to cure the ''misrepresentation'' created only by the Guides themselves.

Id. FDRA urges the Commission to reconsider this approach, which it claims is flawed.

In its comment, FDRA touts the enormous strides made in the development of synthetic materials, which it claims have replaced leather in many facets of footwear construction.[49] Further, the association states that synthetic materials, which in some instances are more expensive than leather, have been developed to be light in weight and provide strength and durability which is superior to leather. In describing today's footwear styles, FDRA explains that such products ''are typically made from a variety of materials fitted together with leather and man-made overlays, interspersed with light, breathable textile materials, combined to create the comfort, fit, and 'breathability' preferred by consumers.''[50] Additionally, FDRA states that low priced synthetic shoes are widely accepted by consumers because they have many of the same comfort and performance characteristics as leather footwear at a fraction of the price.[51]

The basic premise of the Guides is the Commission's long-standing position that when a product has the appearance of leather, its appearance makes an implied representation that the product is made of leather. Clearly, a deceptive omission can arise from the physical appearance of a product, and the Guides' disclosure provisions are designed to correct such an omission. Despite FDRA's claims to the contrary, a product does not ''appear'' to be leather solely because of the absence of a content disclosure for the product. A synthetic product must first appear to be leather before the Guides' disclosure provisions would become applicable to the product. Thus, the Guides' disclosure provisions are limited to situations where consumers are likely to be misled as to a product's composition.

While FDRA cites statistics regarding the percentages of leather and non-leather footwear for the U.S. footwear market and the types of footwear sold in the market,[52] it does not provide evidence regarding consumer expectations regarding footwear with the appearance of leather. Whether or not there have been tremendous advances in synthetic materials, the record does not support a reversal of the Commission's long-standing position related to synthetic material with the appearance of leather.

FDRA asks that, if the Guides remain applicable to footwear, the Commission make clear that the look or mere appearance of the shoe does not constitute a representation that the shoe is leather, either in whole or in part, and to make the Guides applicable only to misrepresentations of leather content.[53] As discussed above, the implied representation made by the appearance of leather is a fundamental premise of the Guides. FDRA's suggested changes would thwart the primary goals of the Guides. Therefore, the Commission is not making the changes suggested by FDRA.

IV. Conclusion

Based upon the review discussed above, the Commission concludes that there is a continuing need for the Leather Guides, which are beneficial to consumers and industry members, and has decided to retain the Guides in their current form.

List of Subjects in 16 CFR Part 24

Advertising, Belts, Distribution, Footwear, Imitation leather products, Labeling, Ladies' handbags, Leather and leather products industry, Luggage and related products, Shoes, Trade practices, Waist belts.

Authority: 15 U.S.C. 41-58.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E8–13656 Filed 6–17–08: 8:45 am]

BILLING CODE 6750–01–S

[49] *Id.*

[50] *Id.* at 1.

[51] *Id.* at 2. FDRA claims that, because of the low price, consumers have no expectation that these items are made of leather. However, as discussed above, FDRA indicates that synthetic materials are more expensive than leather in some instances. Therefore, consumers cannot rely upon price to determine the true composition of a product.

[52] *Id.* at 1.

[53] *Id.* at 2.

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 291

[Docket ID: MMS–2008–PMI–0024]

RIN 1010–AD17

Open and Nondiscriminatory Movement of Oil and Gas as Required by the Outer Continental Shelf Lands Act

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is promulgating new regulations that establish a process for a shipper transporting oil or gas production from Federal leases on the Outer Continental Shelf (OCS) to follow if it believes it has been denied open and nondiscriminatory access to pipelines on the OCS. The rule provides MMS with tools to ensure that pipeline companies provide open and nondiscriminatory access to their pipelines.

EFFECTIVE DATE: August 18, 2008.

FOR FURTHER INFORMATION CONTACT: Scott Ellis, Policy and Appeals Division, at (303) 231–3652, FAX: (303) 233–2225, or e-mail at *Scott.Ellis@mms.gov*. The principal authors of this rule are Alex Alvarado and Robert Mense of Offshore Minerals Management (OMM); and Scott Ellis of Policy and Management Improvement (PMI), MMS, Interior.

SUPPLEMENTARY INFORMATION:

I. Background

Section 5(e) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1334(e), provides that ''[r]ights-of-way through the submerged lands of the outer Continental Shelf, whether or not such lands are included in a mineral lease maintained or issued pursuant to this subchapter, may be granted by the Secretary for pipeline purposes for the transportation of oil, natural gas, sulphur, or other minerals or under such regulations and upon such conditions as may be prescribed by the Secretary. * * * upon the express condition that oil or gas pipelines shall transport or purchase, without discrimination, oil or natural gas produced from submerged lands or outer Continental Shelf lands. * * *'' 43 U.S.C. 1334(e).

Section 5(f) of the OCSLA mandates that every permit, license, easement, or right-of-way granted to a pipeline for transportation of oil or gas on or across the OCS must require that the pipeline ''provide open and nondiscriminatory access to both owner and nonowner shippers.'' 43 U.S.C. 1334(f).

The Federal Energy Regulatory Commission (FERC), exercising authority it claimed under the OCSLA, issued regulations requiring companies providing natural gas transportation service to periodically file information with FERC concerning their pricing and service structures. *See* Order No. 639, FERC Stats. & Regs. (CCH) ¶ 31,097 at 31,514 (April 10, 2000); Order No. 639–A, FERC Stats. & Regs. (CCH) ¶ 31,103 (July 26, 2000). FERC believed that the resulting transparency would enhance

competitive and open access to gas transportation. *Id.* Several of the subject companies sought judicial relief from the orders, alleging that FERC did not have authority under OCSLA to issue the regulations.

On October 10, 2003, the U.S. Court of Appeals for the District of Columbia Circuit, in *Williams Cos.* v. *FERC,* 345 F.3d 910 (DC Cir. 2003), found that sections 5(e) and (f) of the OCSLA, 43 U.S.C. 1334(e) and (f), grant FERC only limited authority to enforce open access rules on the OCS. The court found that enforcement of the requirement to provide open and nondiscriminatory access ''would be at the hands of the obligee of the conditions, the Secretary of the Interior (or possibly other persons that the conditions might specify).'' *Id.* at 913–914.

Specifically, the Court of Appeals concluded that FERC's role under 43 U.S.C. 1334(e) is essentially limited to what are commonly known as ''ratable take'' orders and capacity expansion orders. According to the court's decision, FERC's authority does not include the regulatory oversight described in FERC Orders 639 and 639–A. As a result, the FERC regulations issued under 18 CFR part 330 are *ultra vires*, and therefore not enforceable. MMS believes the court's decision means that the OCSLA provides the Secretary of the Interior the authority to issue and enforce rules to assure open and nondiscriminatory access to pipelines. 43 U.S.C. 1334(e) and (f)(1)(A).

To determine whether a need exists for regulations to assure open and nondiscriminatory access, MMS issued an Advance Notice of Proposed Rulemaking (ANPRM). *See* 69 FR 19137 (April 12, 2004). Subsequently, MMS held public meetings in Houston, Washington, DC, and New Orleans to hear oral comments. MMS received written comments from 17 respondents. After considering all comments and making some minor changes necessitated by the Energy Policy Act of 2005 (EPAct, Pub. L. 109–58, 119 Stat. 594), MMS proceeded by issuing a Proposed Rule in the **Federal Register**. *See* 72 FR 17047 (April 6, 2007).

The Proposed Rule addressed many of the comments in response to the ANPRM and requested further discussion and comments on several topics. MMS received written comments to the Proposed Rule from a total of 13 industry respondents. In addition, MMS received comments from FERC, but those comments were of a technical nature (citation corrections) and did not address the substantive regulations of the Proposed Rule. As with the ANPRM, the Proposed Rule commenters generally fell into two groups—shippers/producers (4) and pipelines/service providers (9). While these commenter groups generally submitted opposing views, the support of the proposed informal complaint resolution process was nearly unanimous (one commenter indicating the process appeared lawful and another stating the process was consistent with other OMM leasing actions). Specific topics regarding the issues raised in the Proposed Rule comments are addressed below in the applicable sections of this final rulemaking.

II. Comments on the Proposed Rule

The MMS received comments on the Proposed Rule from four producers/shippers and nine pipelines/service providers. These comments are analyzed and discussed below:

A. General Comments

1. The formal complaint process, proposed at 30 CFR 291.104–291.115, conflicts with OCSLA ''citizen suit'' adjudication process.

Public Comments: Two pipeline commenters objected to any form of formal complaint process. One pipeline commenter proposed that MMS reconsider the formal administrative complaint process as unnecessary due to the existing option of taking the issue to Federal court, and because Congress did not mandate an administrative process. The other pipeline commenter argues that MMS's formal complaint process exceeds statutory authority and conflicts with the Congressionally-conferred adjudication process, the ''citizen suit'' provisions of OCSLA.

