

subchapter, for which prior approval is always required.

§ 129.7 Prior Approval (License).

(a) The following brokering activities require the prior written approval of the Office of Defense Trade Controls:

(1) Brokering activities pertaining to certain defense articles (or associated defense services) covered by or of a nature described by Part 121, to or from any country, as follows:

(i) Fully automatic firearms and components and parts therefor;

(ii) Nuclear weapons strategic delivery systems and all components, parts, accessories, attachments specifically designed for such systems and associated equipment;

(iii) Nuclear weapons design and test equipment of a nature described by Category XVI of Part 121;

(iv) Naval nuclear propulsion equipment of a nature described by Category VI(e);

(v) Missile Technology Control Regime Category I items (§ 121.16);

(vi) Classified defense articles, services and technical data;

(vii) Foreign defense articles or defense services (other than those that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, Japan, Australia, or New Zealand (see §§ 129.6(b)(2) and 129.7(a)).

(2) Brokering activities involving defense articles or defense services covered by, or of a nature described by, Part 121, in addition to those specified in § 129.7(a), that are designated as significant military equipment under this subchapter, for or from any country not a member of the North Atlantic Treaty Organization, Australia, New Zealand, or Japan whenever any of the following factors are present:

(i) The value of the significant military equipment is \$1,000,000 or more;

(ii) The identical significant military equipment has not been previously licensed for export to the armed forces of the country concerned under this subchapter or approved for sale under the Foreign Military Sales Program of the Department of Defense;

(iii) Significant military equipment would be manufactured abroad as a result of the articles or services being brokered; or

(iv) The recipient or end user is not a foreign government or international organization.

(b) The requirements of this section for prior written approval are met by any of the following:

(1) A license or other written approval issued under parts 123, 124, or 125 of

this subchapter for the permanent or temporary export or temporary import of the particular defense article, defense service or technical data subject to prior approval under this section, provided the names of all brokers have been identified in an attachment accompanying submission of the initial application; or

(2) A written statement from the Office of Defense Trade Controls approving the proposed activity or the making of a proposal or presentation.

(c) Requests for approval of brokering activities shall be submitted in writing to the Office of Defense Trade Controls by an empowered official of the registered broker; the letter shall also meet the requirements of § 126.13 of this subchapter.

(d) The request shall identify all parties involved in the proposed transaction and their roles, as well as outline in detail the defense article and related technical data (including manufacturer, military designation and model number), quantity and value, the security classification, if any, of the articles and related technical data, the country or countries involved, and the specific end use and end user(s).

(e) The procedures outlined in § 126.8(c) through (g) are equally applicable with respect to this section.

§ 129.8 Prior Notification.

(a) Prior notification to the Office of Defense Trade Controls is required for brokering activities with respect to significant military equipment valued at less than \$1,000,000, except for sharing of basic marketing information (e.g., information that does not include performance characteristics, price and probable availability for delivery) by U.S. persons registered as exporters under Part 122.

(b) The requirement of this section for prior notification is met by informing the Office of Defense Trade Controls by letter at least 30 days before making a brokering proposal or presentation. The Office of Defense Trade Controls will provide written acknowledgment of such prior notification to confirm compliance with this requirement and the commencement of the 30-day notification period.

(c) The procedures outlined in § 126.8(c) through (g) are equally applicable with respect to this section.

§ 129.9 Reports.

(a) Any person required to register under this part shall provide annually a report to the Office of Defense Trade Controls enumerating and describing its brokering activities by quantity, type, U.S. dollar value, and purchaser(s) and

recipient(s), license(s) numbers for approved activities and any exemptions utilized for other covered activities.

§ 129.10 Guidance.

(a) Any person desiring guidance on issues related to this part, such as whether an activity is a brokering activity within the scope of this Part, or whether a prior approval or notification requirement applies, may seek guidance in writing from the Office of Defense Trade Controls. The procedures and conditions stated in § 126.9 apply equally to requests under this section.

Dated: November 24, 1997.

Strobe Talbott,

Acting Secretary of State.

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 251

RIN 1010-AC10

Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule revises MMS' regulations and expands the Notice requirement to include all oil, gas, and sulphur related G&G scientific research not conducted under a permit. The revisions also update the addresses for applying for a permit or filing a Notice, standardize definitions, describe the procedures for protecting archaeological resources, reflect changes in technology, and clarify the obligations of third parties who obtain G&G data and information collected under a permit. These revisions are being made because there have been instances of commercial G&G exploration being conducted by academia without a permit, the addresses for all the MMS regions have changed, changes in technology need to be incorporated, and permittees and third parties have questioned MMS access to certain G&G data and information that were collected under a permit and further processed by third parties. The modifications will enable MMS to better ensure safe use and environmental protection of the outer continental shelf (OCS) for all G&G related operations, expedite permit applications and Notices to MMS, and make the regulatory language clearer

and more understandable. MMS also believes that it is necessary to more clearly assert its authority to acquire G&G data and information.

Access to these data and information is needed to ensure that the U.S. Government receives fair market value on leases, especially in areas of complex geology, and for the Government to conduct analyses or assessments for royalty relief and other purposes.

EFFECTIVE DATE: January 23, 1998.

FOR FURTHER INFORMATION CONTACT:

David R. Zinzer, Resource Evaluation Division, (703) 787-1515 or Kumkum Ray, Rules Processing Team, (703) 787-1600.

SUPPLEMENTARY INFORMATION: This final rule implements changes put forward by our notice of proposed rulemaking (NPR) that was published February 11, 1997 (62 FR 6149) and which solicited public comments. The comment period was extended twice, the last extension ending July 29, 1997. We met with industry twice during the comment period, May 15 in Washington, D.C., and July 10 in New Orleans, LA. We received 22 sets of written comments and recommendations in response to the NPR. Ten of these comments and recommendations were from industry associations, and twelve were from permittees and third party users of G&G data and information collected on the OCS. We have carefully considered each of these comments and recommendations. We did not adopt recommendations that did not appear to be in the public's best interest.

In order to assist industry in understanding how MMS will implement the final rule, MMS will conduct a meeting with industry and other interested parties in the Gulf of Mexico Region following publication of a meeting time in the **Federal Register**.

Discussion and Analysis of Comments

Some commenters requested that MMS withdraw the final rule in its entirety and/or conduct a negotiated rulemaking, citing adverse effects on the oil and gas industry, including oil and gas producers, independent oil and gas companies, and geophysical service companies, accompanied by a significant reduction in the amount of data collection and exploration by industry.

MMS has decided to proceed with the final rule after carefully considering all written comments on the proposed rulemaking and after lengthy discussions with industry at the meetings in Washington, D.C., and New Orleans, Louisiana. MMS appreciates the candor and scope of the many

comments that were put forth and the concerns of the industry. However, we believe that specific concerns with the proposed rulemaking have been addressed properly, and that where MMS and industry disagree, MMS is acting appropriately as the Federal agency required by the OCS Lands Act (OSCLA) to manage the oil and natural gas resources of the OCS in an environmentally responsible and safe manner. MMS must oversee G&G explorations on the OCS in an orderly and fair manner, balancing the needs of industry and the public interest.

Some commenters questioned whether MMS had performed the analysis required under the Regulatory Flexibility Act, or made an estimate of how much it would cost the exploration and production industry to comply with the proposed revisions to part 251. These comments cited the potential administrative burdens of the proposed changes and their significant impact on the ability of smaller companies to compete in the Gulf of Mexico. MMS has addressed these concerns under the section of the preamble titled, "Regulatory Flexibility Act."

Section-by-Section Analysis

Section 251.1 Definitions

The definition of *exploration* was expanded to include marine and airborne surveys. Although MMS proposed changing the definition of *human environment*, several comments criticized the proposed wording as broad and ambiguous. MMS agrees to retain the existing definition.

The definitions of *lease* and *lessee* were changed to read the same as the definitions in part 250.

The definitions of *archaeological interest*, *material remains*, and *significant archaeological resource* were added to explain archaeological protection requirements in part 251. The language adopted in this rule is the same as that used in part 250.

The definition of *third party* was clarified to include all persons who, by whatever means, obtained from permittees or other third parties G&G data or information collected under a permit.

The definition of *you* was changed in response to comments that the definition in the proposed rule was too vague and broad and should not include persons who only inquire about a permit or Notice. *You* also applies to third parties who assume certain responsibilities under §§ 251.11 and 251.12.

Section 251.2 Purpose of This Part

Paragraph (d) was added to this section to clarify the U.S. Government's right to certain data and information, explain MMS' obligation to pay certain reimbursements, and set out MMS' procedures for safeguarding proprietary and privileged data and information acquired from industry and other sources.

