



Western Geophysical

April 8, 1997

Via Federal Express

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Robert E. Lowe
Vice President

Attention: John V. Mirabella

Re: Proposed Rule - 30CFR251 - G&G Exploration

Dear Mr. Mirabella:

The following comments are submitted on behalf of Western Geophysical Company ("Western"). Western is the largest American seismic contractor. We currently have five crews conducting G&G exploration in the Gulf of Mexico. Accordingly, the proposed rules will impact our company directly.

Although much of the language of the proposal is dedicated to disclaiming that the proposed rule represents anything new, the fact is that the rule makes significant departures from long standing practice and rule application. Those of us who live and work with these rules on a daily basis are fully aware that the proposed changes are far more than "clarifications", but are in fact an attempt to impose major new obligations and restrictions on seismic data owners and users.

Moreover, the rules would force companies such as Western to reveal highly confidential and competitively valuable commercial information, the sensitivity of which the MMS itself has acknowledged within the very recent past. And yet the proposal neither establishes a bona fide need for such commercial information, nor obligates the MMS to protect its confidentiality.

Comments on specific portions of the proposal follow:

1. **Geophysical scientific research.** The proposal would establish a new requirement for notice prior to conducting geophysical scientific research on the OCS. The notice must, among other things, contain a statement that the entity conducting the research will not "sell or withhold for exclusive use the data and information resulting from your research". (Sec. 251.5) Companies like Western are continually working on developing new seismic equipment and techniques ("geophysical scientific research"), which must necessarily be tested not only in the laboratory, but in a real world environment as well. Often the only way to determine the validity of such new equipment or techniques is to use them in the acquisition of actual seismic data, however, since their validity has not been proven, the acquisition cannot be a commercial venture.



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It appears that the proposal would require the results of any such research carried out on the OCS to be made available to the public, apparently for free. This is clearly a "taking" of private property prohibited by the Constitution and subject to a Takings Implication Assessment under E.O 12630. This conclusion is based in part on the failure of the definition of "geophysical scientific research" to distinguish between situations where the object of the research is the OCS itself and situations where the object of the research is new equipment or techniques and the OCS merely provides a location for the testing. If the proposal intended to draw such a distinction, it needs extensive clarification. If it did not intend to make such a distinction, then it surely constitutes an improper taking of private property.

2. New Obligations of Permittees. Proposed Sec. 251.6 would establish several new obligations on Permittees to consult with their competitors regarding their exploration plans ("you must consult and coordinate your G&G activities with...geophysical survey industries"), as well as with unspecified members of the marine transportation industry, the fishing industry, and other unspecified ("etc."). This new, open-ended consulting obligation would seem to require Western and others in the industry to act in ways that may be contrary to anti-trust laws. No reason for this new requirement is stated. It should be stricken from the proposed rule.

Secondly, the proposal specifies that Western, and other permittees, must use the "best available and safest technologies" as determined by the Regional Director. Western would submit that the Regional Director is unqualified to make any such determination, nor should the Regional Director be empowered to dictate to Western the technology it chooses to employ in its commercial activities. Insofar as safety is concerned, Western and other offshore operators are already subject to all applicable Coast Guard and Solas regulations. Further safety regulation by the MMS seems inappropriate and misguided.

3. New Requirements on Data Licensing. Section 251.12 as proposed would impose new restrictions and requirements on geophysical data licensing as the process is carried out throughout the industry.

Subparagraph (a) requires that the Regional Director be notified immediately after acquisition, processing or interpretation of data, whereas the existing rule calls for such notice to be given within thirty days of such events. No justification is put forth for changing this procedure, and it is unclear what is meant by "immediate" - the same day? hour? within 24 hours? The proposed time period would place an unnecessary burden on companies working on the OCS, and no particular benefit to the government is apparent.



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Subparagraph (d) would establish several new requirements on both data owners and data licensees. These new requirements are described by MMS as being mere "clarifications" rather than changes, but the plain fact is that they are new requirements. No company, to our knowledge, has operated under the procedures set forth in this section before. To establish them now is new, despite any words to the contrary by MMS attorneys. We would also invite MMS's attention to recent "Trial Procedures for Access to Certain Geophysical Data and Information in the Gulf of Mexico", last revised by MMS in January, 1996. The Trial procedures were put into place precisely because the procedures now proposed were not established procedure and not contemplated by the existing section 251.12.

Subparagraph (d) imposes a potentially enormous paperwork burden on data owners, who may be required to report to MMS every license transaction of seismic data on the OCS. This amounts to thousands of transactions annually, hundreds each month. This new paperwork burden is not addressed in the proposal, as it is required to be.

Moreover, the submission of this information is extremely sensitive commercial information to the industry, yet no provisions for protecting its confidentiality are set out in the proposal. The MMS itself recognized this fact in establishing the Trial procedures, stating:

"MMS is also sensitive to the concerns expressed by industry regarding confidentiality of individual company work products and client lists and the potential burden of responding to a myriad of requests from MMS..."

What has become of the MMS's sensitivity to these issues? Clearly, it has been discarded in this proposal. But the concerns of Western Geophysical and the industry have not changed and, in fact, are exacerbated by the prospect that this proposal would become a permanent rule. Nothing in the proposal addresses the concerns industry raised at the time of the Trial procedure, and reiterates now.

Finally, the new requirement that each permittee add to its existing licenses a new provision requiring its licensees to accept the obligations of the permittee in writing, and further prohibiting completion of the licensing transaction until the licensee has so agreed in writing, will place a huge burden on the industry. Master license agreements will all have to be re-written and re-negotiated. Data licensing will come to a full-stop until this procedure can be accomplished. This will cost the industry hundreds of thousands, if not millions, of dollars. (None of this has been taken into consideration in the estimation of added paperwork burden by the proposal.)



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The attempt by MMS, through this new requirement, to obtain licensed data that has been reprocessed by the licensee, using a private, confidential, proprietary processing algorithm, is a clear "taking" of private property without compensation. The MMS can obtain the data from the permittee, that is clear and always has been the case. However, there is no justification for the MMS now seeking to also obtain, at mere reproduction cost, reprocessed data from a licensee regardless of whether or not that licensee has used the reprocessed data to make any bids or acquisitions in the OCS. We submit that such an act by MMS would constitute a clearly unconstitutional "taking" of the property of the licensee.

We urge the MMS to reconsider this proposal in light of the above comments.

Sincerely,

A handwritten signature in cursive script that reads "Robert E. Lowe".

Robert E. Lowe