MMS Response: Concerning the comments that MMS must completely reject the formal administrative process, MMS disagrees with the commenters' position regarding OCSLA authority. The OCSLA specifically grants the Secretary of the Interior the authority to ''prescribe such rules and regulations as may be necessary to carry out the provisions of [the OCSLA].'' *43 U.S.C. 1334(a).* Nothing in section 1349 or section 1350 limits that rulemaking authority. Nor is there anything in section 1334(e) or (f) that exempts those provisions from the general grant of rulemaking authority.

The two pipeline commenters interpret OCSLA in such a narrow manner that when open and nondiscriminatory pipeline access disputes occur that are associated with OCSLA section 5 permits, licenses, easements, rights-of-way, or other grants of authority, the only administrative enforcement that the Secretary could employ is (maybe) informal dispute resolution. The commenters base their interpretation on the premise that Congress failed to grant the Secretary the authority to create, by regulation, a formal administrative process to resolve pipeline access disputes. Instead, when a pipeline access dispute occurs, commenters believe that the dispute may only be resolved by the judiciary. That result would appear to contradict *Williams* where the DC Circuit held that ''[w]ithout some explicit provision to the contrary (as exists for quantification of the ratable take duty), Congress presumably intended that enforcement would be at the hands of the obligee of the conditions, the Secretary of the Interior (or possibly other persons that the conditions might specify).'' *Williams,* 345 F.3d at 913–14. MMS believes that the best way to ensure open and nondiscriminatory access to pipelines on the OCS is through a formal administrative process in conjunction with an informal Hotline and alternative dispute resolution (ADR) processes. Otherwise, MMS's attempts at ''enforcement'' of open access conditions would be more difficult whenever the parties eschewed the informal means of resolution. Consequently, MMS believes that the commenters' interpretation would circumvent the entire executive process. The commenters would have disputes over pipeline access effectively removed from the administrative process, making them subject solely to the judicial process. The MMS believes that neither section 5 nor section 23 (citizen suit provision) of OCSLA may be interpreted so narrowly. Again, MMS rejects the recommendations to eliminate all formal open and nondiscriminatory access dispute resolution procedures.

2. MMS royalty-in-kind (RIK) conflict of interest.

Public Comments: One pipeline commenter questions whether MMS, as a shipper of RIK production, can fairly decide other shipper's appeals alleging violations of the open and nondiscriminatory access provisions of OCSLA. The commenter believes that an inherent conflict of interest prevents MMS from objectively deciding open access complaints because MMS's incentives are the same as shippers that submit complaints. The commenter also believes that MMS's decisions would not only be subject to potential conflicts of interest where MMS is a shipper, but for all complaints. The commenter does not believe that the complaint process equates to MMS's appeal process for MRM orders because Congress has not mandated that an administrative process be established for open and

nondiscriminatory access complaints as it has for royalty disputes.

MMS Response: The MMS previously explained in the Proposed Rule that appellants' allegations of lack of due process or of conflict of interest under the parallel MRM appeal process have never been upheld. *See, e.g., Santa Fe Pacific Railroad Co.,* 90 IBLA 200, 220 (1986); *Davis Exploration,* 112 IBLA 254, 260 (1989); *Transco Exploration Co. & TXP Operating Co.,* 110 IBLA 282, 311–12 (1989); *W&T Offshore, Inc.,* 148 IBLA 323, 355–59 (1999). The RIK division operates within the MRM program of MMS and separately from PMI. Consequently, any complaints peripheral to RIK activities are similar to appeals of orders issued by MRM and decided by PMI. In both situations, MMS programs have an interest in the outcome of the appeal or complaint, but other parties' interests are further protected by Interior Board of Land Appeals (IBLA) review, and the availability of judicial review of those IBLA decisions.

With both royalty appeals and open access complaints, PMI has no underlying operational responsibility. Rather, MRM is responsible for issuing royalty-related orders and for managing the RIK program, while OMM issues pipeline rights-of-way. PMI functions as an independent program that assists in the Director's oversight of MMS's operating programs. PMI helps to fulfill the Director's responsibility by issuing final MMS appeal and complaint decisions under the authority that the MMS Director has delegated to PMI.

Under section 5(a) of OCSLA, Congress granted the Secretary broad authority to administer OCSLA, including the power to ''prescribe such rules and regulations as may be necessary to carry out'' its provisions. In addition, the Circuit Court in *Williams* found that enforcement of the obligation to provide open and nondiscriminatory access ''would be at the hands of the obligee of the conditions, the Secretary of the Interior (or possibly other persons that the conditions might specify).'' *Williams,* 345 F.3d at 913–14. The pipeline right-of-way conditions currently include the regulations in 30 CFR part 250, subpart J. *See* 30 CFR 250.1010. The new regulations in Part 291 serve to complement the subpart J regulations and to encompass a broader range of grants of authority as part of MMS's overall administrative duties under OCSLA, as modified by the EPAct.

Under these rules at §§ 291.112 through 291.115, parties may avail themselves of the same kind of administrative review as lessees/operators experience under current MRM appeals. Because the process in this rulemaking is similar to the appeals process which has been upheld repeatedly by the IBLA, the MMS believes that the complaint process will properly protect parties' rights.

B. 30 CFR Part 291—Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the Outer Continental Shelf Lands Act

1. 30 CFR 291.101. What definitions apply to this part?

a. Undefined Terms

Public Comments: One shipper commenter proposes that MMS provide guidance on behavior that constitutes discrimination. Another shipper commenter recommends that MMS clarify that denial of open access is not confined to physical access and that MMS adopt FERC-based ''reasonableness'' and ''similarly situated'' standards.

MMS Response: MMS prefers to approach disputes over pipeline access by using a broad ''reasonableness'' standard that provides more flexibility rather than numerous rigid parameters that have only limited application. To assist in these kinds of concerns, however, MMS envisioned that shippers using the Hotline would inquire as to whether a particular situation or behavior may constitute a violation of pipeline access requirements and whether those circumstances may support further investigation. The MMS refrained from specifically adopting FERC-based discrimination standards because the mandates and authorizing statutes for FERC and MMS (Interior) differ. While MMS recognizes that both the FERC ''reasonableness'' and ''similarly situated'' standards may be useful in resolving pipeline access disputes at issue under MMS's purview, the application of those standards may necessarily differ from FERC's processes under its differing statutory authorities. Thus, MMS continues to decline to adopt specific standards clarifying what constitutes discriminatory behavior or whether denial of open access has occurred.

b. Definitions of ''OCSLA Pipeline'' and ''Transportation''

Public Comments: One pipeline commenter cautioned against MMS adopting a prescriptive approach to gathering systems, while another proposes that MMS explicitly state whether ''contract carriage'' may meet pipeline access requirements. One shipper commenter believes that the ''transportation'' definition is overly broad, and recommends that MMS exempt producers' lateral or small diameter feeder lines that do not ship others' production. Another shipper commenter indicated support for exempting deep water port facilities from these rules and for limiting the rules to encompass only those facilities that transport and not to those that produce. However, that same commenter proposed that MMS affirmatively request FERC to exempt feeder lines from application of these rules under section 5(f)(2) of OCSLA, that MMS specifically exempt FERC's ''in connection with'' gathering lines, and that MMS exempt ''lease'' facilities and lines since the rights enjoyed under the lease and granted under section 8 of OCSLA, are exclusive as opposed to the non-exclusive rights obtained under other grants of authority under section 5 of OCSLA.

MMS Response: Lateral, feeder, and lease pipelines and associated facilities that do not transport oil and gas do not require a specific exemption from these rules. The plain language of section 5(e) and (f) of OCSLA clearly states that open and nondiscriminatory access requirements apply only to pipelines that transport oil and gas. Section 5(e) addresses only transportation of oil and gas on right-of-way pipelines. If the function of laterals, feeders and gathering lines is for production purposes prior to transportation, these rules do not apply to those facilities. *See* 72 FR at 17049. However, simply because MMS, FERC, or some other entity defines a pipeline or associated facility as a lateral, a feeder, a gathering line, or otherwise production-related does not mean that such a pipeline or associated facility is used to transport oil and gas within the meaning of OCSLA. MMS does not believe that exempting FERC ''in connection with'' gathering lines is necessary. FERC has determined that ''in connection with'' pipelines fall within its jurisdiction under the Natural Gas Act (NGA), 15 U.S.C. 717–717z. Therefore, by the definition in § 291.101, FERC pipelines include ''in connection with'' pipelines. By FERC's definitions, gathering pipelines do not fall under NGA jurisdiction unless FERC determines that they are ''in connection with'' jurisdictional interstate pipelines. 15 U.S.C. 717(b). Consequently, MMS presumes that FERC will adequately address any discriminatory behavior for any pipeline access dispute that may arise for an ''in connection with'' gathering line since pipeline companies are prohibited by law from such discrimination. *Id.* at 717c(b).

MMS declines to implement the proposal to affirmatively request a blanket exemption from FERC for ''lateral'' or ''feeder lines,'' because such a request is outside the scope of this rulemaking. Although MMS views these pipelines as potentially being subject to the open and nondiscriminatory pipeline access rules, MMS elected to accept FERC's oversight on an undue discrimination basis in lieu of applying these rules to transporters' gas pipelines and associated facilities under FERC's NGA jurisdiction, and to transporters' oil pipelines and associated facilities under Department of Energy Organization Act, 49 U.S.C. 60502 (transferring jurisdiction for duties under the Interstate Commerce Act (ICA), 42 U.S.C. 7172(a) and (b)) jurisdiction. MMS believes that requiring oil and gas transporters to comply with MMS's open and nondiscrimination rules under OCSLA in addition to complying with FERC's undue discrimination standards for interstate transport under either NGA or ICA is both duplicative and unnecessary.