Section 251.3 Authority and Applicability of This Part

One commenter questioned whether, under the OCSLA, the Secretary of the Interior (Secretary) could allow G&G exploration under a Notice, instead of requiring a permit. Section 11 of the OCSLA (43 U.S.C. 1340) gives the Secretary the authority to allow geological and geophysical exploration. Because of the commercial nature of the activity, MMS believes that it is preferable to require that G&G exploration be conducted only under the auspices of a permit. G&G scientific research can be conducted either under a permit or by filing a Notice, depending on the activity being conducted.

The commenter also asked under what authority the Secretary applies MMS regulations to ships or vessels, and exempts Federal agencies from the permit procedures. The OCSLA definition of *exploration* includes geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of minerals. Ships and vessels are commonly used in, and are an integral part of, geophysical surveys. Therefore, it is necessary to apply MMS' regulations to them. The definition of *person* in the OCSLA does not include Federal agencies. Thus, Federal agencies are not authorized as *persons* by the Secretary to conduct G&G explorations in the OCS and thus are not subject to part 251.

Finally, the same commenter found no regulatory language dealing with the Secretary's review or approval of permit applications or time limits to take action on applications. While section 11 of the OCSLA authorizes the Secretary to issue permits for exploration, it does not require the Secretary to set forth time limits to issue permits. The authority to review and approve permit applications is delegated to the appropriate MMS Regional Director who exercises this authority under §§ 251.5 and 251.7, and sets the administrative time limits to review and approve permit applications. Time limits may vary in each OCS Region. Response times to permit applications have not been an issue in the past.

Section 251.4 Types of G&G Activities That Require Permits or Notices

Several commenters asked whether commercial G&G research related to developing or testing new equipment or techniques would require a permit or could be conducted under a Notice. As mentioned earlier, MMS believes that a Notice is not appropriate for commercial G&G activities. Basically, whether the G&G company calls the activity "research" or "exploration" is not important. A permit is required if the data collected from the "research" activity can be used in exploration for oil, gas, or sulphur, or if the "research" activity involves solid or liquid explosives, or deep stratigraphic tests. Other research activities that only involve developing or testing new equipment or techniques do not require a permit.

The underlying concern of the commenters, however, seemed to be whether they were required to give MMS the testing and development work they perform when a permit is required. Generally, descriptions of new equipment, techniques, computer hardware/software, or the results of tests on those items do not need to be given to MMS. However, if these items were used to produce G&G data and information which must be submitted to MMS, it may be necessary to provide some explanatory information to MMS in order to allow the agency to properly evaluate the data and information.

Section 251.5 Applying for Permits or Filing Notices

One commenter, addressing § 251.5(c)(7), noted that collaboration on research between industry and universities may make it difficult to estimate the "earliest time" that data will be available to the public. MMS recognizes this difficulty and only requires a good faith estimate of the time that scientific research data and information will be released to the public. To alleviate these concerns, MMS has inserted the word "practicable" between "earliest" and "time" to conform with the wording used in part 251 since 1976.

Section 251.6 Obligations and Rights Under a Permit or a Notice.

One commenter objected to the use of "human environment" in § 251.6(a)(2), citing subjective judgments regarding the term "quality of life", which was part of the proposed definition of "human environment." The definition of "human environment" was not changed in response to this and other comments. However, the word

"property" is added to § 251.6(a)(2) to make the obligation under this part conform with the standards in part 250 which apply to operations under a lease, right of use or easement, or right-of-way. Several commenters objected to the wording of § 251.6(a)(7) which removed the word "unreasonably" from the requirement to not interfere with or cause harm to other users of an area. We agree, and "unreasonably" will be re-inserted before the word "interfere".

Several commenters objected to new wording in § 251.6(c) that requires entities conducting G&G operations to consult with and coordinate their operational activities with specific users of an area. The commenters argued that consultation is not always practicable and that, in certain cases, proprietary information regarding the timing and location of planned surveys would be unfairly revealed to competitors. The wording has been changed to reflect that MMS's intent is for companies to consult and coordinate their G&G activities solely for navigational and safety purposes. MMS also recognizes that the International Association of Geophysical Contractors acts on behalf of the geophysical survey companies to coordinate its members' activities through a time sharing system to promote safe operations and protect members' proprietary survey designs and plans.

Several commenters objected to proposed language which expands the use of the best available and safest technologies (BAST) beyond the area of test drilling requirements. The wording in § 251.6(d) is changed to make clear that the BAST requirement only applies to shallow test drilling and deep stratigraphic test drilling conducted under a permit.

Section 251.7 Test Drilling Activities Under a Permit

One commenter suggested deleting § 251.7(a)(2), stating that MMS cannot mandate compliance of shallow test drilling activities with requirements of the Coastal Zone Management Act (CZMA). We agree that MMS cannot establish requirements under the auspices of the CZMA. However, we disagree that the proposed language creates a new mandate. Section 251.7(a)(2) simply advises permit applicants that MMS may require submittal of consistency certification when a federally approved coastal management program requires consistency review.

Section 251.7(b)(5), "Protecting archaeological resources," is revised in the final rule to make the wording conform with similar requirements in

part 250. Also, as mentioned previously, new definitions related to archaeological resources were added in the definitions section to better explain the requirements of this section.

Section 251.8 Inspection and Reporting Requirements for Activities Under a Permit

One commenter questioned our proposed removal of the word "actual" from the term "actual costs" in determining the amount of reimbursement to a permittee when MMS inspectors are required to be accommodated during activities authorized under part 251. The point of the proposed change was to impose a 90-day time limit for reimbursement requests so that MMS can quickly clear such expenses. Permittees will be reimbursed for actual expenses incurred as long as their request for reimbursement is made within the 90-day period.

Some commenters noted that there was no provision in § 251.8(b) for permittees to make oral requests to MMS for modifications to their programs with a followup in writing, although § 251.4(b)(2) allows a person to file a Notice orally with a followup in writing if circumstances preclude a 30-day advance written Notice. MMS recognizes that there are circumstances when written requests to modify programs are not practicable, and that an oral request with a written followup could be acceptable in such cases. The wording in § 251.8(b) is changed to allow for such oral requests, but we want to emphasize that oral requests for modifications should only be made when necessary.

One commenter sought clarification as to the beginning date of the 30-day period to submit a final report under § 251.8(c)(2). The revised wording indicates that a final report of exploration or scientific research activities under a permit is due within 30 days after completion of "acquisition activities."

Section 251.9 Temporarily Stopping, Canceling, or Relinquishing Activities Approved Under a Permit

This section sets out the situation under which MMS will halt ongoing permit activities. Section 251.9(a)(2) was changed to include G&G data and information in the examples of items required by MMS which, if not submitted, could constitute a failure to comply with applicable law, regulation, order, or provision of a permit and result in MMS halting the permit activities.

Section 251.10 Penalties and Appeals

No comments were received regarding § 251.10.

Section 251.11 Inspection, Selection, and Submission of Geological Data and Information Collected Under a Permit and Processed by Permittees or Third Parties

Several commenters objected to the proposed requirement in § 251.11(a)(1) that a permittee notify the Regional Director "immediately" after acquiring, analyzing, processing, or interpreting geological data and information, citing excessive paperwork and other burdens. MMS agrees. The wording has been changed to require the permittee to notify the Regional Director after completion of the initial analysis, processing, and interpretation of geological data and information collected under a permit. MMS does not require continual notification of every analysis, processing, and interpretation.

Furthermore, the reference in § 251.11(a)(1) to acquisition of geological data is redundant and was therefore removed, since the requirement for reporting acquisition of geological data resides in § 251.8(c)(2).

Some commenters objected to the proposed wording in § 251.11(c)(1) which requires a record of all geological data and information, "describing each operation of analysis, processing, and interpretation." The commenters considered this a shift of MMS focus from geological information, as defined in part 251, to descriptions of the technologies and techniques used to arrive at processed, analyzed, or interpreted information. It is not the intent of MMS to acquire from industry these types of proprietary or confidential technical information. Therefore, MMS will require only a description of each "type" of analysis, processing, or interpretation, as specified in a G&G permit.

Several commenters objected to the provisions in § 251.11(d), relating to the obligations of permittees and third parties who obtain geological data and information. Since the requirements of this section are similar to § 251.12(d), we have combined our discussion of those two sections. Please see the section titled "Third Party Issues" for a complete discussion of obligations when G&G data and information collected under a permit are obtained by a third party.

