

Shell Offshore Inc.



An affiliate of Shell Oil Company

One Shell Square
P. O. Box 61933
New Orleans, LA 70161-1933
(504) 728-6161

September 12, 2002

Department of the Interior
Minerals Management Service
ATTN: Rules Processing Team
Mail Stop 4024
381 Eden Street
Herndon, VA 20170-4817

Gentlemen:

RE: MMS REQUEST FOR COMMENTS
FR 46942 – PROPOSED RULE SHORTENING AND AMENDING
THE RELEASE DATE OF VARIOUS G&G DATA AND
INTERPRETIVE MATERIALS
FEDERAL REGISTER NOTICE DATED JULY 17, 2002

These comments are submitted on behalf of Shell Offshore Inc. (SOI). We would like to take this opportunity to thank the MMS for allowing us the ability to comment on this proposal. With respect to the specifics of this Rulemaking, SOI respectfully opposes the adoption of this regulatory change and requests that the MMS resolve the administrative problem in a different manner. In the following paragraphs, we will provide detailed comments on our specific concerns.

Proposed Changes to 30 CFR Part 251 and Portions of 250.196 (dealing with automatic data and information release at 10 years after permit issuance)

Section 26 of the Outer Continental Shelf Lands Act, at 43 USC §1352(c) mandates the Secretary of Interior to prescribe regulations to assure the confidentiality of privileged and proprietary information received by the Secretary from permittees and lessees and to set time periods and conditions for the release of this information which recognize the proprietary and confidential nature of that information. The economic value of these resources is emphasized by the requirement of the Secretary to secure the agreement of the permittee or licensee before releasing the data to the states under certain circumstances.

The MMS proposal to establish a single date for release of “information” and “data” running solely from the of permit issuance under 30 CFR §251.14 and 30 CFR §250.196 fails to adequately meet the intent of protecting competitive and economically valuable “data” and

“information”.

The principal difficulty results in the failure of the proposal to recognize the intrinsic differences between “data” and “information”. Under the MMS regulations, 30 CFR §251.1 “data” is defined as “facts, statistics, measurements or samples that have not been analyzed, processed or interpreted”. In other words, this is raw knowledge. “Information” on the other hand is defined as “geological and geophysical data that have been analyzed, processed or interpreted”. This analysis, process and re-interpretation may occur or reoccur as science and technology develops many years after the raw data has been gathered.

Lessees and permittees maintain geological and geophysical information for long periods of time in both raw, processed and interpreted stages. MMS has suggested in this proposal that the date of release of both “data” and “information” should be geared solely to the date of permit issuance. Unfortunately, this fails to recognize the fact that re-analysis and re-interpretation of G&G data commonly occurs in the oil and gas industry. If a single date of release running from the date of permit issuance is established, then it will fail to protect re-interpretations, re-processing and re-analysis “information” which is derived from raw “data” gathered under the permit. This will have two unintended consequences. First, current permittees and lessees will lose a valuable asset through early release, especially when the re-interpretation, re-analysis or re-processing has occurred near the end of the protective term running from the permit. Second, this early release will have a tendency to discourage the generation of new “information” since it will no longer have the protection of confidentiality.

To further exasperate this consequence, MMS has proposed to make this rule retroactive back to June 1976. Since the collection and possession of geological and geophysical data is obviously a valuable property right, MMS should reconsider promulgation of a rule which reduces or destroys the value of that property right by earlier release through the promulgation of a retroactive regulation. If a new time period for release is to be established, it should be made applicable to currently issued permits after the effective date of the rule and the data and information flowing from them.

With respect to the MMS assertion that the basis for this rulemaking is related to the unmanageability of keeping track of initial and subsequent data/information filings we recommend that these relatively few submissions be tracked similar to the MMS current administrative procedures for tracking the numerous well logs and well data the MMS currently receives, holds confidential, and subsequently releases to the public. MMS could maintain a similar database for this data and information that tracks each submission by number or code, date received, and date of release to the public.

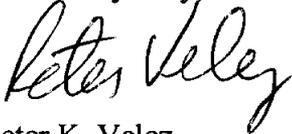
However, if the administrative problem the MMS has described, in fact does require a change, then we suggest that a single period for the release of both “data” and “information” be established at a significantly longer period, such as fifty (50) years after the date of issuance of the permit.

Proposed Changes to 30 CFR Part 250.196

MMS has also proposed expansion of language allowing selective inspection of G&G data for certain specified purposes by parties with a direct interest in the related MMS decision at issue. Among the identified purposes for this limited disclosure are making unitization determinations, making competitive reservoir determinations, ensuring proper plans of development for competitive reservoir determinations, promoting operational safety, protecting the environment, making field determinations and determining eligibility for royalty relief. These reasons for disclosing information to third parties would become extremely broad and would provide competitors with an arsenal of reasons to come in and find out data which a permittee or lessee would want to keep confidential. This dilemma of balancing confidentiality with need to know is not unique to the MMS. It is frequently experienced in litigation and is routinely solved through the entry of a protective order that controls the individuals who will see, have access to and the conditions surrounding use after disclosure. In many instances, outside experts unrelated to the competing party are the only ones allowed to see or use the data and then only for the purposes of the litigation. If the MMS is experiencing a substantial problem in releases of confidential G&G data and information for these purposes, we suggest that it be resolved through the use of some type of form protective order and through the use of an expert not associated with the competitor company. This can be easily accomplished through promulgation of administrative rules related to these types of procedures. Without this protection, there is a real possibility that the current proposal for disclosure will lend itself to abuse through disclosure of confidential information to competitors who may be more interested in the information than they may be in understanding the decision to be made by the agency.

Shell appreciates the opportunity to comment on this proposal. If you have any questions regarding this matter, please contact Mr. Andy Burglass at (504) 728-6012.

Yours very truly,



Peter K. Velez
Manager Regulatory Affairs