MMS also declines to implement the suggestion to explicitly note that ''contract carriage'' may meet the open and nondiscriminatory pipeline access requirements because MMS believes that such a broad declaration would not serve to clarify the scope or function of these rules. A suggestion that contract carriage may satisfy the open and nondiscriminatory pipeline access requirements and may create a ''safe harbor'' would not further MMS's stated objective of analyzing each case based on its factual merits. Whether a particular pipeline or related facility may be subject to the open and nondiscriminatory pipeline access rules is fact-driven, and MMS declines to categorically address every meaning and context of each transportation-related term used in the oil and gas industry and implicated in this rulemaking. Rather, MMS reaffirms its prior position that production-related pipelines and associated facilities are not subject to the open and nondiscriminatory pipeline access rules.

c. Definition of ''Serve''

The following comments respond to MMS's specific question in the Proposed Rule of whether MMS should consider other methods of delivery assurance other than personal delivery, U.S. mail, or private delivery service, *e.g.*, electronic transmission, to satisfy parties' complaint and answer notification requirements:

Public Comments: MMS received four comments on this specific question. One pipeline commenter supported the Proposed Rule as written, while one shipper commenter indicated that typical methods (not including electronic transmission) were sufficient means of notification. One pipeline commenter suggested that MMS should consider allowing electronic transmission in addition to the typical methods, and one pipeline commenter proposed allowing electronic transmission as a form of acceptable notification.

MMS Response: MMS believes that the typical forms of service notification provided for in the Proposed Rule are sufficient for the purposes of these rules. The commenters' limited interest in supporting electronic transmission as well as the low volume of complaints anticipated, suggest that the rule as proposed is adequate. Once a rule is finalized, MMS's practice is to systematically revisit its regulations to determine if circumstances indicate a change is necessary or desirable.

2. 30 CFR 291.102. May I call the MMS Hotline to informally resolve an allegation that open and nondiscriminatory access was denied?

Public Comments: One pipeline commenter observed that the informal complaint resolution process appeared lawful, and another recommended that the Hotline be available to all market participants as a resource to obtain informal advice and guidance as is FERC's Enforcement Hotline.

MMS Response: The MMS purpose for establishing the Hotline under this section is to receive allegations of denial of open and nondiscriminatory access, and to allow shippers and transporters to request ADR in § 291.103. MMS initially requested that the discussion in the ANPRM concern the usefulness of a Hotline to informally attempt to resolve shippers' and service providers' concerns regarding perceived instances of open and nondiscriminatory access violations. Based on the ANPRM responses to MMS's request, shippers and service providers generally endorsed the concept of a Hotline as an informal mechanism for dispute identification and possible resolution.

MMS's purpose for establishing a Hotline is to informally resolve concerns of shippers of possible pipeline access violations, not to offer all market participants a resource to obtain informational advice. The MMS encourages any communication that may assist in averting problems related to open and nondiscriminatory access to pipelines. Users of the Hotline will be informed that information or informational advice about such access violations provided through the Hotline is not binding on MMS or the Department of the Interior (Department).

MMS expects that certain calls into the Hotline will not be made by shippers calling about pipeline access violations and such calls will need to be redirected. Regardless, MMS does not intend to strictly control incoming Hotline calls in an effort to avoid either calls from non-shippers or errant inquiries.

3. 30 CFR 291.103. May I use alternative dispute resolution to informally resolve an allegation that open and nondiscriminatory access was denied?

Public Comments: A shipper commenter indicated that the allocation of costs for an MMS-provided facilitator in ADR was not well defined and suggested that the costs be equally divided between the parties in the dispute.

MMS Response: MMS proposed to require participants in an ADR process to pay their respective shares of all costs and fees associated with any contracted or Departmental ADR provider. MMS is not considered a party for the purposes of this section. *See infra*, 30 CFR 291.103(b). By specifying that allocation of costs be the parties' respective shares, MMS intends that the costs for MMS facilitation be equally shared unless the parties agree to some other division.

4. 30 CFR 291.104. Who may file a complaint?

a. The following comments respond to MMS's specific question of whether MMS's proposed treatment of OCSLA pipelines over which FERC exercises its Natural Gas Act or Interstate Commerce Act jurisdiction is adequate:

Public Comments: MMS received ten comments on this specific question. One shipper commenter believes that deferring to FERC does not create any inconsistencies with other agencies' actions. Another shipper commenter concurs in MMS's deference to FERC's jurisdiction, but stated that MMS must clarify that ''in connection with'' pipelines are exempt from these rules. Seven pipeline commenters supported MMS's deference to FERC jurisdiction for NGA and ICA pipelines and one pipeline commenter believes MMS's deference to FERC cannot be legally sustained.

MMS Response: MMS addresses the recommendation to clarify the status of ''in connection with'' pipelines in its response above to the definitions' comments under § 291.101. The reason for the commenter's belief that MMS's deference to FERC cannot be legally sustained is based on the *Williams* court's finding that FERC has an extremely limited role under OCSLA.

However, the decision to defer to FERC to ensure open and nondiscriminatory access to OCS pipelines is made pursuant to MMS's authority under OCSLA not FERC's authority. MMS recognizes that FERC possesses a parallel authority to prevent undue discrimination access to OCS pipelines subject to the NGA and ICA. MMS believes that its authority under OCSLA and FERC's parallel authorities to prevent undue discrimination access to pipelines subject to NGA and ICA essentially duplicate each other and permit MMS to exercise discretion not to duplicate FERC compliance efforts. MMS believes FERC's anti-discriminatory compliance oversight under the NGA and ICA will ensure open and nondiscriminatory access to pipelines under the OCSLA for those pipelines subject to the NGA and ICA

b. The following comments also relate to complaint filing under § 291.104:

Public Comments: One shipper commenter recommended that MMS allow interested non-parties to intervene in filed complaints, while another shipper commenter proposed that any interested party be allowed to intervene as the commenter believes is contemplated by 5 U.S.C. 555(b) of the Administrative Procedure Act (APA) and in a manner similar to FERC's Rules of Practice and Procedure at 18 CFR 385.206 and 385.214. The commenter believes that where its interests may be affected by precedents established by adjudication of complaints under this rule, then the rule should provide for interested party intervention.

MMS Response: As explained above in subsection A, General Comments, regarding MMS as a shipper of RIK production and the perceived conflict of interest, MMS believes that its administrative form of dispute resolution (the so-called paper hearing) is very successful. It is important to avoid any modification of that process that would lead to a more extensive and more complicated formal complaint process. There has been no evidence presented to indicate that a more extensive complaint process is necessary. MMS does not agree that intervention by right would serve the interest of efficient complaint resolution. However, the rule permits a potentially affected person to submit a brief in the proceeding setting forth the submitter's interest in the matter, recommendations, and reasons for such recommendations. It would be within MMS's discretion whether to address the brief formally and to include the submitter as a party to the proceeding.

5. 30 CFR 291.105. What must a complaint contain?

a. The following comments respond to MMS's specific question of whether MMS should use a formal complaint resolution method other than that proposed:

Public Comments: MMS received seven comments on this specific question. One shipper commenter did not provide a formal dispute alternative to MMS's proposal, but indicated that it preferred the light-handed resolution approach using the MMS Hotline and ADR. Six pipeline commenters expressed general support for the proposed formal dispute resolution process, but two of them qualified their support. The two qualifications to MMS's formal resolution procedure are: (1) that MMS remain flexible where circumstances suggest a need for additional or different procedures; and (2) that MMS avoid ratemaking or cost-based examinations.

MMS Response: In regard to the flexibility of MMS's dispute resolution procedures, MMS does not believe that additional flexibility is needed beyond the Hotline, ADR, and formal complaint resolution procedures. After the public meetings following the issuance of the ANPRM, MMS concluded that the industry has been able to resolve all but a very few of the types of complaints which the Proposed Rule would address. Thus, MMS believes that the three proposed means of dispute resolution are adequate for the anticipated need. Concerning the suggestion to avoid ratemaking, MMS does not include rate setting as a possible remedy in these rules, although cost-based examinations may provide the basis for open access determinations.

b. The following comments also relate to complaint elements under § 291.105:

Public Comments: One shipper commenter proposed allowing discovery consistent with the Federal Rules of Civil Procedure (FRCP, similar to the process that FERC employs) or that MMS allow the sharing of its discovery and that it issue protective orders as a means of ensuring the confidentiality of information. Also, where genuine issues of material fact exist, the commenter proposed that MMS provide for evidentiary hearings. Another shipper commenter proposed that MMS first establish the informal mechanisms before the formal procedures are put into place. One pipeline commenter suggested that MMS not cause any unnecessary discovery burdens. Another pipeline commenter expressed support for the complaint process particularly with respect to the case-by-case basis rather than by prescriptive regulation. Finally, a pipeline commenter suggested that MMS consider issuing a policy statement of its understanding of what the commenter characterizes as the pro-competitive form of regulation called for under OCSLA versus the pervasive command and control common-carrier regulation found in the NGA, ICA and MLA.