Section 251.12 Inspection, Selection, and Submission of Geophysical Data and Information Collected Under a Permit and Processed by Permittees or Third Parties

Similar to the comments on § 251.11(a)(1), many commenters objected to the requirement in § 251.12(a)(1) that a permittee notify the Regional Director "immediately" after initially acquiring, processing, and interpreting any geophysical data and information collected under a permit, again citing excessive costs and other burdens. MMS agrees. The wording is changed to require the permittee to notify the Regional Director after completion of the initial processing and interpretation of geophysical data and information collected under a permit. MMS does not intend to require continual notification of every step of initial processing and interpretation. In addition, the reference in § 251.12(a)(1) to acquisition of geophysical data is redundant and removed, since the requirement for reporting acquisition of geophysical data also resides in § 251.8(c)(2).

Some commenters questioned the provisions in §§ 251.12(c)(2) and 251.12(c)(3) which require that processed geophysical information be submitted to MMS in a "quality" format suitable for processing or interpretive evaluation. There was a misunderstanding as to what was meant by "quality" format. Here "quality" means the same level of format used by a permittee or third party in the normal course of their business.

Some commenters questioned whether MMS was seeking "black box" technologies that are privileged and proprietary to the person submitting the G&G data and information. MMS requires only the information, including a detailed format, necessary to load digital data and information. MMS does not request nor seek proprietary software or procedures used to prepare the data and information.

Third Party Issues

Several commenters strongly objected to §§ 251.11(d) and 251.12(d), which clarify the permit obligations placed on both the permittee and the third party when geological and geophysical data and information are transferred by any means to a third party. Most commenters argued that the provisions of §§ 251.11 and 251.12 should not apply to third parties who obtain G&G data and information from permittees through a license agreement since no "transfer" of data and information takes place. We disagree. The obligation to

notify the Regional Supervisor when a permittee provides geophysical data or processed information to a third party, or a third party provides data and information received from a permittee to another third party, has been in place since part 251 was added to Title 30 of the Code of Federal Regulations, effective June 11, 1976.

MMS has always considered a license agreement a form of transfer or exchange, as are a sale, trade, or other agreement between a permittee and a third party. In order to clarify any confusion resulting from industry's interpretation of what constitutes a transfer, MMS has revised the language of the regulation to make clear that the obligations under §§ 251.11 and 251.12 are triggered whenever a third party obtains by any means data and information collected under a permit. However, in an effort to alleviate industry concerns over the burden and cost of reporting all license agreements, MMS will require identification of third parties who obtain data and information under licensing agreements only in response to a written request by MMS to the permittee, or to the third party which licensed the data to another third party.

The commenters also questioned the statutory authority of MMS to acquire G&G data and information from third parties who obtain the data and information under a license agreement. The authority for obtaining data and information that were collected under a permit and further processed by a third party is at section 11 of the OCSLA (43 U.S.C. 1340 (a)(1)). This section provides that only persons "authorized" by the Secretary may conduct G&G activities on the OCS. In the absence of a lease, MMS "authorization" is the "permit."

One of the terms of the permit is the permittee's agreement to provide MMS with all of the data and information collected, interpretations, etc., and to identify third parties. The regulations in turn, at former §§ 251.11(c) and 251.12 (c) required the recipients of those data and information or interpretation to accept those same permit obligations as a condition of receipt. Third party recipients are still subject to the regulatory requirements of a permittee in the revised §§ 251.11 and 251.12, including the obligation to submit G&G data and information for inspection and possible retention by MMS.

Several commenters stated that there would be an additional administrative burden on third parties who would be required to submit such data and information to MMS for inspection and possible retention, than is the case

under the current regulations. We acknowledge an increase in administrative work and costs to third parties. However, MMS does not consider the extra burden under the revised rule to be significant. Furthermore, the requirement for third parties to submit data and information is not new relative to the requirement of the existing regulations. MMS does anticipate a larger percentage of its data needs coming from third parties. However, we anticipate that most of MMS' future data needs will continue to come directly from permittees, who have provided over 95 percent of processed seismic information that MMS has acquired on the OCS.

Some commenters also claimed that the proposed language would require that third parties assume all responsibilities of permittees, including operational and environmental requirements. That is not the intent of MMS. The responsibilities of third parties to whom data and information were transferred from permittees have always been limited to the data submittal sections of part 251, specifically §§ 251.11 and 251.12. The final rule has been modified so that third parties who obtained data and information are exempt from the §§ 251.11(a)(1) and 251.12(a)(1) requirement of automatic notification to MMS. This exemption is a change from the proposed rulemaking and from previous final rulemakings and will ease the potential administrative burdens on third parties.

Several commenters objected to the provisions that required third parties to submit data and information obtained from permittees to MMS, arguing that the terms of license agreements will be violated and/or license agreements will have to be rewritten to accommodate submittal to MMS, resulting in a large paperwork burden. MMS has always required that third parties assume all the data submittal obligations of a permittee if data and information are transferred to the third party by a permittee. License agreements should therefore have always reflected the possibility of submittal of data and information to MMS by third parties.

Some commenters stated that the acquisition of G&G data and information by MMS from third parties who obtained the data under license agreements is a taking of private property. MMS disagrees. Applicants for a permit accept, as part of the permit terms, an obligation to provide data obtained under the permit to MMS. In addition, applicants agree to require that any third party who obtains the data accept those same obligations. If an

applicant is unwilling to agree, they have the choice of not obtaining the permit. Third parties who agree to the requirements can obtain the data from the permittees. Those who choose not to agree also have an option. They simply cannot accept the data without also accepting the obligation imposed by the permit.

Several commenters expressed concern about revealing to MMS the identity of third parties who obtained data and information from permittees. The commenters noted that public disclosure of a third party's identity, or the areas on the OCS for which the third party obtained data, could jeopardize a third party's competitive position and reveal business strategies of operating and obtaining leases on the OCS. MMS agrees that public disclosure of a third party's business interests and strategies, or of other privileged and proprietary information, would have a deleterious effect on third parties. Such information has been protected in the past by MMS, and we are reaffirming through these regulations that such information would continue to be protected by MMS as trade secrets or confidential business information which are exempt from the Freedom of Information Act and not subject to release under regulations which come under the purview of MMS. A new provision in § 251.14(a)(3) provides further protection for third party recipients of data and information collected under permits. Under this provision, MMS will keep confidential the identities of third party recipients and will not release these identities unless both the permittee and the third parties agree to the disclosure.

Several commenters suggested that MMS continue using the "trial procedures" set up in 1995 between MMS and industry as a mechanism for leases in the Gulf of Mexico. Under these procedures, bidders on a particular tract were required to submit to MMS specific seismic information collected under a permit and processed by the bidder (a third party). While some of the commenters acknowledged problems with implementation of the "trial procedures," they encouraged MMS to pursue improvements instead of proceeding with this final rule.

MMS has always considered the "trial procedures" to be temporary and has indicated such to industry. In the two meetings with industry, MMS cited instances of noncompliance, in some cases perhaps deliberate, with the provisions of the "trial procedures." It is now also becoming apparent that there are data necessary for a thorough assessment of tracts receiving bids that are not available under the "trial

procedures." Furthermore, MMS now needs to clarify and finalize the process of obtaining G&G data and information collected under permits for all of the OCS, not only the Gulf of Mexico.

Section 251.14 Protecting and Disclosing Data and Information Submitted to MMS Under a Permit

Some commenters recommended that the Director, MMS, rather than the appropriate Regional Director, be responsible for the provisions of § 251.14(c), the procedure that MMS follows to disclose acquired data and information to a contractor for reproduction, processing, and interpretation. The commenters argued that wrongful disclosure of data could have disastrous consequences from a competitive standpoint, and that ensuring that the top official of MMS is bound by all applicable laws and regulations regarding dissemination of the data would better protect data. We feel that it is unnecessary to specify that only the Director be responsible for disclosure of data or that only the Director can notify the proper party of disclosure of data to contractors for authorized purposes. The Director is still responsible for actions of subordinates acting in an official capacity.

Section 251.14(c) was changed to clarify that the person, whether a permittee or third party, who submitted the data and information under §§ 251.11 or 251.12 will be advised by MMS of any contemplated disclosure to a contractor for reproduction, processing, and interpretation.

In this rulemaking, MMS is also making two corrections in 30 CFR part 250.

The first correction is to § 250.209(c). This technical amendment amends the citation in (c) from "43 CFR part 62 subpart D" to "43 CFR part 12 subpart D." The second correction is to subpart O. The numbering of subpart O will be moved down one. The subpart will begin at § 250.210 and end at § 250.234.

Authors: David R. Zinzer, Resource Evaluation Division, and Kumkum Ray, Rules Processing Team.

