622-6770 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107-297, 116 Stat. 2322). The Act was effective immediately. The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving state insurance regulation and consumer protections.

Title I of the Act establishes a temporary Federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism, which as defined in the Act is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program, and to issue regulations and procedures. The Program provides a Federal reinsurance backstop for three years. The Program ends on December 31, 2005. Thereafter, the Act provides Treasury with certain continuing authority to take actions as necessary to ensure payment, recoupment, adjustments of compensation, and reimbursement for insured losses arising out of any act of terrorism (as defined under the Act) occurring during the period between November 26, 2002, and December 31, 2005.

Each entity that meets the definition of "insurer" (well over 2000 firms) must participate in the Program. The amount of the Federal share of an insured loss resulting from an act of terrorism is to be determined based upon insurance company deductibles and excess loss sharing with the Federal Government, as specified by the Act and the implementing regulations. An insurer's deductible increases each year of the

## DEPARTMENT OF THE TREASURY

### 31 CFR Part 50

#### RIN 1505-ZA01

#### Terrorism Risk Insurance Program; Technical Amendments to "Make Available" Provision and "Insurer Deductible" Definition

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury (Treasury) is issuing this final rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (Act). The Act established a temporary Terrorism Insurance Program (Program) under which the Federal Government will share the risk of insured loss from certified acts of terrorism with commercial property and casualty insurers until the Program ends on December 31, 2005. This final rule makes minor technical changes to Subpart A of Part 50 of Title 31. One change conforms existing regulations to the June 18, 2004 determination by the Secretary of the Treasury to extend the "make available" provisions of section 103(c) of the Act through the third year