MMS Response: The MMS carefully considered whether it should adopt a formal complaint procedure similar to that of FERC. MMS determined that it would adopt as a model the appeal process for royalty disputes at 30 CFR Part 290, subpart B, because of the number of disputes anticipated (based on FERC's prior experience), the costs, and the labor involved. MMS believes that this process is more cost-effective and less intrusive, and thus lessens the chilling effect that a more extensive formal process would have on prospective complainants. MMS concluded that adopting a FERC-type of formal process that included discovery, evidentiary hearings, protective orders, etc., would hamper MMS's efforts to encourage resolution of these issues.

With respect to the comment about initiating the informal process before establishing formal processes, MMS previously addressed the need to issue the informal and formal dispute resolution processes concurrently. MMS believes that without the potential of some consequences, there is no reason for a pipeline owner to participate in a voluntary or an administrative process. MMS does not want prospective complainants to be forced into court as the sole means of resolving open access disputes.

MMS declines to implement the suggestion that MMS issue a policy statement expressing its understanding that OCSLA may be characterized as a pro-competitive form of regulation rather than the pervasive command and control form of common carrier regulation found in the NGA, ICA and MLA. This particular policy statement supports the commenter's position that MMS refrain from adopting any formal complaint resolution procedures. MMS declined to adopt that suggestion for the reasons explained above, that an informal process, absent a formal process, would be insufficient to secure compliance. The new Part 291 represents MMS's policy regarding its mandate to ensure open and nondiscriminatory access to OCS pipelines.

6. 30 CFR 291.106. How do I file a complaint?

The following comments respond to MMS's specific question of whether

MMS should impose a time limit on the filing of complaints:

Public Comments: MMS received eight comments on this specific question. The commenters all provided suggested time limits for complaint filing. The suggested time limits were 60–90 days (1 respondent), 90 days (1 respondent), 6 months (1 respondent), 1 year (1 respondent), and 2 years (4 respondents with two mentioning ICA complaint limitations standards). The suggestions varied between both shipper and pipeline commenters. Most of the comments suggested that the time period begin from the time of the alleged denial, alleged discrimination, or cause of action. However, one commenter suggested the time period commence from the time the complainant knew or should have known of the violation. Another commenter believes that an additional time limit should be created and imposed on those seeking informal complaint resolution.

MMS Response: The MMS agrees with the reasoning of the majority of the commenters responding to this question. The commenters were primarily concerned with the availability of relevant documentary evidence before it becomes stale or unavailable and with the need to provide certainty and ensure finality of transactions for activities undertaken on the OCS. The commenters also expressed concern: (1) That parties should not be indefinitely exposed to potential claims and uncertainties arising from past actions; (2) that limitations should be imposed out of a sense of fairness and administrative efficiency; and (3) that a potential exists for shippers to use a complaint threat as leverage against pipeline companies or otherwise achieve an unfair advantage. The MMS believes that a 2-year limitation period from the alleged denial for initiating a formal complaint is appropriate and addresses the commenters' concerns, and has adopted this recommendation in the final rule.

7. 30 CFR 291.107. How do I answer a complaint?

a. The following comments respond to MMS's specific question of whether an answer in response to a complaint should include specific information other than that required by the Proposed Rule:

Public Comments: MMS received five comments on this specific question. Four of the commenters indicated support for the rule as proposed. One pipeline commenter suggested that answers should include specific information in addition to that required if the additional information would expedite resolution of the dispute.

MMS Response: MMS agrees that any information that may expedite the resolution process should be required under this rule and MMS sought comments on what other information might be needed in the Proposed Rule. Had the commenters identified such information, MMS would have considered including it as part of this regulation. However, due to the absence of suggestions on this matter from commenters, no further information requirements have been adopted. MMS has the authority to require submittal of additional information in the course of resolving open and nondiscriminatory pipeline access disputes whenever it determines that the additional information is necessary to resolve the dispute. *See infra* 30 CFR 291.110.

b. The following comments also relate to submitting answers in response to complaints under § 291.107:

Public Comments: One shipper commenter recommends streamlining the complaint process by shortening the time to answer a complaint by 30 days from the proposed 60 days. The commenter indicates that a 30-day response period is consistent with FERC's complaint procedures allowing only 20 days to respond (30 days for confidential treatment) and with the FRCP, which also requires answers to be filed within 20 days of the service of complaint.

MMS Response: The MMS declines to implement the recommendation to shorten the required response time to answer complaints. The MMS believes that the 60-day period is necessary to prepare an answer that is sufficiently researched and documented.

8. 30 CFR 291.108. How do I pay the processing fee?

a. The following comments respond to MMS's specific questions of whether the amount of processing fee is fair; whether the payment by electronic funds transfer is feasible; and what form of identification should be used to submit fees to MMS:

Public Comments: MMS received three comments on these specific questions. A pipeline commenter expressed support for the rule as proposed. However, two shipper commenters expressed opposing views. One shipper commenter proposed eliminating the complaint filing fee altogether, while the other shipper commenter suggested imposing an additional fee of $15,000 per complaint in order to discourage frivolous filings.

MMS Response: The commenter proposing that the filing fee be eliminated argues that the fee is not justified under the Independent Offices Appropriation Act. MMS does not agree with the commenter's rationale and opts to retain the filing fee as proposed. As stated in the Proposed Rule, the party seeking compliance under this rule is not the regulated entity. However, MMS believes that there is no question that the complaining party receives a ''special benefit'' from the services performed by MMS in processing the formal complaint. This ''special benefit'' standard triggers mandated cost-recovery compliance. Since publication of the Proposed Rule, MMS re-estimated the total actual costs to process a formal complaint to be $12,627 (the cost for government personnel was reduced from $80/hour to $74/hour), but the reasons stated in the cost recovery analysis in the preamble to the Proposed Rule neither support increasing the filing fee above the proposed $7,500, nor would they support a $15,000 supplemental fee. MMS believes the $7,500 filing fee is both reasonable and protects against frivolous filings.

In the Proposed Rule, MMS provided alternative means of processing fee payment in addition to electronic funds transfer. However, the acceptance of checks and other alternative payment means was subject to MMS's sole discretion. MMS received no comments about the alternative payment proposal, and MMS received no comments on the specific question regarding the feasibility of electronic funds transfer. Upon further review, MMS has determined that it will prohibit any alternative means of payment in this section. Payment by check and other means for complaint processing costs is inefficient and creates unnecessary administrative burdens.

b. The following comments respond to MMS's specific questions of whether the proposed processing fee will materially affect the filing of complaints, and whether the value of using the complaint process to complainants, transporters, and others is fairly presented:

Public Comments: MMS received three comments on these specific questions. All three commenters responding to these questions indicated that the impact of the processing fee appears immaterial since cost is not an impediment for OCS shippers. Although related to MMS's specific question below, a pipeline commenter included in its response a proposal to eliminate the regulation providing for fee waivers and reductions.

MMS Response: The comment regarding elimination of the fee waiver and reduction regulation is addressed

below in response to comments on § 291.109.

9. 30 CFR 291.109. Can I ask for a fee waiver or a reduced processing fee?

The following comments respond to MMS's specific question of whether processing fee waiver and reduction provisions should be retained:

Public Comments: In addition to the response from the prior question, MMS received three other comments on this specific question. One commenter deferred to MMS on this question, and three commenters recommended eliminating this section as inappropriate and unnecessary.

MMS Response: MMS declines to eliminate this section as unnecessary. The proposal to reduce or waive filing fees was included in the Proposed Rule to avoid undue hardship on small independent oil and gas producers/shippers and thus impede their access to the complaint process. The commenters point out that entities who engage in producing, shipping or other oil and gas business activities on the OCS (those entities that have a basis to claim denial of pipeline access) are large sophisticated entities for whom a $7,500 filing fee would not prove to be an impediment. However, MMS declines to exclude the ability to respond to circumstances that would warrant granting of relief.

10. 30 CFR 291.110. Who may MMS require to produce information?

a. The following comments respond to MMS's specific question of whether MMS should obtain information from persons who are not parties to a complaint:

Public Comments: MMS received five comments on this specific question. Three pipeline commenters indicated support for MMS gathering information from non-parties, but all three qualified their support. One commenter cautioned that confidentiality should be maintained for outside information providers. Another commenter believes that the need to subpoena information is best left on a case-by-case basis, and the third commenter suggested possibly adding a threshold measure of proof before accepting a complaint. One pipeline and one shipper commenter recommended not allowing non-party information because it could not be validated or disputed without due diligence by all parties.