Executive Order (E.O.) 12866

This rule is not significant under E.O. 12866, "Regulatory Planning and Review," and does not require a review by the Office of Management and Budget (OMB). Most revisions to the rule are generally nonsubstantive changes and will have a negligible economic effect on the oil, gas, sulphur, and mining industries or scientific researchers. Bonding requirements in the rule affect G&G exploration costs as

outlined below. MMS estimated the economic effects by assuming that one deep stratigraphic well will be drilled per year, based on past history of frequency of wells drilled. Bonding requirements for single deep stratigraphic wells recently increased from \$50,000 to \$200,000; at a 2-percent maximum rate, the bonding cost recently increased from \$1,000 to \$4,000.

MMS does not expect that any company will drill enough deep stratigraphic wells to warrant an area bond. If a company did want an area bond, then the bonding requirement would increase from \$300,000 to \$1,000,000; at a 2-percent maximum rate, the bonding cost would increase from \$6,000 to \$20,000. Since this increase in bonding cost will not have a major economic effect (less than \$100 million), the proposed rule is not considered an economically significant rule. Additionally, the proposed revisions will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or raise novel legal or policy issues.

Regulatory Flexibility Act

The changes to 30 CFR part 251 will not have a significant economic effect on the oil and gas industry or small business entities. The final rulemaking may involve small businesses or other small entities if they desire to perform geological or geophysical exploration or scientific research on the OCS. The Small Business Administration defines a *small business* as having:

- Annual revenues of \$5 million or less for exploration service and field service companies;
- Less than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

However, a typical exploratory well in the shallow waters of the Gulf of Mexico costs more than \$2.7 million to drill; and the acquisition and processing of a single block (9 sq. mi) of exclusive 3D seismic data could cost as much as \$1 million. Because of the technical and financial resources needed to perform these activities offshore, the majority of entities conducting these activities are not considered small.

The primary economic effect on small businesses is the cost associated with information collection activities. The final rulemaking contains virtually all of the same reporting requirements and attendant costs as the existing regulations. There is only one change in

reporting requirements which represents a small increase. The increased burden is not on the oil and gas industry, but for entities involved in scientific research.

The increased reporting requirement contained in these regulations relates to the filing of a Notice for all scientific research involving geological and geophysical activities. Previously, the requirement for a Notice existed solely for certain geological scientific research activities, namely shallow test drilling. We estimate that the new requirement will result in the filing of an additional two to four Notices annually, all from small entities: 24 to 36 hours; \$840 to \$1,260.

Several commenters on the proposed regulations commented on the extreme burden that would be imposed on the oil and gas industry if they were made to comply with our clarification of "transfer." They alluded to the need to modify the large number of existing data licenses. MMS does not agree with the contention that there is a material change in the definition. We maintain that the requirement is unchanged from the existing regulations. To the extent existing licenses need to be revised we believe the burden and cost of this revision will not be incurred directly by small business entities. MMS will, however, be making requests directly to small business entities. These new requests will be offset in part by elimination of the current procedures.

MMS concludes that complying with these regulations will not have a substantial or significant effect on small business entities operating on the OCS. MMS in its existing approved information collection budget estimated the total burden in complying with these regulations is 10,604 hours for a total of \$371,140. Our estimate of the annual burden to small business entities is approximately 1,060 hours at a cost of \$37,100. This represents about 10 percent of the total compliance burden. These costs are insignificant given the fiscal resources required to perform exploration and development activities on the OCS. Furthermore, virtually all of this burden existed under the old rule.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we submitted the collection of information contained in the proposed rule to OMB. The OMB approved the information collection requirements in proposed 30 CFR part 251, Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf and assigned OMB control number 1010-0048. We have examined the

information collection requirements in this final rule and have determined that there is no significant change from the currently approved collection of information for the proposed rule. The estimated annual burden for this collection of information is 10,604 hours, an average of 7.7 hour per response.

Takings Implication Assessment

The rule does not represent a government action capable of interference with constitutionally protected property rights. A new requirement in the rule is a Notice for scientific research in the OCS. Since MMS is not requiring the researcher to submit data and information or analyses resulting from the research activity, there is no direct or indirect taking.

The rule also clarifies the obligations of a third party. When a permittee transfers data and information to a third party, there is a transfer of the obligation to provide access to MMS as well. Further, the recipient of the data and information is subject to the same penalty provisions as the original permittee—if a third party fails to provide access. These clarifications better define existing requirements and add no new requirements.

Other changes are not substantive or were made to put the regulation into plain English. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights."

Unfunded Mandates Reform Act of 1995

DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of \$100 million or more in any given year on local, tribal, and State governments, or the private sector.

E.O. 12988

DOI has certified to OMB that the rule meets the applicable reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12988, "Civil Justice Reform."

National Environmental Policy Act

DOI has also determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

List of Subjects

30 CFR Part 250

Continental shelf, 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, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

30 CFR Part 251

Continental shelf, Freedom of information, Oil and gas exploration, Public lands— mineral resources, Reporting and recordkeeping requirements, Research.

Dated: December 16, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, Minerals Management Service (MMS) amends 30 CFR parts 250 and 251 to read 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. 1334.

Subpart N—Outer Continental Shelf (OCS) Civil Penalties

2. Section 250.209 paragraph (c) is revised as follows:

§ 250.209 What are my rights?

* * * * *

(c) * * * The Department of Interior's regulations implementing these authorities are found at 43 CFR part 12 subpart D.

Subpart O—Training

3. In subpart O, §§ 250.209 through 250.233 are redesignated as §§ 250.210 through 250.234, respectively.

4. 30 CFR part 251 is revised to read as follows:

PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

Sec.

251.1 Definitions.

251.2 Purpose of this part.

251.3 Authority and applicability of this part.

251.4 Types of G&G activities that require permits or Notices.

251.5 Applying for permits or filing Notices.

251.6 Obligations and rights under a permit or a Notice.

251.7 Test drilling activities under a permit.

251.8 Inspection and reporting requirements for activities under a permit.

251.9 Temporarily stopping, canceling, or relinquishing activities approved under a permit.

251.10 Penalties and appeals.

251.11 Submission, inspection, and selection of geological data and information collected under a permit and processed by permittees or third parties.

251.12 Submission, inspection, and selection of geophysical data and information collected under a permit and processed by permittees or third parties.

251.13 Reimbursement for the cost of reproducing data and information and certain processing costs.

251.14 Protecting and disclosing data and information submitted to MMS under a permit.

251.15 Authority for information collection.

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

§ 251.1 Definitions.

Terms used in this part have the following meaning:

Act means the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1331 *et seq.*).

Analyzed geological information means data collected under a permit or a lease that have been analyzed.

Analysis may include, but is not limited to, identification of lithologic and fossil content, core analyses, laboratory analyses of physical and chemical properties, well logs or charts, results from formation fluid tests, and descriptions of hydrocarbon occurrences or hazardous conditions.

Archaeological interest means capable of providing scientific or humanistic understanding of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques, such as controlled observation, contextual measurements, controlled collection, analysis, interpretation, and explanation.

Archaeological resources means any material remains of human life or activities that are at least 50 years of age and of archaeological interest.

Coastal environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

Coastal Zone means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands

(including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States and extends seaward to the outer limit of the U.S. territorial sea.

Coastal Zone Management Act means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*).

Data means facts, statistics, measurements, or samples that have not been analyzed, processed, or interpreted.

Deep stratigraphic test means drilling that involves the penetration into the sea bottom of more than 500 feet (152 meters).

Director means the Director of the Minerals Management Service, U.S. Department of the Interior, or a subordinate authorized to act on the Director's behalf.

Exploration means the commercial search for oil, gas, and sulphur.

Activities classified as exploration include, but are not limited to:

(1) Geological and geophysical marine and airborne surveys where magnetic, gravity, seismic reflection, seismic refraction, gas sniffers, coring, or other systems are used to detect or imply the presence of oil, gas, or sulphur; and

(2) Any drilling, whether on or off a geological structure.

Geological and geophysical scientific research means any oil, gas, or sulphur related investigation conducted in the OCS for scientific and/or research purposes. Geological, geophysical, and geochemical data and information gathered and analyzed are made available to the public for inspection and reproduction at the earliest practicable time. The term does not include commercial geological or geophysical exploration or research.

Geological exploration means exploration that uses geological and geochemical techniques (e.g., coring and test drilling, well logging, and bottom sampling) to produce data and information on oil, gas, and sulphur resources in support of possible exploration and development activities. The term does not include geological scientific research.

Geophysical exploration means exploration that utilizes geophysical techniques (e.g., gravity, magnetic, or seismic) to produce data and information on oil, gas, and sulphur resources in support of possible exploration and development activities. The term does not include geophysical scientific research.

Governor means the Governor of a State or the person or entity lawfully designated to exercise the powers

granted to a Governor pursuant to the Act.