MMS Response: Regardless of the source, MMS believes it is necessary to treat all submitted information under part 291 as confidential to the extent allowed by law. The need to collect information from non-parties will not become routine and will only occur when there is additional information that MMS believes is necessary to make a decision on whether open access or nondiscriminatory access was denied. MMS believes that requiring certain non-parties to provide information upon request is less burdensome than requiring the routine submittal of information from all transporters and service providers. Also, MMS does not believe that a threshold level of proof is necessary before a complaint can be filed. The regulation at § 291.105 requires that the allegations include all documents that support the facts in your complaint including, but not limited to, contracts and any affidavits that may be necessary to support particular factual allegations. As with MMS appeals, unsupported assertions will not initiate complaint fact-finding efforts by MMS and will not move the complaint forward. However, MMS agrees that non-party information must be made available to the parties in dispute to afford them the opportunity to challenge that information. To the extent that the information would not be made available under 30 CFR 291.111, it is likely that MMS would not rely on it in resolving a complaint. Under MMS's appeals process, whenever MMS obtains supplemental information to process an appeal, that information, if it is not confidential, is provided to the other parties with an opportunity for the parties to supplement their pleadings. MMS conducts this information exchange in the absence of any formal procedure or regulatory provision. Similarly, MMS intends to follow that information exchange practice for non-party information obtained by MMS in resolving open and nondiscriminatory pipeline access complaints. In other words, MMS's long-standing practice in resolving royalty disputes is to send any relevant information it obtains to all parties. MMS would continue this practice in actions filed under this part.

b. The following comments also relate to reporting information under § 291.110:

i. Routine information reporting.

Public Comments: Eight commenters submitted comments on the general subject of information reporting requirements. A cross-section of six commenters supported the Proposed Rule's absence of routine reporting requirements, but one other commenter believes that no authority under OCSLA exists to require routine reporting. A shipper commenter suggested that a reporting scheme was essential because shippers do not have access to pipeline companies' rates and terms of service. The commenter's extensive reporting proposal recommended including the following: Oil and gas production handling services, public reporting, rate and material economic terms, quarterly updates, and penalties for inaccurate reporting. However, the proposal exempted NGA and ICA pipelines from the reporting requirements. As an alternative to required reporting, the commenter suggested that MMS publish all of its RIK terms of service.

MMS Response: The routine submittal of information by service providers and pipeline companies that are not involved in complaint proceedings is not ''essential'' to MMS's mandate of assuring open and nondiscriminatory pipeline access on the OCS. MMS believes that it can satisfy its mandate by utilizing the information requirements specified in Part 291. Further, entities responding to this Proposed Rule did not provide any of the specifics of the number and type of instances of violations of the open and nondiscriminatory access requirements to support requiring a more vigorous information collection. Thus, as stated in the preamble to the Proposed Rule, MMS does not believe that there is sufficient reason to require the routine submittal of information.

MMS believes that publishing the terms of service for all its RIK transportation contracts would serve little or no purpose. When negotiating with service providers on the OCS (and elsewhere), MMS is uniquely positioned for those negotiations. To the extent that no other shipper may be able to duplicate that position, other shippers must view MMS's negotiation results in that context. Whether that perception may be helpful to other shippers is a matter of conjecture. Thus, MMS declines to make the terms of service information available. However, the rates that MMS pays on NGA and ICA-regulated pipelines are already available to the public.

ii. Challenging information requests.

Public Comments: One of the six pipeline commenters identified above as a supporter of MMS's information collection proposal, suggested allowing parties to challenge requests for information on the grounds that the information sought is irrelevant, privileged, commercially sensitive, or overly burdensome to produce (to assist in satisfying due process requirements). The commenter specifically suggested that MMS add the following provisions: ''(1) The MMS may only request information from parties to a complaint proceeding; (2) parties that are requested to produce additional information may object to the request; and (3) in ruling on objections to requests for the production of information, the MMS will balance the

need for the information to resolve the then-pending dispute against the burden on production and the commercial risk of disclosure of proprietary, commercially sensitive or privileged information.''

MMS Response: The MMS also declines to adopt the suggested amendments allowing parties to object to information requests. First, MMS believes that limiting information collection only to parties inhibits its ability to assure the open and nondiscriminatory access to OCS pipelines. As stated above, MMS will require information from non-parties only when MMS believes it is necessary. Second, the rule does not preclude any party from objecting to an MMS request for information. Because the rule does not specifically address such objections, it would be at MMS's discretion whether to consider and respond to such an objection. Third, allowing a formal process of objections, denials, and appeals, would needlessly add another layer to the process of determining whether the requirement to provide open and nondiscriminatory access has been denied. Because any concerns the submitter may have regarding keeping such information confidential are addressed at section 291.111, MMS does not consider it necessary to add any additional protections. Therefore, MMS declines to institute a FERC-type dispute resolution process by allowing for information challenges because they would needlessly complicate MMS's formal complaint adjudication process.

11. 30 CFR 291.111. How do I request that MMS treat information I provide as confidential?

Public Comments: Two commenters submitted proposals that broadly relate to submittal of information and confidentiality in § 291.111. Both commenters proposed timely public access to complaints, answers, and decisions. They suggested that MMS publish all complaint proceedings on its Web site or in the **Federal Register**.

MMS Response: As with its current appeals process, MMS intends to transmit its complaint decisions to the Gower Federal Service for publication. For subsequent adjudication before IBLA and the courts, results are published through their respective reporter services for external dissemination. Also, as with the appeals process, MMS responds to information requests pursuant to the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552.

12. 30 CFR 291.113. What actions may MMS take to remedy denial of open and nondiscriminatory access?

Public Comments: Four commenters addressed the issue of remedies in § 291.113. Two pipeline commenters recommended changes to the 60-day grace period prior to imposition of civil penalties. One commenter suggested allowing a reasonable period not less than 60 days after a decision, and the other commenter proposed that the period be revised to 10 days after diligent construction of needed facilities, but no earlier than 60 days. A shipper commenter proposed including monetary/equitable relief to make complainant whole for its losses. The commenter also suggested that MMS include expedited relief where the complainant can demonstrate imminent irreparable injury similar to FERC's provisions at 18 CFR 385.206(h). One pipeline commenter simply posed the question of what remedies will apply to a determination of excess transportation rates.

MMS Response: If the appropriate remedy to provide open and nondiscriminatory pipeline access includes the construction of facilities such as an interconnecting pipeline, MMS agrees that in such a case, 60 days may not be adequate to comply with the MMS order. Thus, a grantee or transporter has a period of 10 days after the conclusion of diligent construction of needed facilities or 60 days after receipt of the MMS order, whichever is later, to comply and provide open and nondiscriminatory access to its OCS pipelines.

Concerning equitable relief for denial of access, MMS believes that such relief is not authorized under OCSLA. The purpose of this rule is to assure open and nondiscriminatory access to OCS pipelines, not to make whole the injured party of such actions. That is an appropriate role for the courts. MMS believes the penalty provisions authorized under OCSLA provide an appropriate response to any violation of and deterrent against acts denying open and nondiscriminatory access to pipelines on the OCS. MMS also declines to include provisions for expedited relief. MMS is not aware of any instances of ''irreparable'' injury incurred by shippers that would require the need for expedited relief. Section 291.113 describes the available actions MMS may take to remedy instances of denial of access. Further, the same remedial provisions apply if the access denial is the result of excessive transportation rates.

13. 30 CFR 291.115. How do I exhaust administrative remedies?

The following comments respond to MMS's specific question of whether MMS should automatically stay each decision pending an appeal to IBLA:

Public Comments: MMS received five comments on this specific question. Two pipeline commenters support the rule as written. However, three shipper commenters oppose providing for an automatic stay to decisions on complaints. One urged that the question of a stay should be determined on a case-by-case basis. Another suggested that the automatic issuance of a stay defeats the fair and reasonable process. The third shipper commenter proposed that decisions be effective on issuance and subject to a stay only if granted by IBLA. This commenter believes its proposal is consistent with the regulations governing other OCS operations and with 30 CFR 290.7.

MMS Response: The MMS declines to adopt the suggestions to eliminate automatic stays of decisions. We decline to eliminate the automatic stay because in the vast majority of cases, the appellee would not be injured by a stay. This is because we believe that the decisions will primarily deal with whether pipeline pricing should be adjusted. If the Director rules for the pipeline, status quo would be maintained and the stay question would not be an issue. On the other hand, if the Director ordered a pipeline to adjust its rates, the effective date of the rate adjustment would be established by the Director's decision. In the event the decision would be reviewed by the IBLA, any affirmation of the rate adjustment would be retroactive to the effective date established by the Director's decision. In such a case, the retroactive lowering of the pipeline's rates would put the parties in the same place they would have been on the day the Director's decision was issued. Thus, we believe that it would be a waste of time and money to require a party to file a petition requesting the IBLA to stay the decision, for the parties to brief the issue, and for the IBLA to have to issue a decision on such a petition.

However, in what we believe to be the unlikely instance where the proceedings before the Director would show that a pipeline's denial of open or non-discriminatory access would likely cause dire and irreversible consequences to a producer, the rule provides for a safeguard. It states that either the MMS Director or the Assistant Secretary can make the decision effective upon issuance. 30 CFR 291.115(b).