Human environment means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

Hydrocarbon occurrence means the direct or indirect detection during drilling operations of any liquid or gaseous hydrocarbons by examination of well cuttings, cores, gas detector readings, formation fluid tests, wireline logs, or by any other means. The term does not include background gas, minor accumulations of gas, or heavy oil residues on cuttings and cores.

Information means geological and geophysical data that have been analyzed, processed, or interpreted.

Interpreted geological information means knowledge, often in the form of schematic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of geological data and analyzed and processed geologic information.

Interpreted geophysical information means knowledge, often in the form of seismic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of geophysical data and processed geophysical information.

Lease means an agreement which is issued under section 8 or maintained under section 6 of the Act and which authorizes exploration for, and development and production of, minerals or the area covered by that authorization, whichever is required by the context.

Lessee means a person who has entered into, or is the MMS approved assignee of, a lease with the United States to explore for, develop, and produce the leased minerals. The term "lessee" also includes an owner of operating rights.

Marine environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the quality of the marine ecosystem in the coastal zone and in the OCS.

Material remains mean physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.

Minerals mean oil, gas, sulphur, geopressed-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from public lands as

defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702).

Notice means a written statement of intent to conduct geological or geophysical scientific research related to oil, gas, and sulphur in the OCS other than under a permit.

Oil, gas, and sulphur mean oil, gas, sulphur, geopressed-geothermal, and associated resources.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Permit means the contract or agreement, other than a lease, issued pursuant to this part, under which a person acquires the right to conduct on the OCS, in accordance with appropriate statutes, regulations, and stipulations:

- (1) Geological exploration for mineral resources;
- (2) Geophysical exploration for mineral resources;
- (3) Geological scientific research; or
- (4) Geophysical scientific research.

Permittee means the person authorized by a permit issued pursuant to this part to conduct activities on the OCS.

Person means a citizen or national of the United States; an alien lawfully admitted for permanent residence in the United States as defined in section 8 U.S.C. 1101(a)(20); a private, public, or municipal corporation organized under the laws of the United States or of any State or territory thereof; and associations of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States, or political subdivisions of States or anyone operating in a manner provided for by treaty or other applicable international agreements. The term does not include Federal agencies.

Processed geological or geophysical information means data collected under a permit and later processed or reprocessed. Processing involves changing the form of data so as to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements. Reprocessing is the additional processing other than ordinary processing used in the general course of evaluation. Reprocessing operations may include varying identified

parameters for the detailed study of a specific problem area.

Secretary means the Secretary of the Interior or a subordinate authorized to act on the Secretary's behalf.

Shallow test drilling means drilling into the sea bottom to depths less than those specified in the definition of a deep stratigraphic test.

Significant archaeological resource means those archaeological resources that meet the criteria of significance for eligibility to the National Register of Historic Places as defined in 36 CFR 60.4.

Third Party means any person other than the permittee or a representative of the United States, including all persons who obtain data or information acquired under a permit from the permittee, or from another third party, by sale, trade, license agreement, or other means.

Violation means a failure to comply with any provision of the Act, or a provision of a regulation or order issued under the Act, or any provision of a lease, license, or permit issued under the Act.

You means a person who applies for and/or obtains a permit, or files a Notice to conduct geological or geophysical exploration or scientific research related to oil, gas, and sulphur in the OCS.

§ 251.2 Purpose of this part.

- (a) To allow you to conduct G&G activities in the OCS related to oil, gas, and sulphur on unleased lands or on lands under lease to a third party.
- (b) To ensure that you carry out G&G activities in a safe and environmentally sound manner so as to prevent harm or damage to, or waste of, any natural resources (including any mineral deposit in areas leased or not leased), any life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

(c) To inform you and third parties of your legal and contractual obligations.

(d) To inform you and third parties of the U.S. Government's rights to access G&G data and information collected under permit in the OCS, reimbursement for submittal of data and information, and the proprietary terms of data and information submitted to, and retained by, MMS.

§ 251.3 Authority and applicability of this part.

MMS authorizes you to conduct exploration or scientific research activities under this part in accordance with the Act, the regulations in this part, orders of the Director/Regional Director, and other applicable statutes, regulations, and amendments.

(a) This part does not apply to G&G exploration conducted by or on behalf

of the lessee on a lease in the OCS. Refer to 30 CFR part 250 if you plan to conduct G&G activities related to oil, gas, or sulphur under terms of a lease.

(b) Federal agencies are exempt from the regulations in this part.

(c) G&G exploration or G&G scientific research related to minerals other than oil, gas, and sulphur is covered by regulations at 30 CFR part 280.

§ 251.4 Types of G&G activities that require permits or Notices.

(a) *Exploration.* You must have an MMS-approved permit to conduct G&G exploration, including deep stratigraphic tests, for oil, gas, or sulphur resources. If you conduct both geological and geophysical exploration, you must have a separate permit for each.

(b) *Scientific research.* You may only conduct G&G scientific research related to oil, gas, and sulphur in the OCS after you obtain an MMS-approved permit or file a Notice.

(1) *Permit.* You must obtain a permit if the research activities you propose to conduct involve:

- (i) Using solid or liquid explosives;
- (ii) Drilling a deep stratigraphic test;

or

- (iii) Developing data and information for proprietary use or sale.

(2) *Notice.* Any other G&G scientific research that you conduct related to oil, gas, and sulphur in the OCS requires you to file a Notice with the Regional Director at least 30 days before you begin. If circumstances preclude a 30-day Notice, you must provide oral notification and followup in writing. You must also inform MMS in writing when you conclude your work.

§ 251.5 Applying for permits or filing Notices.

(a) *Permits.* You must submit a signed original and three copies of the MMS permit application form (Form MMS-327). The form includes names of persons, type, location, purpose, and dates of activity, and environmental and other information.

(b) *Disapproval of permit application.* If MMS disapproves your application for a permit, the Regional Director will state the reasons for the denial and will advise you of the changes needed to obtain approval.

(c) *Notices.* You must sign and date a Notice and state:

- (1) The name(s) of the person(s) who will conduct the proposed research;
- (2) The name(s) of any other person(s) participating in the proposed research, including the sponsor;
- (3) The type of research and a brief description of how you will conduct it;

(4) The location in the OCS, indicated on a map, plat, or chart, where you will conduct research;

(5) The proposed dates you project for your research activity to start and end;

(6) The name, registry number, registered owner, and port of registry of vessels used in the operation;

(7) The earliest practicable time you expect to make the data and information resulting from your research activity available to the public;

(8) Your plan of how you will make the data and information you collected available to the public;

(9) That you and others involved will not sell or withhold for exclusive use the data and information resulting from your research; and

(10) At your option, you may submit (as a substitute for the material required in paragraphs (c)(7), (c)(8), and (c)(9) of this section) the nonexclusive use agreement for scientific research attachment to Form 327.

(d) *Filing locations.* You must apply for a permit or file a Notice at one of the following locations:

(1) For the OCS off the State of Alaska—the Regional Supervisor for Resource Evaluation, Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Anchorage, Alaska 99508-4302.

(2) For the OCS off the Atlantic Coast and in the Gulf of Mexico—the Regional Supervisor for Resource Evaluation, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.

(3) For the OCS off the coast of the States of California, Oregon, Washington, or Hawaii—the Regional Supervisor for Resource Evaluation, Minerals Management Service, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, California 93010-6064.

§ 251.6 Obligations and rights under a permit or a Notice.

While conducting G&G exploration or scientific research activities under MMS permit or Notice:

- (a) You must not:
 - (1) Interfere with or endanger operations under any lease, right-of-way, easement, right-of-use, Notice, or permit issued or maintained under the Act;
 - (2) Cause harm or damage to life (including fish and other aquatic life), property, or to the marine, coastal, or human environment;
 - (3) Cause harm or damage to any mineral resource (in areas leased or not leased);
 - (4) Cause pollution;
 - (5) Disturb archaeological resources;

(6) Create hazardous or unsafe conditions; or

(7) Unreasonably interfere with or cause harm to other uses of the area.

(b) You must immediately report to the Regional Director if you:

- (1) Detect hydrocarbon occurrences;
- (2) Detect environmental hazards which imminently threaten life and property; or

(3) Adversely affect the environment, aquatic life, archaeological resources, or other uses of the area where you are conducting exploration or scientific research activities.

(c) You must also consult and coordinate your G&G activities with other users of the area for navigation and safety purposes.

(d) Any persons conducting shallow test drilling or deep stratigraphic test drilling activities under a permit must use the best available and safest technologies that the Regional Director determines to be economically feasible.

(e) You may not claim any oil, gas, sulphur, or other minerals you discover while conducting operations under a permit or Notice.

§ 251.7 Test drilling activities under a permit.

(a) *Shallow test drilling.* Before you begin shallow test drilling under a permit, the Regional Director may require you to:

(1) Gather and submit seismic, bathymetric, sidescan sonar, magnetometer, or other geophysical data and information to determine shallow structural detail across and in the vicinity of the proposed test.

(2) Submit information for coastal zone consistency certification according to paragraphs (b)(3) and (b)(4) of this section, and for protecting archaeological resources according to paragraph (b)(5) of this section.

(3) Allow all interested parties the opportunity to participate in the shallow test according to paragraph (c) of this section, and meet bonding requirements according to paragraph (d) of this section.

(b) *Deep stratigraphic tests.* You must submit to the appropriate Regional Director, at the address given in § 251.5, a drilling plan, an environmental report, and an application for permit to drill (Form MMS-123) as follows:

(1) *Drilling plan.* The drilling plan must include:

(i) The proposed type, sequence, and timetable of drilling activities;

(ii) A description of your drilling rig, indicating the important features with special attention to safety, pollution prevention, oil-spill containment and cleanup plans, and onshore disposal procedures;

(iii) The location of each deep stratigraphic test you will conduct, including the location of the surface and projected bottomhole of the borehole;

(iv) The types of geological and geophysical survey instruments you will use before and during drilling;

(v) Seismic, bathymetric, sidescan sonar, magnetometer, or other geophysical data and information sufficient to evaluate seafloor characteristics, shallow geologic hazards, and structural detail across and in the vicinity of the proposed test to the total depth of the proposed test well; and

(vi) Other relevant data and information that the Regional Director requires.

(2) *Environmental report.* The environmental report must include all of the following material:

(i) A summary with data and information available at the time you submitted the related drilling plan. MMS will consider site-specific data and information developed since the most recent environmental impact statement or other environmental impact analysis in the immediate area. The summary must meet the following requirements:

(A) You must concentrate on the issues specific to the site(s) of drilling activity. However, you only need to summarize data and information discussed in any environmental reports, analyses, or impact statements prepared for the geographic area of the drilling activity.

(B) You must list referenced material. Include brief descriptions and a statement of where the material is available for inspection.

(C) You must refer only to data that are available to MMS.

(ii) Details about your project such as:

(A) A list and description of new or unusual technologies;

(B) The location of travel routes for supplies and personnel;

(C) The kinds and approximate levels of energy sources;

(D) The environmental monitoring systems; and

(E) Suitable maps and diagrams showing details of the proposed project layout.

(iii) A description of the existing environment. For this section, you must include the following information on the area:

(A) Geology;

(B) Physical oceanography;

(C) Other uses of the area;

(D) Flora and fauna;

(E) Existing environmental monitoring systems; and

(F) Other unusual or unique characteristics that may affect or be affected by the drilling activities.

(iv) A description of the probable impacts of the proposed action on the environment and the measures you propose for mitigating these impacts.

(v) A description of any unavoidable or irreversible adverse effects on the environment that could occur.

(vi) Other relevant data that the Regional Director requires.

(3) *Copies for coastal States.* You must submit copies of the drilling plan and environmental report to the Regional Director for transmittal to the Governor of each affected coastal State and the coastal zone management agency of each affected coastal State that has an approved program under the Coastal Zone Management Act. (The Regional Director will make the drilling plan and environmental report available to appropriate Federal agencies and the public according to the Department of the Interior's policies and procedures).

(4) *Certification of coastal zone management program consistency and State concurrence.* When required under an approved coastal zone management program of an affected State, your drilling plan must include a certification that the proposed activities described in the plan comply with enforceable policies of, and will be conducted in a manner consistent with such State's program. The Regional Director may not approve any of the activities described in the drilling plan unless the State concurs with the consistency certification or the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of the Coastal Zone Management Act.

(5) *Protecting archaeological resources.* If the Regional Director believes that an archaeological resource may exist in the area that may be affected by drilling, the Regional Director will notify you of the need to prepare an archaeological report.

(i) If the evidence suggests that an archaeological resource may be present, you must:

(A) Locate the site of the drilling so as to not adversely affect the area where the archaeological resources may be, or

(B) Establish to the satisfaction of the Regional Director that an archaeological resource does not exist or will not be adversely affected by drilling. This must be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the Regional Director. A report on the investigation

must be submitted to the Regional Director for review.

(ii) If the Regional Director determines that an archaeological resource is likely to be present in the area that may be affected by drilling, and may be adversely affected by drilling, the Regional Director will notify you immediately. You must take no action that may adversely affect the archaeological resource unless further investigations determine that the resource is not archaeologically significant.

(iii) If you discover any archaeological resource while drilling, you must immediately halt drilling and report the discovery to the Regional Director. If investigations determine that the resource is significant, the Regional Director will inform you how to protect it.

(6) *Application for permit to drill (APD).* Before commencing deep stratigraphic test drilling activities under an approved drilling plan, you must submit an APD (Form MMS-123) and receive approval. You must comply with all regulations relating to drilling operations in 30 CFR part 250.

(7) *Revising an approved drilling plan.* Before you revise an approved drilling plan, you must obtain the Regional Director's approval.

(8) *After drilling.* When you complete the test activities, you must permanently plug and abandon the boreholes of all deep stratigraphic tests in compliance with 30 CFR part 250. If the tract on which you conducted a deep stratigraphic test is leased to another party for exploration and development, and if the lessee has not disturbed the borehole, MMS will hold you and not the lessee responsible for problems associated with the test hole.

(9) *Deadline for completing a deep stratigraphic test.* If your deep stratigraphic test well is within 50 geographic miles of a tract that MMS has identified for a future lease sale, as listed on the currently approved OCS leasing schedule, you must complete all drilling activities and submit the data and information to the Regional Director at least 60 days before the first day of the month in which MMS schedules the lease sale. However, the Regional Director may extend your permit duration to allow you to complete drilling activities and submit data and information if the extension is in the national interest.

(c) *Group participation in test drilling.* MMS encourages group participation for deep stratigraphic tests.

(1) *Purpose of group participation.* The purpose is to minimize duplicative

G&G activities involving drilling into the seabed of the OCS.

(2) *Providing opportunity for participation in a deep stratigraphic test.* When you propose to drill a deep stratigraphic test, you must give all interested persons an opportunity to participate in the test drilling through a signed agreement on a cost-sharing basis. You may include a penalty for late participation of not more than 100 percent of the cost to each original participant in addition to the original share cost.

(i) The participants must assess and distribute late participation penalties in accordance with the terms of the agreement.

(ii) For a significant hydrocarbon occurrence that the Regional Director announces to the public, the penalty for subsequent late participants may be raised to not more than 300 percent of the cost of each original participant in addition to the original share cost.

(3) *Providing opportunity for participation in a shallow test drilling project.* When you apply to conduct shallow test drilling activities, you must, if ordered by the Regional Director or required by the permit, give all interested persons an opportunity to participate in the test activity on a cost-sharing basis. You may include a penalty provision for late participation of not more than 50 percent of the cost to each original participant in addition to the original share cost.

(4) *Procedures for group participation in drilling activities.* You must:

(i) Publish a summary statement that describes the approved activity in a relevant trade publication;

(ii) Forward a copy of the published statement to the Regional Director;

(iii) Allow at least 30 days from the summary statement publication date for other persons to join as original participants;

(iv) Compute the estimated cost by dividing the estimated total cost of the program by the number of original participants; and

(v) Furnish the Regional Director with a complete list of all participants before starting operations, or at the end of the advertising period if you begin operations before the advertising period is over. The names of any subsequent or late participants must also be furnished to the Regional Director.

(5) *Changes to the original application for test drilling.* If you propose changes to the original application and the Regional Director determines that the changes are significant, the Regional Director will require you to publish the changes for an additional 30 days to

give other persons a chance to join as original participants.

(d) *Bonding requirements.* You must submit a bond under this part before you may start a deep stratigraphic test.

(1) Before MMS issues a permit authorizing the drilling of a deep stratigraphic test, you must either:

(i) Furnish to MMS a bond of not less than \$200,000 that guarantees compliance with all the terms and conditions of the permit; or

(ii) Maintain a \$1 million bond that guarantees compliance with all the terms and conditions of the permit you hold for the OCS area where you propose to drill.

(2) You must provide additional security to MMS if the Regional Director determines that it is necessary for the permit or area.

(3) The Regional Director may require you to provide a bond, in an amount the Regional Director prescribes, before authorizing you to drill a shallow test well.

(4) Your bond must be on a form approved by the Associate Director for Offshore Minerals Management.