III. Procedural Matters

1. Regulatory Planning and Review (Executive Order 12866)

This is not a significant rule as determined by the Office of Management and Budget and is not subject to review under Executive Order 12866.

a. This rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. From the inception of Order 639, FERC received only a few formal complaints and approximately ten informal hotline complaints regarding open and nondiscriminatory access. MMS expects to receive approximately five formal complaints and fifty calls to the MMS Hotline in the first year, and fewer in subsequent years. MMS bases this estimate on the number of OCSLA open and nondiscriminatory complaints FERC received, comments MMS received at the public workshops, and in response to the Advance Notice of Proposed Rulemaking and Proposed Rule. MMS conducted an economic analysis for a five-year period to estimate the net benefits from implementing this rule. Projected costs and benefits from the proposed complaint program are incremental from a baseline which MMS established to represent the current state of shipper and pipeline transactions on the OCS.

MMS decisions favorable to complainants would increase revenue received by shippers/producers, and royalty payments would also increase. The analysis shows that over that five-year period, the total gross baseline benefits to shippers/producers and the public would be within the range of $4.4 million to $27 million, with a most likely estimate of $13 million.

These benefits would be offset by the cost of compliance with the rule, *e.g.*, ADR, complaint filings, litigation, etc., and a decrease in tariff revenue paid to pipeline companies. The total of these costs is almost equal to the baseline benefits. Net benefits to shippers/producers and the public could range from $0.12 million to $0.60 million, with a most likely estimate of $0.24 million.

The rule will not create an adverse effect upon the ability of the United States offshore oil and gas industry to compete in the world marketplace, nor will the rule adversely affect investment or employment factors locally. As noted during the public meetings held by MMS, it appears that the industry has been able to resolve all but a very few of the types of complaints the rule addresses through the normal course of finding, developing and marketing resources on the OCS. Because of this history, MMS concludes that the economic effects of the rule will not be significant. In disputed cases, intervention by MMS could result in the shifting of costs and revenue among the parties. Business transactions could be altered in a way that ensures shippers can move production. The economy could benefit if additional reserves are recovered and sold. Regardless, MMS concludes that aggregate direct effects on the economy for the rule would not exceed the $100 million threshold in any year.

b. This final rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule does not change the relationships of the OCS oil and gas leasing program with other agencies. These relationships are usually encompassed in agreements and memoranda of understanding that would not change with this rule. By deferring to FERC when FERC has retained and exercised jurisdiction, MMS has structured the rule to ensure that it would not create any inconsistencies with FERC's actions.

c. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights and obligations of their recipients. The rule simply includes requirements for the filing and processing of complaints concerning open and nondiscriminatory access on the OCS.

d. This rule does not raise novel legal or policy issues. The rule merely sets out the rules for filing complaints, investigating, and adjudicating matters related to the requirements for pipeline companies to offer open and nondiscriminatory transportation of OCS production.

2. Regulatory Flexibility Act (RFA)

MMS certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). While the rule may affect some small entities, the economic effects of the rule are not expected to be significant.

The regulated community for this proposal consists of companies specializing in leasing, developing, and operating offshore oil and gas properties, and providing pipeline services. The companies that this rule will affect can be divided into two types: (1) Companies using the services of pipeline transportation and (2) companies providing pipeline transportation. Almost all producers that ship production on or across the OCS are represented by the Small Business Administration's North American Industry Classification System (NAICS) code 211111 (crude petroleum and natural gas extraction). For this NAICS code, a small company is one with fewer than 500 employees. Within this group, approximately 90 of 130 are small companies. Those small companies providing pipeline transportation are represented primarily by NAICS codes 486110 (crude petroleum pipelines) (For this NAICS code, a small company is one with fewer than 1,500 employees) and 486210 (natural gas transmission pipelines) (For this NAICS code, a small company is one with gross annual receipts of $5 million or less). Within this second group, approximately 180 of 220 are small companies. In total, 270 of 350 companies affected by this rule, or approximately 77%, are small entities. Therefore, MMS concludes this rule will affect a substantial number of small entities.

This rule will not have a significant economic effect on these small entities. This rule is unlikely to impose a net cost on any small company shipping production, because the option to file a complaint is a discretionary act and a company is unlikely to file a complaint unless it perceives the benefits will exceed the cost. In the event a small pipeline company is found to be in violation of the open and non-discriminatory access provisions of OCSLA, the violation would presumably be resolved by some adjustment of the business relationship between the parties to the dispute. In these cases, the complaining producers would benefit financially, and the public could benefit from the production of these reserves. On the other hand, pipeline companies would be obliged to accept less profitable business arrangements.

If the fraction of small to large companies providing pipeline services is applied to the number of complaints expected in the first year, MMS estimates 4–5 cases would be processed that could affect the degree of profitability of the 180 pipeline service providers fitting the small company criteria. MMS estimates there would be fewer cases in subsequent years, dropping to an estimated 1 case 5 years after the effective date of this rule, in the most likely scenario. So, it can be concluded that the MMS pipeline anti-discrimination program will not have a significant economic impact on a

substantial number of small pipeline companies.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free 1–888–REG–FAIR (1–888–734–3247). You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under SBREFA (5 U.S.C. 804(2)). The rule does not change significantly the cost of transporting oil or gas through pipelines on the OCS. Indeed, MMS expects the rule to decrease transportation costs overall. Based on economic analysis:

a. This rule will not have an annual effect on the economy of $100 million or more. As indicated in MMS's analysis, the economic impact to industry will be minimal. The rule will have a minor economic effect on the offshore oil and gas industries.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

4. Paperwork Reduction Act of 1995 (PRA)

This rulemaking contains information collection requirements, and MMS submitted an information collection package to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the PRA. The title of the collection of information is ''30 CFR Part 291, Open and Nondiscriminatory Access to Oil and Gas Pipelines.'' The OMB approved the information collection for this rule and assigned OMB Control Number 1010–0172 (exp. date June 30, 2011) for 254 hours and $37,500 in nonhour burden costs. The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves the collection of information and assigns a control number, you are not required to respond.

There are approximately 220 potential respondents. The frequency of reporting and recordkeeping is generally on occasion. Responses are required to obtain or retain benefits. The information collection does not include questions of a sensitive nature. The MMS will protect information considered proprietary and will not disclose documents exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2).

The rule implements complaint procedures to address allegations that a shipper has been denied open and nondiscriminatory access to a pipeline as sections 5(e) and (f) of the OCSLA require. The MMS intends to use the information collected to determine whether the shipper has been denied open and nondiscriminatory access. The complaint information will be provided to the alleged offending party. Informal resolution is provided as an option.

Shippers submitting a complaint are asked to identify the alleged action or inaction, explain how the action violates 43 U.S.C. 1334(e) or (f) and how the action affects their business interests, state the relief or remedy requested, and provide supporting documentation.

The MMS estimates that the total annual reporting and recordkeeping ''hour'' burden for the rule is 254 hours. (See the table below for a breakdown of requirements and hour burdens.) There was one change (−1 hour burden) in the information collection requirements from the Proposed Rule to the Final Rule. The MMS determined that electronic payment of the fee is the most efficient method and therefore eliminated alternative payment methods such as checks.

Citation 30 CFR 291	Reporting & recordkeeping requirement	Hour burden	Average No. annual responses	Annual burden hours
105, 106, 108, 109, 111	Submit complaint (with fee) to MMS and affected parties. Request confidential treatment and respond to MMS decision.	50	5	250
106(b), 109	Request waiver or reduction of fee	1	4	4
104(b), 107, 111	Submit response to a complaint. Request confidential treatment and respond to [MMS] decision.	Information required after an investigation is opened against a specific entity is exempt under the PRA (5 CFR 1320.4)		0
110	Submit required information for MMS to make a decision.			
114, 115(a)	Submit appeal on MMS final decision			
Total burden			9	254

The rule (§§ 291.106(b) and 108) also states that shippers pay a nonrefundable fee of $7,500 when filing a complaint with MMS. The fee is required to recover the Federal Government's processing costs. Therefore, MMS estimates that the annual non-hour cost burden for this rulemaking is $37,500, based on five complaints per year.

Section 291.103 of the rule provides for alternative dispute resolution to informally resolve an allegation that access was denied. The request has the appearance of information collection, but because there is no structure required for the request process, a burden hour is not assigned.

In the Proposed Rule, MMS asked for responses to several questions about the regulatory requirements and complaint process being proposed. Although MMS

received comments on the regulatory requirements and on the fee, we did not receive any comments on the actual hour burdens. Some of the relevant comments are discussed below with more detail provided in Section II.B. of the Preamble.

Some commenters wanted to see a more detailed, formal discovery and reporting process, similar to what FERC employs; however, MMS determined that it would proceed to mirror MMS's appeals process for royalty disputes because of the small number of anticipated disputes (five) and because of cost and labor efficiencies. In the Proposed Rule, MMS also sought recommendations about any specific information that it should require that would expedite the dispute resolution process. The commenters did not offer any suggestions about specific information requirements; therefore, no further information requirements were made.