§ 251.8 Inspection and reporting requirements for activities under a permit.

(a) *Inspection of permit activities.* You must allow MMS representatives to inspect your exploration or scientific research activities under a permit. They will determine whether operations are adversely affecting the environment, aquatic life, archaeological resources, or other uses of the area. MMS will reimburse you for food, quarters, and transportation that you provide for MMS representatives if you send in your reimbursement request to the Region that issued the permit within 90 days of the inspection.

(b) *Approval for modifications.* Before you begin modified operations, you must submit a written request describing the modifications and receive the Regional Director's oral or written approval. If circumstances preclude a written request, you must make an oral request and follow up in writing.

(c) *Reports.* (1) You must submit status reports on a schedule specified in the permit and include a daily log of operations.

(2) You must submit a final report of exploration or scientific research activities under a permit within 30 days after the completion of acquisition activities under the permit. You may combine the final report with the last status report and must include each of the following:

(i) A description of the work performed.

(ii) Charts, maps, plats, and digital navigational data in a format specified

by the Regional Director, showing the areas and blocks in which any exploration or permitted scientific research activities were conducted. Identify the lines of geophysical traverses and their locations including a reference sufficient to identify the data produced during each activity.

(iii) The dates on which you conducted the actual exploration or scientific research activities.

(iv) A summary of any:

(A) Hydrocarbon or sulphur occurrences encountered;

(B) Environmental hazards; and

(C) Adverse effects of the exploration or scientific research activities on the environment, aquatic life, archaeological resources, or other uses of the area in which the activities were conducted.

(v) Other descriptions of the activities conducted as specified by the Regional Director.

§ 251.9 Temporarily stopping, canceling, or relinquishing activities approved under a permit.

(a) MMS may temporarily stop exploration or scientific research activities under a permit when the Regional Director determines that:

(1) Activities pose a threat of serious, irreparable, or immediate harm. This includes damage to life (including fish and other aquatic life), property, any mineral deposit (in areas leased or not leased), to the marine, coastal, or human environment, or to an archaeological resource;

(2) You failed to comply with any applicable law, regulation, order, or provision of the permit. This would include MMS' required submission of reports, well records or logs, and G&G data and information within the time specified; or

(3) Stopping the activities is in the interest of national security or defense.

(b) *Procedures to temporarily stop activities.* (1) The Regional Director will advise you either orally or in writing. MMS will confirm an oral notification in writing and deliver all written notifications by courier or certified or registered mail. You must halt all activities under a permit as soon as you receive an oral or written notification.

(2) The Regional Director will advise you when you may start your permit activities again.

(c) *Procedure to cancel or relinquish a permit.* The Regional Director may cancel, or a permittee may relinquish, a permit at any time.

(1) If MMS cancels your permit, the Regional Director will advise you by certified or registered mail 30 days before the cancellation date and will state the reason.

(2) You may relinquish the permit by advising the Regional Director by certified or registered mail 30 days in advance.

(3) After MMS cancels your permit or you relinquish it, you are still responsible for proper abandonment of any drill sites in accordance with the requirements of § 251.7(b)(8). You must also comply with all other obligations specified in this part or in the permit.

§ 251.10 Penalties and appeals.

(a) *Penalties for noncompliance under a permit issued by MMS.* You are subject to the penalty provisions of: (1) Section 24 of the Act (43 U.S.C. 1350); and (2) The procedures contained in 30 CFR part 250, subpart N, for noncompliance with: (i) Any provision of the Act; (ii) Any provision of a G&G or drilling permit; or (iii) Any regulation or order issued under the Act.

(b) *Penalties under other laws and regulations.* The penalties prescribed in this section are in addition to any other penalty imposed by any other law or regulation.

(c) *Procedures to appeal orders or decisions MMS issues.* You may appeal any orders or decisions that MMS issues under the regulations in this part by referring to 30 CFR part 290. When you file an appeal with the Director, you must continue to follow all requirements for compliance with an order or decision other than payment of a civil penalty.

§ 251.11 Submission, inspection, and selection of geological data and information collected under a permit and processed by permittees or third parties.

(a) *Availability of geological data and information collected under a permit.*

(1) You must notify the Regional Director, in writing, when you complete the initial analysis, processing, or interpretation of any geological data and information. Initial analysis and processing are the stages of analysis or processing where the data and information first become available for in-house interpretation by the permittee, or become available commercially to third parties via sale, trade, license agreement, or other means.

(2) The Regional Director may ask if you have further analyzed, processed, or interpreted any geological data and information. When so asked, you must respond to MMS in writing within 30 days.

(b) *Submission, inspection, and selection of geological data and information.* The Regional Director may request the permittee or third party to submit the analyzed, processed, and interpreted geologic data and

information for inspection and/or permanent retention by MMS. The data and information must be submitted within 30 days after such request.

(c) *Requirements for submission of geological data and information collected under a permit.* Unless the Regional Director specifies otherwise, geological data and information must include:

(1) An accurate and complete record of all geological (including geochemical) data and information describing each operation of analysis, processing, and interpretation;

(2) Paleontological reports identifying microscopic fossils by depth, including the reference datum to which paleontological sample depths are related and, if the Regional Director requests, washed samples that you maintain for paleontological determinations;

(3) Copies of well logs or charts in a digital format, if available;

(4) Results and data obtained from formation fluid tests;

(5) Analyses of core or bottom samples and/or a representative cut or split of the core or bottom sample;

(6) Detailed descriptions of any hydrocarbons or hazardous conditions encountered during operations, including near losses of well control, abnormal geopressures, and losses of circulation; and

(7) Other geological data and information that the Regional Director may specify.

(d) *Obligations when geological data and information collected under permit are obtained by a third party.* A third party may obtain geological data and information from a permittee, or from another third party, by sale, trade, license agreement, or other means. If this happens:

(1) The third party recipient of the data and information assumes the obligations under this section, except for the notification provisions of paragraph (a)(1), and is subject to the penalty provisions of 30 CFR part 250, subpart N; and

(2) A permittee or third party that sells, trades, licenses, or otherwise provides data and information to a third party must advise the recipient, in writing, that accepting these obligations is a condition precedent of the sale, trade, license, or other agreement; and

(3) Except for license agreements, a permittee or third party that sells, trades, or otherwise provides data and information to a third party must advise the Regional Director, in writing and within 30 days, of the sale, trade, or other agreement, including the identity

of the recipient of the data and information; or

(4) For license agreements a permittee or third party that licenses data and information to a third party must, within 30 days of a request by the Regional Director, advise the Regional Director, in writing, of the license agreement, including the identity of the recipient of the data and information.

§ 251.12 Submission, inspection, and selection of geophysical data and information collected under a permit and processed by permittees or third parties.

(a) *Availability of geophysical data and information collected under a permit.* (1) You must notify the Regional Director, in writing, when you complete the initial processing and interpretation of any geophysical data and information. Initial processing is the stage of processing where the data and information become available for in-house interpretation by the permittee, or become available commercially to third parties via sale, trade, license agreement, or other means.

(2) The Regional Director may ask if you have further processed or interpreted any geophysical data and information. When so asked, you must respond to MMS in writing within 30 days.

(b) *Submission, inspection and selection of geophysical data and information collected under a permit.* The Regional Director may request that the permittee or third party submit geophysical data and information before making a final selection for retention. MMS representatives may inspect and select the data and information on your premises, or the Regional Director can request delivery of the data and information to the appropriate MMS regional office for review.

(1) You must submit the geophysical data and information within 30 days of receiving the request, unless the Regional Director extends the delivery time.

(2) At any time before final selection, the Regional Director may return any or all geophysical data and information following review. You will be notified in writing of all or portions of those data the Regional Director decides to retain.

(c) *Requirements for submission of geophysical data and information collected under a permit.* Unless the Regional Director specifies otherwise, you must include:

(1) An accurate and complete record of each geophysical survey conducted under the permit, including digital navigational data and final location maps;

(2) All seismic data collected under a permit presented in a format and of a quality suitable for processing;

(3) Processed geophysical information derived from seismic data with extraneous signals and interference removed, presented in a quality format suitable for interpretive evaluation, reflecting state-of-the-art processing techniques; and

(4) Other geophysical data, processed geophysical information, and interpreted geophysical information including, but not limited to, shallow and deep subbottom profiles, bathymetry, sidescan sonar, gravity and magnetic surveys, and special studies such as refraction and velocity surveys.