With regard to the processing fee, MMS received opposing comments. Some commenters wanted to eliminate the fee, while another suggested a much higher fee to avoid frivolous filings. Another commenter supported the rule as proposed. Based on the cost recovery analysis of the Proposed Rule, MMS believes the stated fee is both reasonable and protects against frivolous filings. Three commenters also recommended eliminating the provision for fee waivers or reduction, saying that the fee is immaterial for OCS shippers. The MMS believes this provision helps small businesses avoid undue hardships that could impede their access to the complaint process.

One commenter proposed allowing parties to object to information requests, while another suggested that a routine reporting scheme was essential. The MMS believes that limiting information collection only to parties inhibits its ability to assure the open and nondiscriminatory access to OCS pipelines. The MMS also emphasized that the need to collect information from nonparties will only occur when MMS believes it is necessary. The ability to obtain needed information is justified in lieu of requiring the routine submission of information from all transporters and service providers, which would increase the reporting burden.

The public may comment, at any time, on any aspect of the reporting and cost burden in this rule. You may submit your comments directly to the Department of the Interior, Minerals Management Service, Attn: Information Collection Clearance Officer, Policy & Appeals Division, Mail Stop 4230, 1849 C Street, NW., Washington, DC 20240.

5. Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This action does not limit the policymaking discretion of any State. It does not change the roles of Federal, State, or local governments. A Federalism Assessment is not required.

6. Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

7. Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. Unfunded Mandates Reform Act of 1995 (UMRA)

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

9. National Environmental Policy Act of 1969 (NEPA)

This rule does not constitute a major Federal action, under 42 U.S.C. 4332(c), significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required. The MMS has analyzed this Proposed Rule under the criteria of the National Environmental Policy Act and the policies of the Department of the Interior set forth in 516 Departmental Manual 15. This Proposed Rule meets the requirements of 516 Departmental Manual 2 (Appendix 1.10) for a Departmental ''Categorical Exclusion'' in that this Proposed Rule is ''of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis. * * *'' This Proposed Rule also meets the criteria set forth in 516 Departmental Manual 15.4(C)(1) for a MMS ''Categorical Exclusion'' in that its impacts are limited to administration, economic or technological effects. Further, the MMS has analyzed this Proposed Rule to determine if it meets any of the extraordinary circumstances that would require an environmental assessment or an environmental impact statement as set forth in 516 Departmental Manual 2.3, and Appendix 2. The MMS concluded that this rule does not meet any of the criteria for extraordinary circumstances set forth in 516 Departmental Manual 2 (Appendix 2).

10. Effects on the Nation's Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

11. Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally-recognized Indian tribes.

12. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), we have evaluated potential effects on federally-recognized Indian tribes. This rule does not apply to Indian tribes or trust assets.

13. Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

List of Subjects in 30 CFR Part 291

Administrative practice and procedures, Alternative dispute resolution, Complaints, Continental shelf, Government contracts, Hotline, Natural gas, Oil, Penalties, Petroleum, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Remedies, Reporting requirements, and Transportation.

Dated: May 2, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

■ For the reasons set out in the preamble, MMS is adding to title 30 of

the Code of Federal Regulations a new Part 291 as follows:

Title 30—Mineral Resources

Subchapter C—Appeals and Complaints

PART 291—OPEN AND NONDISCRIMINATORY ACCESS TO OIL AND GAS PIPELINES UNDER THE OUTER CONTINENTAL SHELF LANDS ACT

Sec.

Authority: 43 U.S.C. 1334, 31 U.S.C. 9701, section 342 of the Energy Policy Act of 2005.

§ 291.1 What is MMS's authority to collect information?

(a) The Office of Management and Budget (OMB) has approved the information collection requirements in this part under 44 U.S.C. 3501 *et seq.*, and assigned OMB Control Number 1010–0172.

(b) An agency 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 to determine whether or not the shipper has been denied open and nondiscriminatory access to Outer Continental Shelf (OCS) pipelines as sections of 5(e) and (f) of the OCS Lands Act (OCSLA) require.

(d) Respondents are companies that ship or transport oil and gas production across the OCS. Responses are required to obtain or retain benefits. We will protect information considered proprietary under applicable law.

(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, NW., Washington, DC 20240.

§ 291.100 What is the purpose of this part?

This part:

(a) Explains the procedures for filing a complaint with the Director, Minerals Management Service (MMS) alleging that a grantee or transporter has denied a shipper of production from the OCS open and nondiscriminatory access to a pipeline;

(b) Explains the procedures MMS will employ to determine whether violations of the requirements of the OCSLA have occurred, and to remedy any violations; and

(c) Provides for alternative informal means of resolving pipeline access disputes through either Hotline-assisted procedures or alternative dispute resolution (ADR).

§ 291.101 What definitions apply to this part?

As used in this part:

Accessory means a platform, a major subsea manifold, or similar subsea structure attached to a right-of-way (ROW) pipeline to support pump stations, compressors, manifolds, etc. The site used for an accessory is part of the pipeline ROW grant.

Appurtenance means equipment, device, apparatus, or other object attached to a horizontal component or riser. Examples include anodes, valves, flanges, fittings, umbilicals, subsea manifolds, templates, pipeline end modules (PLEMs), pipeline end terminals (PLETs), anode sleds, other sleds, and jumpers (other than jumpers connecting subsea wells to manifolds).

FERC pipeline means any pipeline within the jurisdiction of the Federal Energy Regulatory Commission (FERC) under the Natural Gas Act, 15 U.S.C. 717–717z, or the Interstate Commerce Act, 42 U.S.C. 7172(a) and (b).

Grantee means any person to whom MMS has issued an oil or gas pipeline permit, license, easement, right-of-way, or other grant of authority for transportation on or across the OCS under 30 CFR part 250, subpart J or 43 U.S.C. 1337(p), and any person who has an assignment of a permit, license, easement, right-of-way or other grant of authority, or who has an assignment of any rights subject to any of those grants of authority under 30 CFR part 250, subpart J or 43 U.S.C. 1337(p).

IBLA means the Interior Board of Land Appeals.

OCSLA pipeline means any oil or gas pipeline for which MMS has issued a permit, license, easement, right-of-way, or other grant of authority.

Outer Continental Shelf means all submerged lands lying seaward and outside of 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.

Party means any person who files a complaint, any person who files an answer, and MMS.

Person means an individual, corporation, government entity, partnership, association (including a trust or limited liability company), consortium, or joint venture (when established as a separate entity).

Pipeline is the piping, risers, accessories and appurtenances installed for transportation of oil and gas.

Serve means personally delivering a document to a person, or sending a document by U.S. mail or private delivery services that provide proof of delivery (such as return receipt requested) to a person.

Shipper means a person who contracts or wants to contract with a grantee or transporter to transport oil or gas through the grantee's or transporter's pipeline.

Transportation means, for purposes of this part only, the movement of oil or gas through an OCSLA pipeline.

Transporter means, for purposes of this part only, any person who owns or operates an OCSLA oil or gas pipeline.

§ 291.102 May I call the MMS Hotline to informally resolve an allegation that open and nondiscriminatory access was denied?

Before filing a complaint under § 291.106, you may attempt to informally resolve an allegation concerning open and nondiscriminatory access by calling the toll-free MMS Hotline at 1–888–232–1713.

(a) MMS Hotline staff will informally seek information needed to resolve the dispute. MMS Hotline staff will attempt to resolve disputes without litigation or other formal proceedings. The Hotline staff will not attempt to resolve matters that are before MMS or FERC in docketed proceedings.

(b) MMS Hotline staff may provide information to you and give informal oral advice. The advice given is not binding on MMS, the Department of the Interior (DOI), or any other person.

(c) To the extent permitted by law, the MMS Hotline staff will treat all information it obtains as non-public and confidential.

(d) You may call the MMS Hotline anonymously.

(e) If you contact the MMS Hotline, you may file a complaint under this part if discussions assisted by MMS Hotline staff are unsuccessful at resolving the matter.

(f) You may terminate use of the MMS Hotline procedure at any time.

§ 291.103 May I use alternative dispute resolution to informally resolve an allegation that open and nondiscriminatory access was denied?

You may ask to use ADR either before or after you file a complaint. To make a request, call the MMS at 1–888–232–1713 or write to us at the following address: Associate Director, Policy and Management Improvement, Minerals Management Service, 1849 C Street, NW., Mail Stop 4230, Washington, DC 20240–0001.

(a) You may request that ADR be administered by:

(1) A contracted ADR provider agreed to by all parties;

(2) The Department's Office of Collaborative Action and Dispute Resolution (CADR); or

(3) MMS staff trained in ADR and certified by the CADR.

(b) Each party must pay its respective share of all costs and fees associated with any contracted or Departmental ADR provider. For purposes of this section, MMS is not a party in an ADR proceeding.

§ 291.104 Who may file a complaint or a third-party brief?

(a) You may file a complaint under this subpart if you are a shipper and you believe that you have been denied open and nondiscriminatory access to an OCSLA pipeline that is not a FERC pipeline.

(b) Any person that believes its interests may be affected by precedents established by adjudication of complaints under this rule may submit a brief to MMS. The brief must be served following the procedure set out in 30 CFR 291.107. After considering the brief, it is within MMS's discretion as to whether MMS may:

(1) Address the brief in its decision;

(2) Not address the brief in its decision; or

(3) Include the submitter of the brief in the proceeding as a party.

§ 291.105 What must a complaint contain?

For purposes of this subpart, a complaint means a comprehensive written brief stating the legal and factual basis for the allegation that a shipper was denied open and nondiscriminatory access, together with supporting material. A complaint must:

(a) Clearly identify the action or inaction which is alleged to violate 43 U.S.C. 1334(e) or (f)(1)(A);

(b) Explain how the action or inaction violates 43 U.S.C. 1334(e) or (f)(1)(A);

(c) Explain how the action or inaction affects your interests, including practical, operational, or other non-financial impacts;

(d) Estimate any financial impact or burden;

(e) State the specific relief or remedy requested; and

(f) Include all documents that support the facts in your complaint including, but not limited to, contracts and any affidavits that may be necessary to support particular factual allegations.

§ 291.106 How do I file a complaint?

To file a complaint under this part, you must:

(a) File your complaint with the Director, Minerals Management Service at the following address: Director, Minerals Management Service, Attention: Policy and Management Improvement, 1849 C Street, NW., Mail Stop 4230, Washington, DC 20240–0001; and

(b) Include a nonrefundable processing fee of $7,500 under § 291.108(a) or a request for reduction or waiver of the fee under § 291.109(a); and

(c) Serve your complaint on all persons named in the complaint. If you make a claim under § 291.111 for confidentiality, serve the redacted copy and proposed form of a protective agreement on all persons named in the complaint.

(d) Complaints shall not be filed later than two (2) years from the time of the alleged access denial. If the complaint is filed later than two (2) years from the time of the alleged access denial, the MMS Director will not consider the complaint and the case will be closed.

§ 291.107 How do I answer a complaint?

(a) If you have been served a complaint under § 291.106, you must file an answer within 60 days of receiving the complaint. If you miss this deadline, MMS may disregard your answer. We consider your answer to be filed when the MMS Director receives it at the following address: Director, Minerals Management Service, Attention: Policy and Management Improvement, 1849 C Street, NW., Mail Stop 4230, Washington, DC 20240–0001.

(b) For purposes of this paragraph, an answer means a comprehensive written brief stating the legal and factual basis refuting the allegations in the complaint, together with supporting material. You must:

(1) Attach to your answer a copy of the complaint or reference the assigned MMS docket number (you may obtain the docket number by calling the Policy and Management Improvement Office at (202) 208–2622);

(2) Explain in your answer why the action or inaction alleged in the complaint does not violate 43 U.S.C. 1334(e) or (f)(1)(A);

(3) Include with your answer all documents in your possession or that you can otherwise obtain that support the facts in your answer including, but not limited to, contracts and any affidavits that may be necessary to support particular factual allegations; and

(4) Provide a copy of your answer to all parties named in the complaint including the complainant. If you make a claim under § 291.111 for confidentiality, serve the redacted copy and proposed form of a protective agreement to all parties named in the complaint, including the complainant.

§ 291.108 How do I pay the processing fee?

(a) You must pay the processing fee electronically through *Pay.Gov*. The *Pay.Gov* Web site may be accessed through links on the MMS Offshore Web site at: *http://www.mms.gov/offshore/homepage* (on drop-down topic list) or directly through *Pay.Gov* at: *https://www.pay.gov/paygov/*.

(b) You must include with the payment:

(1) Your taxpayer identification number;

(2) Your payor identification number, if applicable; and

(3) The complaint caption, or any other applicable identification of the complaint you are filing.

§ 291.109 Can I ask for a fee waiver or a reduced processing fee?

(a) MMS may grant a fee waiver or fee reduction in extraordinary circumstances. You may request a waiver or reduction of your fee by:

(1) Sending a written request to the MMS Policy and Management Improvement Office when you file your complaint; and

(2) Demonstrating in your request that you are unable to pay the fee or that payment of the full fee would impose an undue hardship upon you.

(b) The MMS Policy and Management Improvement Office will send you a written decision granting or denying your request for a fee waiver or a fee reduction.

(1) If we grant your request for a fee reduction, you must pay the reduced processing fee within 30 days of the date you receive our decision.

(2) If we deny your request, you must pay the entire processing fee within 30 days of the date you receive the decision.

(3) MMS's decision granting or denying a fee waiver or reduction is final for the Department.

§ 291.110 Who may MMS require to produce information?

(a) MMS may require any lessee, operator of a lease or unit, shipper, grantee, or transporter to provide information that MMS believes is necessary to make a decision on whether open access or nondiscriminatory access was denied.

(b) If you are a party and fail to provide information MMS requires under paragraph (a) of this section, MMS may:

(1) Assess civil penalties under 30 CFR part 250, subpart N;

(2) Dismiss your complaint or consider your answer incomplete; or

(3) Presume the required information is adverse to you on the factual issues to which the information is relevant.

(c) If you are not a party to a complaint and fail to provide information MMS requires under paragraph (a) of this section, MMS may assess civil penalties under 30 CFR part 250, subpart N.

§ 291.111 How does MMS treat the confidential information I provide?

(a) Any person who provides documents under this part in response to a request by MMS to inform a decision on whether open access or nondiscriminatory access was denied may claim that some or all of the information contained in a particular document is confidential. If you claim confidential treatment, then when you provide the document to MMS you must:

(1) Provide a complete unredacted copy of the document and indicate on that copy that you are making a request for confidential treatment for some or all of the information in the document.

(2) Provide a statement specifying the specific statutory justification for nondisclosure of the information for which you claim confidential treatment. General claims of confidentiality are not sufficient. You must furnish sufficient information for MMS to make an informed decision on the request for confidential treatment.

(3) Provide a second copy of the document from which you have redacted the information for which you wish to claim confidential treatment. If you do not submit a second copy of the document with the confidential information redacted, MMS may assume that there is no objection to public disclosure of the document in its entirety.

(b) In making data and information you submit available to the public, MMS will not disclose documents exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) and will follow the procedures set forth in the implementing regulations at 43 CFR Part 2 to give submitters an opportunity to object to disclosure.

(c) MMS retains the right to make the determination with regard to any claim of confidentiality. MMS will notify you of its decision to deny a claim, in whole or in part, and, to the extent permitted by law, will give you an opportunity to respond at least 10 days before its public disclosure.

§ 291.112 What process will MMS follow in rendering a decision on whether a grantee or transporter has provided open and nondiscriminatory access?

MMS will begin processing a complaint upon receipt of a processing fee or granting a waiver of the fee. The MMS Director will review the complaint, answer, and other information, and will serve all parties with a written decision that:

(a) Makes findings of fact and conclusions of law; and

(b) Renders a decision determining whether the complainant has been denied open and nondiscriminatory access.

§ 291.113 What actions may MMS take to remedy denial of open and nondiscriminatory access?

If the MMS Director's decision under § 291.112 determines that the grantee or transporter has not provided open access or nondiscriminatory access, then the decision will describe the actions MMS will take to require the grantee or transporter to remedy the denial of open access or nondiscriminatory access. The remedies MMS would require must be consistent with MMS's statutory authority, regulations, and any limits thereon due to Congressional delegations to other agencies. Actions MMS may take include, but are not limited to:

(a) Ordering grantees and transporters to provide open and nondiscriminatory access to the complainant;

(b) Assessing civil penalties of up to $10,000 per day under 30 CFR part 250, subpart N, for failure to comply with an MMS order to provide open access or nondiscriminatory access. Penalties will begin to accrue 60 days after the grantee or transporter receives the order to provide open and nondiscriminatory access if it has not provided such access by that time. However, if MMS determines that requiring the construction of facilities would be an appropriate remedy under the OCSLA, penalties will begin to accrue 10 days after conclusion of diligent construction of needed facilities or 60 days after the grantee or transporter receives the order to provide open and nondiscriminatory access, whichever is later, if it has not provided such access by that time;

(c) Requesting the Attorney General to institute a civil action in the appropriate United States District Court under 43 U.S.C. 1350(a) for a temporary restraining order, injunction, or other appropriate remedy to enforce the open and nondiscriminatory access requirements of 43 U.S.C. 1334(e) and (f)(1)(A); or

(d) Initiating a proceeding to forfeit the right-of-way grant under 43 U.S.C. 1334(e).

§ 291.114 How do I appeal to the IBLA?

Any party, except as provided in § 291.115(b), adversely affected by a decision of the MMS Director under this part may appeal to the Interior Board of Land Appeals (IBLA) under the procedures in 43 CFR part 4, subpart E.

§ 291.115 How do I exhaust administrative remedies?

(a) If the MMS Director issues a decision under this part but does not expressly make the decision effective upon issuance, you must appeal the decision to the IBLA under 43 CFR part 4 to exhaust administrative remedies. Such decision will not be effective during the time in which a person adversely affected by the MMS Director's decision may file a notice of appeal with the IBLA, and the timely filing of a notice of appeal will suspend the effect of the decision pending the decision on appeal.

(b) This section does not apply if a decision was made effective by:

(1) The MMS Director; or

(2) The Assistant Secretary for Land and Minerals Management.

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