(d) *Obligations when geophysical data and information collected under a permit are obtained by a third party.* A third party may obtain geophysical data, processed geophysical information, or interpreted geophysical information from a permittee, or from another third party, by sale, trade, license agreement, or other means. If this happens:

(1) The third party recipient of the data and information assumes the obligations under this section, except for the notification provisions of paragraph (a)(1), and is subject to the penalty provisions of 30 CFR part 250, subpart N; and

(2) A permittee or third party that sells, trades, licenses, or otherwise provides data and information to a third party must advise the recipient, in writing, that accepting these obligations is a condition precedent of the sale, trade, license, or other agreement; and

(3) Except for license agreements, a permittee or third party that sells, trades, or otherwise provides data and information to a third party must advise the Regional Director, in writing and within 30 days, of the sale, trade, or other agreement, including the identity of the recipient of the data and information; or

(4) For license agreements, a permittee or third party that licenses data and information to a third party must, within 30 days of a request by the Regional Director, advise the Regional Director, in writing, of the license agreement, including the identity of the recipient of the data and information.

§ 251.13 Reimbursement for the costs of reproducing data and information and certain processing costs.

(a) MMS will reimburse you or a third party for reasonable costs of reproducing data and information that the Regional Director requests if:

(1) You deliver G&G data and information to MMS for the Regional

Director to inspect or select and retain (according to §§ 251.11 or 251.12);

(2) MMS receives your request for reimbursement and the Regional Director determines that the requested reimbursement is proper; and

(3) The cost is at your lowest rate (or a third party's) or at the lowest commercial rate established in the area, whichever is less.

(b) MMS will reimburse you or the third party for the reasonable costs of processing geophysical information (which does not include cost of data acquisition):

(1) If, at the request of the Regional Director, you processed the geophysical data or information in a form or manner other than that used in the normal conduct of business; or

(2) If you collected the information under a permit that MMS issued to you before October 1, 1985, and the Regional Director requests and retains the information.

(c) When you request reimbursement, you must identify reproduction and processing costs separately from acquisition costs.

(d) MMS will not reimburse you or a third party for data acquisition costs or for the costs of analyzing or processing geological information or interpreting geological or geophysical information.

§ 251.14 Protecting and disclosing data and information submitted to MMS under a permit.

(a) *Disclosure of data and information to the public by MMS.* (1) In making data and information available to the public, the Regional Director will follow the applicable requirements of:

(i) The Freedom of Information Act (5 U.S.C. 552);

(ii) The implementing regulations at 43 CFR part 2;

(iii) The Act; and

(iv) The regulations at 30 CFR parts 250 and 252.

(2) Except as specified in this section or in 30 CFR parts 250 and 252, if the Regional Director determines any data or information is exempt from public disclosure under paragraph (a) of this section, MMS will not provide the data and information to any State or to the executive of any local government or to the public, unless you and all third parties agree to the disclosure.

(3) MMS will keep confidential the identity of third party recipients of data and information collected under a permit. MMS will not release the identity unless you and the third parties agree to the disclosure.

(4) When you detect any significant hydrocarbon occurrences or environmental hazards on unleased

lands during drilling operations, the Regional Director will immediately issue a public announcement. The announcement must further the national interest, but without unduly damaging your competitive position.

(b) *Timetable for release of G&G data and information that MMS acquires.* MMS will release data and information that you or a third party submits and MMS retains, in accordance with paragraphs (b)(1) and (b)(2) of this section.

(1) If the data and information are not related to a deep stratigraphic test, MMS will release them to the public in accordance with the following table:

If you or a third party submit and MMS retains	The Regional Director will disclose them to the public
Geological data and information.	10 years after issuing the permit.
Geophysical data	50 years after you or a third party submit the data.
Geophysical information.	25 years after you or a third party submit the information.

(2) If the data and information are related to a deep stratigraphic test, MMS will release them to the public at the earlier of the following times:

(i) Twenty-five years after you complete the test; or

(ii) If a lease sale is held after you complete a test well, 60 calendar days after MMS issues the first lease, any portion of which is located within 50 geographic miles (92.7 kilometers) of the test.

(c) *Procedure that MMS follows to disclose acquired data and information to a contractor for reproduction, processing, and interpretation.*

(1) When practical, the Regional Director will advise the person who submitted data and information under §§ 251.11 or 251.12 of the intent to disclose the data or information to an independent contractor or agent.

(2) The person so notified will have at least 5 working days to comment on the action.

(3) When the Regional Director advises the person who submitted the data and information, all other owners of the data or information will be considered to have been so notified.

(4) Before disclosure, the contractor or agent must sign a written commitment not to sell, trade, license, or disclose data or information to anyone without the Regional Director's consent.

(d) *Sharing data and information with coastal States.* (1) When MMS solicits nominations for leasing lands located within 3 geographic miles (5.6

kilometers) of the seaward boundary of any coastal State, the Regional Director, in accordance with 30 CFR 252.7 (a)(4) and (b) and subsections 8(g) and 26(e) of the Act (43 U.S.C. 1337(g) and 1352(e)), will provide the Governor with:

(i) All information on the geographical, geological, and ecological characteristics of the areas and regions MMS proposes to offer for lease;

(ii) An estimate of the oil and gas reserves in the areas proposed for leasing; and

(iii) An identification of any field, geological structure, or trap on the OCS within 3 geographic miles (5.6 kilometers) of the seaward boundary of the State.

(2) After receiving nominations for leasing an area of the OCS within 3 geographic miles of the seaward boundary of any coastal State, MMS will carry out a tentative area identification according to 30 CFR part 256, subparts D and E. At that time, the Regional Director will consult with the Governor to determine whether any tracts further considered for leasing may contain any oil or gas reservoirs that underlie both the OCS and lands subject to the jurisdiction of the State.

(3) Before a sale, if a Governor requests, the Regional Director, in accordance with 30 CFR 252.7(a)(4) and (b) and sections 8(g) and 26(e) of the Act (43 U.S.C. 1337(g) and 1352(e)), will share with the Governor information that identifies potential and/or proven common hydrocarbon bearing areas within 3 geographic miles of the seaward boundary of that State.

(4) Information received and knowledge gained by a State official under paragraph (d) of this section is subject to applicable confidentiality requirements of:

- (i) The Act; and
- (ii) The regulations at 30 CFR parts 250, 251, and 252.

§ 251.15 Authority for information collection.

(a) The Office of Management and Budget has approved the information collection requirements in this part under 44 U.S.C. 3501 *et seq.* and assigned OMB control number 1010-0048. The title of this information collection is "30 CFR Part 251, Geological and Geophysical (G&G) Explorations of the OCS."

(b) We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(c) We use the information collected under this part to:

(1) Evaluate permit applications and monitor scientific research activities for environmental and safety reasons.

(2) Determine that explorations do not harm resources, result in pollution, create hazardous or unsafe conditions, or interfere with other users in the area.

(3) Approve reimbursement of certain expenses.

(4) Monitor the progress and activities carried out under an OCS G&G permit.

(5) Inspect and select G&G data and information collected under an OCS G&G permit.

(d) Respondents are Federal OCS permittees and Notice filers. Responses are mandatory or are required to obtain or retain a benefit. We will protect information considered proprietary under applicable law and under regulations at § 251.14 and part 250 of this chapter.

(e) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, N.W., Washington, D.C. 20240; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (1010-0048), 725 17th Street, N.W., Washington, D.C. 20503.

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DEPARTMENT OF DEFENSE

Defense Special Weapons Agency

32 CFR Part 318

[DSWA Instruction 5400.11B]

Defense Special Weapons Agency Privacy Program

AGENCY: Defense Special Weapons Agency, DOD.

ACTION: Final rule.

SUMMARY: The Defense Special Weapons Agency (DSWA) is adding two sections to its procedural rule for the DSWA Privacy Program. The two sections are entitled Disclosure of record to persons other than the individual to whom it pertains and Fees. The addition of these two sections helps an individual to better understand the DSWA Privacy Program.

EFFECTIVE DATE: December 3, 1997.

ADDRESSES: General Counsel, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310-3398.

FOR FURTHER INFORMATION CONTACT: Mrs. Sandy Barker at (703) 325-7681.

SUPPLEMENTARY INFORMATION:

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of \$100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that the Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

The Defense Special Weapons Agency is adopting the changes previously published as a proposed rule on October 3, 1997, at 62 FR 51821. No comments were received, therefore, the Defense Special Weapons Agency is adopting the rule as previously published.

List of Subjects in 32 CFR Part 318

Privacy.

Accordingly, the Defense Special Weapons Agency amends 32 CFR part 318 as follows:

PART 318—DEFENSE SPECIAL WEAPONS AGENCY PRIVACY PROGRAM—[AMENDED]

1. The authority citation for 32 CFR part 318 continues to read as follows:

AUTHORITY: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 318.9 is redesignated as 318.11.

3. Sections 318.9 and 318.10 are added as follows: