DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 291

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: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing new regulations that would 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 would provide MMS with tools to ensure that pipeline companies provide open and nondiscriminatory access to their pipelines.

DATES: MMS will consider all comments received by June 5, 2007. MMS will begin reviewing comments then and may not fully consider comments received after June 5, 2007. Comments on the reporting burden in this rulemaking should be submitted by May 7, 2007.

ADDRESSES: Mail or hand-carry comments to: Director, Minerals Management Service, Attention: Policy and Management Improvement, 1849 C Street, NW., Mail Stop 4230, Washington, DC 20240–0001. You may submit comments by personal or messenger delivery to: 1849 C Street, NW., Room 4223, Washington, DC 20240–0001.

You may also submit comments by any of the following methods. Please use ''Open and Nondiscriminatory Movement'' and the approved Regulatory Identification Number (RIN) 1010–AD17 as an identifier in your message. We will not return materials submitted as part of comments.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- E-mail MMS at *rules.comments@mms.gov.* Use the RIN in the subject line. Include your name and return address in your e-mail message and mark your message for return receipt.
- *Fax:* 202–208–4891. Identify with the RIN.
- Please submit comments on any aspect of the reporting burden in this proposed rule to the Office of Management and Budget (OMB) either by e-mail (*OIRA_DOCKET@omb.eop.gov*) or by fax (202) 395–6566 directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior. Please provide MMS with a copy of your comments so that we can summarize all written comments and address them in the final rule.

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.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 5(e) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331–1356, states that rights-of-way through the submerged lands of the OCS, whether or not such lands are included in a mineral lease maintained or issued pursuant to that subchapter, may be granted by the Secretary of the Interior for pipeline purposes for the transportation of oil, natural gas, sulphur, or other minerals. The right-of-way may be granted in accordance with such regulations and upon such conditions as may be prescribed by the Secretary of the Interior, including the express condition that oil or gas pipelines shall transport or purchase, without discrimination, oil or natural gas produced from submerged lands or OCS 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 (D.C. Cir. 2003), found that sections 5(e) and (f) of the OCSLA, 43 U.S.C. 1334(e) and (f), grant the 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, MMS is proceeding with this proposed rule.

The ANPRM requested discussion and comments on several topics. The commenters generally fell into two groups—shippers/producers and pipelines/transportation service providers. In most instances, these commenter groups submitted opposing views. However, on some issues there was general consensus. Specific topics regarding the issues raised in the ANPRM comments are addressed below in the applicable sections of this proposed rulemaking.

II. Section-by-Section Analysis, 30 CFR Part 291

MMS proposes to include a new part 291 in its regulations. This part would implement complaint procedures and informal alternative processes to address allegations that a shipper has been denied open and nondiscriminatory access to a pipeline

contrary to sections 5(e) and (f) of the OCSLA.

Pursuant to section 27 of the OCSLA, 43 U.S.C. 1353, and section 342 of the Energy Policy Act of 2005, the United States is entitled to take its royalty in-kind, rather than in value. MMS's Royalty-in-Kind (RIK) production marketing process includes negotiating rates for transportation of the production to market. Some of that transportation will likely occur on pipelines subject to this rulemaking. This may raise the question of 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. Furthermore, it also may raise the issue of whether MMS can fairly decide a complaint brought by the RIK division.

The MMS believes that this situation is similar to cases in which the MMS Director decides lessees' appeals of MMS Minerals Revenue Management (MRM) orders. Those appeals are filed under 30 CFR part 290, subpart B. Normally those orders require a company to pay monies. The MMS Director has delegated her authority to decide those appeals to the Associate Director, Policy and Management Improvement (PMI). MRM and PMI are separate programs that both report to the MMS Director. Any decisions regarding complaints on open access would also be decided by PMI. Appellants in those MRM cases may appeal any adverse MMS decision to the Interior Board of Land Appeals (IBLA) under 30 CFR part 290. Appellants' complaints of lack of due process or conflict of interest under this system 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).

Appellants under these proposed rules at § 291.112 would be able to avail themselves of the same IBLA review as current MRM appeals. Because the process proposed in this rulemaking is the same as that upheld repeatedly by the Department, the MMS believes that the proposed process will properly protect parties' rights.

Section 291.100 What Is the Purpose of This Part?

This section would explain the purposes of this part. This part discusses the procedures for filing a complaint with the MMS Director alleging that a grantee or transporter, as defined below, has denied a shipper of production from the OCS open and nondiscriminatory access to a pipeline. The complaint procedures would include an explanation of the process that MMS would use to determine whether violations of the requirements of the OCSLA have occurred, and to remedy these violations. This part also would provide alternative informal means of reconciling pipeline access disputes through either Hotline-assisted procedures or Alternative Dispute Resolution (ADR).

Section 291.101 What Definitions Apply to This Part?

This section would define terms applicable to this part.

MMS would not define ''open access'' or ''nondiscriminatory access'' in this proposed rulemaking. Based upon the comments received in response to the ANPRM and at the public meetings, MMS believes ''open access'' and ''nondiscriminatory access'' are fact-specific terms and their application is best left to be determined during adjudication of individual situations. MMS intends to apply a reasonableness standard when deciding complaints alleging violations of the OCSLA's open and nondiscriminatory access requirements. While a reasonableness standard is inherently broad, it provides the flexibility necessary to address the various and unique situations that may arise. MMS believes that trying to encompass the plethora of circumstances that could present themselves would result in a definition that is unmanageable and would ultimately result in resorting to exceptions to accommodate unforeseen circumstances. Like FERC's ''comparability standard'' used for its electric ''open access'' and ''undue discrimination'' adjudications, MMS's reasonableness standard may include comparability as an element when appropriate. However, MMS is not bound by, and does not intend to necessarily base its determinations of reasonableness on previous FERC decisions.

''Accessory'' would have the same definition as in 30 CFR part 250, subpart J—i.e., 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. In the final rule, MMS may prescribe a definition different than that in 30 CFR part 250, subpart J.

''Appurtenance'' would have the same definition as in 30 CFR part 250, subpart J—i.e., 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, pipeline end terminals, anode sleds, other sleds, and jumpers (other than jumpers connecting subsea wells to manifolds).

MMS is currently in the process of rewriting its regulations at 30 CFR part 250, subpart J. Those regulations are on a different schedule than this effort. We are proposing to use the same definitions as in 30 CFR part 250, subpart J, in an effort to assure consistency between the two rules and eliminate any ambiguities. In the final rule, MMS may prescribe a definition different than that in 30 CFR part 250, subpart J.

''FERC pipeline'' would mean any pipeline under the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. 717–717z, or the Department of Energy Organization Act, 49 U.S.C. 60502. Although MMS believes it has jurisdiction over such pipelines for purposes of OCSLA's open and nondiscriminatory access requirement (see definition of ''OCSLA pipelines'' discussed below), it is necessary to distinguish FERC pipelines because, as discussed further below, MMS is proposing in this rulemaking to presume that FERC pipelines provide open and nondiscriminatory access.

''Grantee'' would mean any person or assignee to whom MMS has issued a pipeline permit, license, easement, right-of-way, or other grant of authority for transportation of oil or gas 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. MMS is proposing this definition because section 5(f) of the OCSLA requires that ''every permit, license, easement, right-of-way or other grant of authority for the transportation by pipeline on or across the outer Continental Shelf of oil or gas shall require that the pipeline * * * provide open and nondiscriminatory access to both owner and nonowner shippers.'' Therefore, persons to whom MMS has granted such rights, and their assignees, would be grantees under the proposed rule, against whom shippers could file a complaint.

When Congress enacted the Energy Policy Act of 2005, it amended the OCSLA by adding subsection (p) to 43 U.S.C. 1337. (Energy Policy Act of 2005, section 388(a).) MMS has existing authority over all OCS pipelines for

which it has already issued a pipeline permit, license, easement, right-of-way, or other grant of authority for transportation of oil or gas across the OCS. However, subsection 388(a) of the Energy Policy Act of 2005 provides the Department of the Interior with additional authority to grant new pipeline easements or rights-of way on the OCS for transportation of oil or natural gas not already authorized by statute.

''IBLA'' would mean the Interior Board of Land Appeals.

''OCSLA pipeline'' would mean oil or gas pipelines for which MMS has issued a permit, license, easement, right-of-way, or other grant of authority under 30 CFR part 250, subpart J or 43 U.S.C. 1337(p).

Again, this is the definition found in section 5(f) of the OCSLA quoted above. Any such pipelines would be under the jurisdiction of MMS. See also *Williams Cos.* v. *FERC*, 345 F.3d 910, 913–14 (D.C. Cir. 2003), wherein the court found that enforcement of the statutory requirement ''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).''

In response to the ANPRM, MMS received a broad range of comments regarding the Department of the Interior's (DOI) authority under the OCSLA. Both shippers and service providers expressed opinions concerning the actual authority granted to the DOI by the OCSLA. Areas of concern included jurisdiction over production-related facilities on offshore platforms; the regulation of pipelines subject to the Natural Gas Act and the Interstate Commerce Act; the exemption of deepwater ports from the OCSLA's open access requirements; the application of the OCSLA to both oil and gas pipelines; and the spectrum of pipelines that the DOI might regulate and whether any of these pipelines might be exempted from regulation.

MMS believes that its authority to require that pipelines provide open and nondiscriminatory access to both owner and nonowner shippers extends to every pipeline transporting oil or gas on or across the OCS under a permit, license, easement, right-of-way, or other grant of authority, including leases. This includes right-of-way grantees, lessees, pipeline owners, pipeline operators, and all of their assignees, even when those pipelines are also regulated by FERC.

One commenter stated that it believes that pipelines associated with deepwater ports are exempt from the open and nondiscriminatory access requirements of OCSLA. MMS believes that the commenter is correct in part. Our rationale is included in section III of this preamble and discusses why pipelines under the Deepwater Port Act are exempt from the pipeline access provisions of OCSLA.

''Outer Continental Shelf'' would have the same definition as in the OCSLA, 43 U.S.C. 1331—i.e., 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'' would mean any person who files a complaint, any person who files an answer, and MMS. We are proposing to include MMS as a party because under this proposed rule, MMS has both enforcement and adjudicatory functions. It is not merely an impartial arbiter. For example, if MMS orders remedial action, MMS will be in the best position to defend that action.

''Person'' would mean 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'' would mean the piping, risers, accessories and appurtenances installed for the purpose of transporting oil or gas.

The requirements outlined in this proposed rule are intended to apply only to platforms and facilities directly related to the transportation of oil and gas production. MMS believes that under the plain language of OCSLA, production-related facilities on platforms, which include processing equipment for separating and treating production prior to transportation, are not covered by the open and nondiscriminatory access provisions. Therefore, MMS would only include appurtenances and accessories, as defined above, in the definition of pipeline.

''Serve'' would mean personally delivering a copy of the document to a person, or sending the document by U.S. mail or private delivery services that provide proof of delivery (such as return receipt requested). MMS is proposing that the party submitting a complaint as well as the answerer to a complaint provide a copy of its submittal to the other parties, including MMS. In order to provide proof of service and timely processing, MMS is proposing that correspondence be delivered by U.S. mail or private delivery services that provide proof of delivery (such as return receipt requested). MMS is requesting comments on whether there are other methods of delivery assurance that MMS should consider, including electronic transmission.

''Shipper'' would mean 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'' would mean, for purposes of this part only, the movement of oil or gas through an OCSLA pipeline.

The ANPRM requested discussion concerning whether, for the purposes of this rule, there is a need to define ''transportation'' and ''gathering'' differently than those terms are defined in MMS royalty valuation regulations or FERC regulations. MMS is specifically proposing to use this definition of ''transportation'' in this part only to avoid any conflict with existing definitions of ''transportation'' or ''gathering'' in MMS's royalty valuation regulations in 30 CFR part 206 or FERC regulations. MMS is not proposing a definition of ''gathering'' in this proposed rule because we believe that MMS has jurisdiction over all pipelines for which it has issued a permit, license, easement, right-of-way, or other grant of authority, whether or not those pipelines would be considered ''gathering'' lines under the FERC's regulations.

''Transporter'' would mean, for purposes of this part only, any person who owns or operates an OCSLA oil or gas pipeline, for the reasons discussed in the definition of ''transportation.''

Section 291.102 May I Call the MMS Hotline to Informally Resolve an Allegation That Open and Nondiscriminatory Access Was Denied?

With respect to informal resolution of disputes, comments received in response to the ANPRM generally recommended that MMS implement a light-handed approach. Therefore, MMS is proposing in this section to establish a toll-free Hotline to receive allegations of denial of open and nondiscriminatory access, and to allow shippers and transporters to request ADR in § 291.103.

In the ANPRM, MMS requested discussion concerning the usefulness of a Hotline to informally attempt to resolve shippers' and service providers' concerns regarding perceived instances of open and nondiscriminatory access violations. In general, shippers and service providers endorsed the concept of a Hotline as an informal mechanism for dispute identification and possible resolution. In this proposed rule, MMS

would establish a Hotline to receive informal allegations of denial of open access or discrimination in access in violation of the OCSLA. The Hotline's primary purpose would be to gather facts, evaluate allegations of denial of open access or discrimination in access, and recommend resolution options, including alternative dispute resolution (ADR).

Proposed § 291.102 would allow a shipper to attempt to informally resolve an allegation that it was denied open and nondiscriminatory access by calling the MMS Hotline. You (the shipper) could make the call to the MMS Hotline anonymously, and to the extent permitted by law, the MMS Hotline staff would treat all information it obtains as non-public and confidential. The proposed rule explains that the MMS Hotline staff would informally seek information from you and any grantee or transporter, as appropriate, and would attempt to resolve disputes without formal complaint proceedings. MMS agrees with commenters that the requirements for reporting a dispute using the Hotline should be kept to a minimum. Required information would include the location, pipeline, and a brief explanation of the reason(s) for believing that open access has been denied or that discrimination in access has occurred.

The MMS Hotline staff could provide information to you and give informal oral advice. However, the advice given would not be binding on MMS or DOI. You could terminate your use of the MMS Hotline procedure at any time. If discussions assisted by the MMS Hotline staff were unsuccessful at resolving the matter, you could file a formal complaint under this part after notifying the MMS Hotline that you wish to file a formal complaint.

Section 291.103 May I Use Alternative Dispute Resolution to Informally Resolve an Allegation That Open and Nondiscriminatory Access Was Denied?

Another informal option would allow the persons involved in the dispute to agree to non-binding ADR at their expense. ADR may be requested either by calling the MMS Hotline or by contacting the MMS Associate Director for Policy and Management Improvement.

Under the proposed rule, either before or after a complaint is filed, persons involved in a dispute could elect to use one of the following to resolve their dispute:

- A contracted ADR provider;
- The DOI's Office of Collaborative Action and Dispute Resolution (CADR); or
- MMS employees trained in ADR facilitation techniques and certified by the CADR.

ADR facilitation is a service that uniquely benefits the participants by providing an opportunity for the participants to resolve their dispute without incurring substantial litigation costs. Thus, MMS is proposing 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 proposes to recover its costs for providing an MMS facilitator. The costs of providing ADR facilitation are readily calculated and tracked. Thus, MMS is proposing to require participants in an ADR process to pay the actual costs of the service on a case-by-case basis. These costs would include both direct and indirect costs. Direct costs include such things as labor, material, and equipment. For example, direct costs would include the costs of the facilitator's time and any other MMS personnel time spent on related secretarial or other tasks. In addition to direct costs, MMS would recover indirect costs, such as rent and overhead. MMS would calculate indirect costs by applying to the direct cost figure an indirect cost ratio already determined in its accounting system.

Authority for cost recovery is provided by the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701. This Act is a general law applicable Government-wide, that provides MMS authority to recover the costs of providing services to the non-federal sector. It requires implementation through rulemaking. There are several policy documents that provide guidance on the process of charging for service costs.

These policy documents are in the Office of Management and Budget (OMB) Circular A–25, ''User Charges,'' and the Department of the Interior Departmental Manual (DM), 330 DM 1.3 & 6.4, ''Cost Recovery'' and ''User Charges.'' The general policy that governs charges for services provided states that a charge ''will be assessed against each identifiable recipient for special benefits derived from federal activities beyond those received by the general public'' (OMB Circular A–25). The Departmental Manual mirrors this policy (330 DM 1.3 A.).

Section 291.104 Who May File a Complaint?

This section would explain who may file a complaint alleging a violation of the requirements of OCSLA section 5(e) and (f) that grantees and transporters provide open and nondiscriminatory access.

MMS would propose to limit the filing of a complaint to any shipper who believes it has been denied open and nondiscriminatory access to an OCSLA pipeline.

MMS intends to defer to the FERC on pipelines under the jurisdiction of the Natural Gas Act or Interstate Commerce Act. This deferral is based on MMS's presumption that because pipelines under the Natural Gas Act and Interstate Commerce Act are regulated by the FERC, ''open access'' and ''nondiscriminatory access'' are being assured. Therefore, MMS would not consider complaints regarding a FERC pipeline that, for example, originates from a lease on the OCS and then transports production onshore to an adjacent state.

MMS welcomes comments on the treatment of pipelines over which FERC exercises its Natural Gas Act or Interstate Commerce Act jurisdiction.

Section 291.105 What Must a Complaint Contain?

This section would explain what a complaint must contain. In the ANPRM, MMS requested comments on the type of complaints it might receive. Review of the comments indicated that the types of complaints MMS might receive generally fell into two categories: (1) Rate discrimination and (2) denial of access. It became clear to MMS from the statements at the public meetings and written comments to the ANPRM that each complaint would be very fact-specific. Thus, MMS is not proposing to define categories of complaints it might receive in this proposed rulemaking. MMS would generally define a ''complaint'' to mean a comprehensive written brief stating the legal and factual basis for the allegation that a shipper was denied open and nondiscriminatory access with supporting material.

Paragraph (a) would specify that a complaint must clearly identify the action or inaction which is alleged to violate 43 U.S.C. 1334(e) or (f)(1)(A). For example, in the case of rate discrimination, a shipper would have to allege that it was discriminated against by being charged a higher rate than other similarly situated shippers. General statements of dissatisfaction with high rates would not suffice.

Paragraph (b) would require a complaint to explain how the action or inaction violates 43 U.S.C. 1334(e) or (f)(1)(A)—i.e., how the action or inaction denied the shipper open access or resulted in discrimination in access.

Paragraph (c) would require a complaint to set forth how the action or

inaction affects the complainant's interests. In particular, it would require a complainant to make a good faith effort to quantify the financial impact or burden (if any) created as a result of the action or inaction. It also would require a complaint to explain other impacts of the action or inaction, such as practical, operational, or other non-financial impacts. This would be met by a statement of the harm the denial of open access or discrimination in access caused the shipper.

Paragraph (d) would require a complainant to make a good faith effort to quantify the financial impact or burden (if any) created as a result of the action or inaction.

Paragraph (e) would require that the complaint request specific relief or remedy. For a discussion of some of the specific remedies MMS believes are available, see the discussion of § 291.112 below.

Paragraph (f) would require that a complaint include all documents that support the facts in the complaint. MMS expects a complainant to provide all documents in its possession or which it can otherwise obtain. These documents should include, at a minimum, the relevant contracts and any affidavits necessary to support any particular factual allegations.

In the ANPRM, MMS requested comments on whether interested parties would be more likely to participate in one type of complaint resolution process over another and what circumstances might affect this decision. Based on the responses, as discussed above, MMS is proposing informal processes to address disputes by utilizing an MMS Hotline process or ADR discussed in §§ 291.102–291.103, and a formal process to address complaints described in this section and §§ 209.106–209.114 below.

With respect to the formal process that MMS is proposing, shipper comments generally supported a formal regulatory process to address complaints, and pipeline comments generally did not. Specifically, some pipeline commenters questioned MMS's authority under the OCSLA to issue regulations concerning complaint resolution. Those commenters believe the OCSLA only provides for judicial review of such complaints under 43 U.S.C. 1349–1350.

MMS disagrees. 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.

Moreover, based on comments received at the public meetings and in response to the ANPRM, MMS believes a formal process is necessary to assure that its decision to enforce the requirements of the OCSLA will be followed, and to give both parties a reason to participate in the informal process. Without the potential of some consequences, there is no reason for a pipeline owner to participate in a voluntary or an administrative process. Therefore, in §§ 291.105–291.114, MMS is proposing a formal complaint process.

In its consideration of the comments MMS received in response to the ANPRM, MMS recognized other possible formal complaint resolution processes. One of these would be to establish a process similar to the process employed by FERC as set forth in 18 CFR part 385. This process has the advantage of being familiar to both shippers and service providers. However, a FERC-mirrored process would impose new requirements on the DOI, including administrative hearing and appeals requirements. MMS is requesting comments on this or other possible variants.

Section 291.106 How Do I File a Complaint?

This section would explain the process for filing a complaint. Paragraph (a) would explain that shippers filing complaints regarding OCSLA pipelines must file complaints with the MMS Director. As discussed above, decisions would be issued by the MMS Policy and Management Improvement office (PMI). Paragraph (b) would provide that the party filing the complaint must pay a nonrefundable processing fee of $7,500 to MMS. Under paragraph (c), you would have to serve your complaint on all parties named in the complaint. See discussion of ''Serve'' in the definitions section above.

Since MMS has not been involved in the processing of complaints of this type, it is interested in comments regarding whether there should be time limits placed on the filing of complaints following an action by a grantee or transporter denying open and nondiscriminatory access. MMS recognizes that the information necessary to effectively answer a complaint may become stale or even non-existent. On the other hand, should the mere passage of time be a limiting factor on whether a shipper can submit a complaint? MMS is requesting comments on this issue and may prescribe a time limit in the final rule.

Section 291.107 How Do I Answer a Complaint?

The proposed rule would provide that, after a complaint is filed, those on whom a complaint was served could then submit a formal written answer responding to the allegations in the complaint. Paragraph (a) of this section would explain that if you have been served a complaint under § 291.106(b), you may file an answer to the complaint within 60 days of your receipt of the complaint. If you file your answer after 60 days of your receipt of the complaint, MMS would have discretion not to consider your answer.

The proposed rule would explain in paragraph (b) that for purposes of this part, an answer would mean a comprehensive written brief stating the legal and factual basis refuting the allegation in the complaint that you denied open access or nondiscriminatory access, together with supporting material.

Paragraph (b)(1) would explain that you must attach a copy of the complaint to your answer or reference the assigned MMS docket number. This is to assist MMS in case management.

Paragraph (b)(2) would require the answer to explain why the action or inaction alleged in the complaint does not violate 43 U.S.C. 1334(e) or (f)(1)(A).

Paragraph (b)(3) would require answers to include all documents that support the facts in the answer in possession of, or otherwise obtainable by, the answerer, including, but not limited to, contracts and any affidavits necessary to support factual allegations. MMS is requesting comments on whether there is any other specific information that the answer should include.

Paragraph (b)(4) would require that a copy of the answer be provided to all parties named in the complaint including the complainant.

Section 291.108 How Do I Pay the Processing Fee?

This section would provide that you must pay your processing fees to the MMS Policy and Management Improvement office. Under paragraph (a) you would have to pay the processing fee or seek a fee waiver or reduction under § 291.109. The party filing the complaint must pay a nonrefundable processing fee of $7,500 to MMS.

You would be required to pay the nonrefundable processing fee by Electronic Funds Transfer, unless you requested, and MMS authorized, payment by check or an alternative method before the date the processing

fee would be due. The payment would have to include various specified forms of identification in order to properly account for the fee. We request comments on the amount of the processing fee, payment by Electronic Funds Transfer, and what form of identification should be included with fees.

The Department's authority to recover its costs for the processing of complaints involving offshore pipeline access is the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701 (originally codified at 31 U.S.C. 483a) (IOAA). ''Office of Management and Budget (OMB) Circular No. A–25, 58 FR 38144 (adopted 1959; revised July 15, 1993), establishes federal policy regarding user charges under the IOAA.'' Interior Solicitor Opinion M–36987 (December 5, 1996). Further, the Department of the Interior Departmental Manual (DM) mandates cost recovery for special services: ''Departmental policy requires * * * that a charge, which recovers the bureau or office costs, be imposed for services which provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large.'' Id. (quoting 346 DM 1.2 A.); Cf. *Federal Power Comm'n* v. *New England Power Co.*, 415 U.S. 345, 350 (1974) (describing the OMB Circular test at 6.a.(4) when no charge should be made as the proper construction of the IOAA). Thus, as part of this proposed rulemaking, we analyzed a previously proposed appeals rule's processing fees (that rule is discussed immediately below) for reasonableness according to the factors in IOAA section 501(b), 31 U.S.C. 9701(b) and the guidance contained in the DM and OMB's Circular No. A–25.

In promulgating regulations for similar processes (to complaints) for appeals of MMS-issued orders, the October 28, 1996, proposed appeals regulation also proposed payment of a processing fee. 61 FR 33607 (1996). Several comments to that proposed appeals rule questioned MMS's authority to impose such fees. A similar concern logically exists for the processing of complaints here, even though the public has not yet had the opportunity to convey their comments. However, in addition to the authority under the IOAA, the United States Court of Appeals for the District of Columbia Circuit has upheld charging processing fees for administrative appeals. *Ayuda, Inc.* v. *Attorney General*, 848 F.2d 1297 (D.C. Cir. 1988). See also, *United Transportation Union-Illinois Legislative Board* v. *Surface Transportation Board*, No. 97–1038, 1997 U.S. App. LEXIS 37560, (D.C. Cir., Nov. 10, 1997) (decision published in table case format without opinion, reaffirming *Ayuda*) (reported in full text format at 1997 U.S. App. LEXIS 37560). In *Ayuda* the Circuit Court held that processing fees for administrative appeals ''are for a 'service or thing of value' [under the IOAA, 31 U.S.C. 9701(a),] which provides the recipients with a special benefit.'' 848 F.2d at 1301.

Unlike the circumstances and precedents established in *Ayuda*, the party seeking compliance (the complainant) under this rule normally is not the regulated party. However, there is no question that the complainant receives a ''special benefit'' from the services performed by MMS in processing the formal complaint. Therefore, this rule proposes that the party filing the complaint will pay the fee. We believe that this arrangement would fairly protect regulated parties from frivolous complaints while it would also ensure compliance with statutory and regulatory requirements. We request comments on the proposed fee.

The four factors in the IOAA are ''(1) fair; and (2) based on—(A) the costs to the Government; (B) the value of the service or thing to the recipient; (C) public policy or interest served; and (D) other relevant facts.'' The factors mirror four of the six ''reasonableness factors'' contained in section 304(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734(b). The ''reasonableness factors set out in FLPMA are: (a) ''Actual costs (exclusive of management overhead);'' (b) ''the monetary value of the rights or privileges sought by the applicant;'' (c) ''the efficiency to the government processing involved;'' (d) ''that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant;'' (e) ''the public service provided;'' and (f) ''other factors relevant to determining the reasonableness of the costs.'' Although the factors contained in FLPMA apply only to onshore lands, because of the similarity between the factors used under both statutes and of the open-ended ''other relevant facts'' factor contained in IOAA, the Department believes that using the factors contained in section 304(b) to determine fees is eminently ''fair'' under the authority of the IOAA.

For the reasons set forth above, MMS proposes to implement the IOAA by applying each of the FLPMA factors for complaints processed under this proposed rule. We first estimated the actual cost for processing the complaint, and then considered each of the other FLPMA factors to see if any of them might cause the fee to be set at less than actual cost. We then considered whether any of the remaining factors acted as an enhancing factor that would mitigate against setting the fees at less than actual cost. We then decided the amount of the fee, which cannot be more than the actual processing cost. This method results in fees that are based upon the actual processing costs. Accordingly, for formal pipeline access complaints, the fee is proposed to be set at $7,500 and to be paid by the party filing the complaint.

Factor (a)—Actual Costs

Actual costs means the financial measure of resources expended or used by MMS to process a complaint, including, but not limited to the costs to research and write the MMS Director's decision or take any other relevant action. Actual costs include both direct and indirect costs, exclusive of management overhead. Section 304(b) of FLPMA requires that management overhead be excluded from chargeable costs. Because we are implementing the IOAA by applying the FLPMA factors, management overhead costs are excluded from this analysis.

MMS calculated the direct cost component of the actual costs to process a complaint by totaling agency expenditures for labor, material, and equipment usage. Based on the time it now takes to complete an appeals decision, we estimated the time it would take to perform the various phases of the proposed complaint process. We then multiplied the hours by $80, the average of MMS's personnel, material and equipment usage costs.

MMS calculated the indirect cost component of actual costs by dividing the indirect costs such as rent and overhead associated with this process by the total program cost to arrive at an indirect cost percentage of 18.5%.

MMS then multiplied the direct costs by 18.5% and added that figure to its direct costs to determine its total actual costs. This method of calculating costs is a generally accepted by both the public and private sectors.

Our method of establishing actual costs involved estimating the average cost of processing an individual complaint. We concluded that while it might be possible to track costs and consider the reasonableness factors on a case-by-case basis, doing so would be time consuming and expensive.

MMS's costs to process a complaint under this proposed rule would include the cost to consider the complaint in various phases at MMS. The first phase

would be the MMS Policy and Management Improvement office performing the following functions:

(1) Receiving and date stamping each document;

(2) Reviewing each complaint for completeness;

(3) Docketing the complaint by entering the information into a computer-based tracking system;

(4) Preparing and sending an acknowledgment letter or a denial letter as appropriate;

(5) Preparing a complaint file; and

(6) Reviewing each answer for completeness.

We estimated based on current processes that the average time to complete this phase would be 4 hours.

The next phase would be researching and drafting the Director's decision. We estimated the average staff-hours the Policy and Management Improvement office currently spends on each appeal of MMS orders (discussed above) that results in a decision by the MMS Director to be 100 hours. However, unlike the current process where the appeals analyst only reviews a Statement of Reasons, in this process, the analyst would have to review a complaint and an answer, request additional information, as necessary, and review that information. The Policy and Management Improvement office also anticipates that initially it will be necessary for that Division to consult with MMS's Offshore Minerals Management program and Minerals Revenue Management program as part of the decision-making process. This is because the appeals analyst may need to use those programs' expertise to reach a decision. Accordingly, MMS estimates that the additional time it will need to process at least the first 5 complaints and answers, compared with an appeal of MMS-issued orders, will be 40 hours, for a total of 140 hours for this phase.

Thus, the total estimated average hours for MMS to spend on these phases is 4 hours for the docketing of the complaint and 140 hours for the preparing the MMS Director's decision, for a total of 144 hours per complaint. This estimate is based on current MMS time requirements for completing similar tasks. Using an estimate of $80 per hour based on an average of MMS's personnel, material and equipment-usage costs, we estimate the average direct cost burden for these requests would be $11,520 ($80/hour × 144 hours). MMS's indirect costs for the requests is $2,131 per appeal (18.5% indirect cost rate × $11,520) resulting in total estimated actual costs of $13,561 per average complaint.

Factor (b)—Monetary Value of the Rights and Privileges Sought

The monetary value of rights and privileges sought means the objective worth of a complaint, in financial terms, to the complainant. The value to a complainant is gaining open or nondiscriminatory access to a pipeline if MMS determines that the complainant has been denied open or nondiscriminatory access. See e.g., *Ayuda Inc.* v. *Attorney General*, 848 F.2d 1297 at 1301 (1988) (value of having an incorrect action corrected). However, the monetary value of having MMS remedy a violation of OCSLA's requirement to provide open and nondiscriminatory access will vary depending on the specific facts of each complaint, which MMS cannot accurately estimate in advance of deciding any complaints. Moreover, most complaints will decide a legal question regarding what MMS believes is open access or discrimination that imparts value to both shippers and transporters, so the monetary value is not merely equal to the complainant's alleged loss. Therefore, we rejected the idea of trying to calculate monetary value on a case-by-case basis for purposes of determining whether to increase or decrease the recovery of actual costs based on this factor. Instead, we have determined that consideration of this factor should include an examination of equitable considerations related to monetary value, rather than precise figures. However, given the nature of these complaints, we believe the monetary value to complainants of gaining access or having discriminatory actions cease would be great.

A major equitable consideration is whether the level of cost reimbursement could burden the complainant to such an extent that the complaint would actually end up being of no monetary value to the complainant whatsoever. However, because we are providing a mechanism for fee waiver or reduction, and believe the monetary value of the relief sought would be considerably greater than the cost of filing a complaint in a vast majority of cases, we decided that this factor should not cause fees to be set below actual costs.

Factor (c)—Efficiency to the Government Processing Involved

Efficiency to the Government processing means the ability of the United States to process a complaint with a minimum of waste, expense, and effort. Implicit in this factor is the establishment of a cost recovery process that does not cost more to operate than is necessary, and does not unduly increase the costs to be recovered. As noted in the above section on actual costs, we have estimated the cost to the government for the complaint process proposed in this rulemaking. However, we believe it would be inefficient to determine an adjustment factor to increase or decrease the recovery of actual costs on a case-by-case basis.

The procedures that we would use to process a complaint would be based on standardized steps for similar MMS transactions in order to eliminate duplication and extraneous procedures. However, some procedures would require processes in addition to those used under the current appeals process. These additional processes were accounted for under factor (a) above.

Factor (d)—Cost Incurred for the Benefit of the General Public Interest

The cost incurred for the benefit of the general public interest (public benefit) means funds the United States expends, in connection with the processing of a complaint, for studies or data collection determined to have value or utility to the United States or the general public separate and apart from the document processing. It is important to note that this factor addresses funds expended in connection with a complaint. There is another level of public benefit that includes studies which we are required, by statute or regulation, to perform regardless of whether a complaint is received. The costs of such studies are excluded from any cost recovery calculations from the outset. Therefore, no reduction from costs recovered is necessary in relation to these studies.

We concluded that the processing of a complaint would not as a rule produce studies or data collection that might benefit the public to any appreciable degree. Therefore, any possible benefits of such studies to the public are balanced by their possible benefits to the complainant. Accordingly, we made no adjustment to the fee recovered based on this factor.

Factor (e)—Public Service Provided

Public service provided means direct benefits with significant public value that are expected as a result of a complaint. This factor is thus concerned with the benefit resulting from the ultimate decision in the complaint, while the previous factor related to the benefits of the document processing itself. Deciding a complaint provides a public service because the primary function of the complaint process is to ensure open and nondiscriminatory access as mandated by Congress in

sections 1334 (e) and (f)(1)(A). The value of the benefit to the public is great because ensuring open and nondiscriminatory access encourages production in new fields and prevents shut-in of existing wells. These in turn would further Congress' stated purpose of expeditious and orderly development of the OCS, 43 U.S.C. 1332, and the requirement that lessees diligently produce oil and gas from the lease. 43 U.S.C. 1337(b)(4).

Furthermore, comments received from the County of Santa Barbara stated that requiring open and nondiscriminatory access may decrease environmental degradation. ''Santa Barbara's policies * * * require equitable and nondiscriminatory access to onshore segments of pipelines that carry offshore oil and gas * * *. Application of these policies since the mid-1980's has substantially reduced the environmental impacts that would occur if every offshore operator installed their individual set of pipelines * * *.'' We agree. Therefore, we believe there would be a public benefit from avoiding potential environmental degradation. For these reasons, we decided that it was reasonable to set fees below actual costs on the basis of this factor.

Factor (f)—Other Factors

The final reasonableness factor is other factors relevant to determining the reasonableness of the costs. Under this factor, we considered fees that other government entities charge for processing similar complaints (see October 28, 1996, proposed rulemaking, 61 FR at 55609). Also, the paucity of anticipated complaints skews the programmatic costs for individual complaints. As discussed above, it will take the Policy and Management Improvement office an additional 40 hours to process at least the first 5 complaints and answers than to process an appeal of a Minerals Revenue Management program order. However, after the Policy and Management Improvement office develops the expertise and case law, the time necessary to process a complaint should decrease. Accordingly, the first 5 complainants would bear the entire costs of the extra time necessary for the Policy and Management Improvement office to develop the expertise. We believe that it is more reasonable to spread those costs out over time, and, thus, reasonable to set fees below actual costs based on this factor.

After considering all of the reasonableness factors, we concluded that the factors of public service (e) and other factors (f) make it reasonable to set the fees for filing a complaint at $7,500 instead of at the actual costs. None of the other factors mitigate against setting the fees at less than actual costs. Moreover, because the proposed fee of $7,500 would meet the reasonableness factors of FLPMA, they would also be fair under the IOAA.

We invite comments concerning the proposed processing fee. Specifically, the MMS is requesting comments on the effect the proposed fees could have on the filing of complaints.

Section 291.109 Can I Ask for a Reduced Processing Fee?

This section would allow complainants to request a fee waiver or reduction. We invite comments regarding the advisability of including procedures in the proposed rule for granting fee waivers or reductions. We have included fee waiver and reduction provisions because we believe that the payment of the $7,500 fee may cause undue hardship on small independent oil and gas producers/shippers and thus impede their access to the complaint process.

While waiver procedures for complaints and appeals exist in some other agencies, they may not be applicable in instances such as this where there is an informal processing-fee free Hotline alternative and we have already reduced the fee to half of our actual costs. For example, waiver provisions in Department of Transportation Surface Transportation Board regulations apply to a fee schedule that includes fees ranging up to $23,300 for the filing of a formal complaint 49 CFR 1002.2(c)–(f). See United Transportation Union-Illinois Legislative Board versus Surface Transportation Board, No. 97–1038, 1997 U.S. App. LEXIS 37560, (D.C. Cir. Nov. 10, 1997) (upheld a Surface Transportation Board fee for handling appeals, in part, because it ''provided a waiver mechanism for fees that would cause undue hardship''). Therefore, we invite comment on whether we should retain a fee waiver or reduction provision.

Section 291.110 Who May MMS Require To Produce Additional Information?

The ANPRM requested comments on whether MMS could achieve its mandate of assuring open and nondiscriminatory access in the absence of routine information collection and the dissemination of some or all of that information. The comments received varied widely. Some commenters stated that the OCSLA does not provide MMS with the authority to require reporting. Others believed that MMS should implement the same type of information collection that the FERC had mandated in Orders 639 and 639–A.

MMS believes that without knowing the specifics of the number and type of instances of violations of the open and nondiscriminatory access requirements, the routine submittal of information is not justified at this time. In addition, MMS is not proposing to include reporting requirements because, if a shipper alleges discrimination in a complaint against a pipeline, it will need to provide documentation supporting that allegation. Likewise, it will be in a pipeline's best interest to provide documentation refuting the shipper's allegations of discrimination. Finally, because MMS is not defining ''open access'' or ''nondiscriminatory access'' in the rulemaking, and because MMS believes complaints extend beyond rate issues, MMS anticipates that it will not need the majority of information FERC was gathering under Orders 639 and 639–A. Therefore, in the proposed rule, MMS does not propose any reporting requirements by service providers operating pipelines on the OCS similar to what the FERC imposed in Orders 639 and 639–A.

Rather, in paragraph (a) of this section, the proposed rule would allow MMS to require any lessee, operator of a lease or unit, shipper, grantee, or transporter (whether it is a shipper or not) to provide additional information that MMS believes is necessary to make a decision on whether open access or nondiscriminatory access was denied. MMS welcomes comments on whether it should be able to require information from persons who are not parties.

Paragraph (b) would provide for enforcement of such requests if a party fails to provide additional information MMS requests under paragraph (a). Enforcement could include the assessment of civil penalties under 30 CFR part 250, subpart N, and dismissal of a complaint or factual findings adverse to a party on factual issues to which the information sought is relevant.

Paragraph (c) would provide for enforcement of such requests if a lessee, operator of a lease or unit, shipper, grantee, or transporter, that is not a party fails to provide additional information MMS requests under paragraph (a). Enforcement may result in the assessment of civil penalties under 30 CFR part 250, subpart N.

Section 291.111 How May I Request That MMS Treat Information I Provide as Confidential?

This section would allow any person who provides documents to MMS under

this part to claim that some or all of the information contained in the particular document is confidential. Confidentiality under this section would include documents that are exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552, or protected by the Trade Secrets Act, 18 U.S.C. 1905, or otherwise exempt by law from public disclosure.

In the ANPRM, MMS requested comments on how it should treat any collected information. MMS believes that in order to encourage participation in informal complaints, it is necessary to treat all submitted information as confidential to the extent allowed by law. Conversations with FERC reinforced this belief. With respect to information submitted during the formal complaint resolution process, MMS is proposing the submittal of complete and redacted versions of information in order to maintain the confidentiality of information when appropriate if a party requests that information be kept confidential and explains why it should be treated as confidential.

MMS is proposing to retain the right to determine whether any claim of confidentiality is required by law. MMS would notify the person claiming confidentiality of its determination and to the extent permitted by law, would provide an opportunity to respond prior to any public disclosure.

Section 291.112 How Will MMS Decide Whether a Grantee or Transporter Has Provided Open and Nondiscriminatory Access?

The MMS Director would review the pleadings and issue a decision including appropriate remedial actions as discussed below.

MMS's Royalty-in-Kind (RIK) production marketing process includes negotiating rates for transportation. Some of that transportation will likely occur on pipelines subject to this rulemaking and presents the possibility that the RIK division may file a complaint. As discussed above, this raises the question of 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. See the discussion in Section II that concludes that MMS can fairly decide other shipper's appeals.

Section 291.113 What Actions May MMS Take To Remedy Denial of Open and Nondiscriminatory Access?

If the MMS Director decides under § 291.111 that the grantee or transporter has not provided open and nondiscriminatory access, then the decision would describe the actions MMS would take to remedy the denial of access. Actions MMS could take include ordering grantees and transporters to provide open and nondiscriminatory access to the complainant and assessing civil penalties of up to $10,000 per day under 30 CFR part 250, subpart N, for failure to provide open and nondiscriminatory access. Penalties would begin to accrue 60 days after the grantee or transporter received the order to provide access under this paragraph. The proposal also would allow MMS to request that the Department of Justice institute civil actions 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 to forfeit the right-of-way grant under 43 U.S.C. 1334(e).

Section 291.114 How Do I Appeal to the IBLA?

MMS is proposing to allow any party adversely affected by a final decision of the MMS Director under this part to appeal to IBLA under the procedures provided in 43 CFR part 4, subpart E.

Section 291.115 How Do I Exhaust Administrative Remedies?

MMS is proposing to allow appeals to IBLA. If the MMS Director issues a decision, and does not expressly make the decision effective upon its issuance, then a party would need to appeal the decision to IBLA in order to exhaust administrative remedies. On the other hand, if the MMS Director expressly makes the decision effective upon issuance or if the Assistant Secretary for Land and Minerals Management issues or concurs in a decision under this part, then that is the Department's final decision. No further appeals would be needed to exhaust your administrative remedies, and none would be available.

III. Jurisdiction Under the Deepwater Port Act

The Deepwater Port Act of 1974 defines a deepwater port as including ''all components and equipment, *including pipelines*, pumping stations, service platforms, buoys, mooring lines, and similar facilities to the extent they are located seaward of the high water mark.'' 33 U.S.C. 1502(9) (emphasis added). Under 33 U.S.C. 1503(b), the Secretary of Transportation ''issue[s] a license for the ownership, construction, and operation of a deepwater port''—including pipelines. Although the Secretary of the Interior, through MMS, issues a right-of-way across the seabed for a pipeline that transports production from a deepwater port, the Secretary of Transportation authorizes the construction and regulates the operation of the pipeline.

However, the definition of ''deepwater port'' with respect to natural gas specifically limits the pipelines and other facilities to those ''proposed or approved for construction and operation as part of a deepwater port, * * * and do[es] not include interconnecting facilities.'' 33 U.S.C. 1502(9)(C). Consequently, only those dedicated pipeline segments constructed and operated solely as part of the deepwater port facility would be exempt from OCSLA jurisdiction.

The Deepwater Port Act further specifies what common carrier obligations do and do not apply to pipelines that are part of deepwater ports. Section 1507 provides in relevant part:

(a) Status of deepwater ports and storage facilities. A deepwater port and a storage facility serviced directly by that deepwater port shall operate as a common carrier under applicable provisions of part I of the Interstate Commerce Act and subtitle IV of title 49, United States Code [*49 U.S.C. § 10101* et seq.], *and shall accept, transport, or convey without discrimination all oil delivered to the deepwater port* with respect to which its license is issued, except as provided by subsection (b) of this section.

(b) Discrimination prohibition; exceptions. A licensee is not discriminating under this section and is not subject to common carrier regulations under subsection (a) of this section when that licensee—

(1) Is subject to effective competition for the transportation of oil from alternative transportation systems; and

(2) Sets its rates, fees, charges, and conditions of service on the basis of competition, giving consideration to other relevant business factors such as the market value of services provided, licensee's cost of operation, and the licensee's investment in the deepwater port and a storage facility, and components thereof, serviced directly by that deepwater port.

(c) Enforcement, suspension, or termination proceedings. When the Secretary has reason to believe that a licensee is not in compliance with this section, the Secretary shall commence an appropriate proceeding before the Federal Energy Regulatory Commission or request the Attorney General to take appropriate steps to enforce compliance with this section and, when appropriate, to secure the imposition of appropriate sanctions. In addition, the Secretary may suspend or revoke the license of a licensee not complying with its obligations under this section.

(d) Managed access. *Subsections (a) and (b) shall not apply to deepwater ports for natural gas. A licensee of a deepwater port for natural gas, or an affiliate thereof, may exclusively utilize the entire capacity of the deepwater port and storage facilities for the*

acceptance, transport, storage, regasification, or conveyance of natural gas produced, processed, marketed, or otherwise obtained by agreement by such licensee or its affiliates. The licensee may make unused capacity of the deepwater port and storage facilities available to other persons, pursuant to reasonable terms and conditions imposed by the licensee, if such use does not otherwise interfere in any way with the acceptance, transport, storage, regasification, or conveyance of natural gas produced, processed, marketed, or otherwise obtained by agreement by such licensee or its affiliate.

33 U.S.C. 1507 (emphasis added). In other words, if a deepwater port accepts crude oil, it must operate as a common carrier and provide nondiscriminatory access to all crude oil delivered to the port unless the conditions in subsection (b) are met. If a deepwater port is required to operate as a common carrier for crude oil and is not meeting that obligation, enforcement of that obligation rests with the Secretary of Transportation and FERC under subsection (c), not the Secretary of the Interior.

If a deepwater port is a natural gas port—i.e., a liquefied natural gas (LNG) port—it is not required to operate as a common carrier and is not required to provide non-discriminatory access to other parties. By the express terms of subsection (d), the licensee of the port and its affiliates may use the port (and, therefore, the pipeline) exclusively. The licensee may also make any unused capacity available to others if it chooses to do so, ''pursuant to reasonable terms and conditions *imposed by the licensee*'' (emphasis added), not by the Secretary of the Interior. This provision does not convert the deepwater port or its pipeline into a common carrier if it chooses to make capacity available to others.

These express specific provisions control over the general provision in the OCSLA at 43 U.S.C. 1334(f)(1)(A) that pipelines on or across the OCS provide open and non-discriminatory access to both owner and non-owner shippers.

The Deepwater Port Act does contemplate the possibility that pipelines that are part of deepwater ports may be used to transport production that originates on the OCS. The congressional declaration of policy in the Deepwater Port Act, at 33 U.S.C. 1501, provides that the congressional purposes in enacting the statute include:

(5) Promote the construction and operation of deepwater ports as a safe and effective means of importing oil or natural gas into the United States *and transporting oil or natural gas from the outer continental shelf* while minimizing tanker traffic and the risks attendant thereto; and

(6) *Promote oil or natural gas production on the outer continental shelf by affording an economic and safe means of transportation of outer continental shelf oil or natural gas to the United States mainland.* (Emphasis added.)

Thus, Congress was aware when it enacted the Deepwater Port Act and subsequent amendments that production from outside the OCS could be brought in to land through a port located on the OCS. It was also aware that some production from the OCS might be transported through pipelines that are part of the deepwater port facility. In enacting the common carrier provisions and exclusions in that statute, Congress distinguished between products (oil versus gas), but did not distinguish between production brought in from outside the OCS and production from the OCS. Had Congress intended to apply the general requirements of 43 U.S.C. 1334(f)(1)(A) to that portion of production transported through a deepwater port's pipeline that originates from the OCS, notwithstanding the express specific provisions in the Deepwater Port Act, it presumably would have included specific language stating that intent.

It is possible that a pipeline constructed as part of a deepwater port may connect the deepwater port with an existing OCS pipeline that is subject to MMS's jurisdiction and the open and nondiscriminatory access requirements of 43 U.S.C. 1334(f)(1)(A) implemented in this rule. In such a case, connection with the OCS pipeline would not make segments of the OCS pipeline downstream of the interconnect point exempt from open and nondiscriminatory access requirements. MMS does not believe that Congress intended in the Deepwater Port Act to override the Secretary of the Interior's authority in this context. The provisions of this proposed rule would apply to all segments of the OCS pipeline, including those downstream of the interconnect point. They would not apply to the pipeline connecting the deepwater port with the OCS pipeline.

IV. Requested Comments Summary

MMS has specifically requested comments on various topics in the preamble. Those specific requests are summarized here:

1. Whether MMS should consider other methods of delivery assurance, e.g., electronic transmission, to satisfy parties' complaint and answer notification requirements.

2. Whether MMS should use a formal complaint resolution method other than that proposed.

3. Whether MMS's proposed treatment of OCSLA pipelines over which FERC exercises its Natural Gas Act or Interstate Commerce Act jurisdiction is adequate.

4. Whether MMS should impose a time limit on the filing of complaints.

5. Whether an answer in response to a complaint should include specific information other than that required by the proposed rule.

6. Whether the amount of the 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.

7. Whether the proposed processing fees will materially affect the filing of complaints and whether the value of using the complaints process to complainants, transporters, and others of using the complaint process is fairly presented.

8. Whether processing fee waiver and reduction provisions should be retained.

9. Whether MMS should obtain information from persons who are not parties to a complaint.

10. Whether MMS should automatically stay each decision pending an appeal to the IBLA.

V. Procedural Matters

Public Comment

MMS's practice is to make comments, including the names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their names and home addresses, etc. But if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information that demonstrates that disclosure would constitute a clearly unwarranted invasion of personal privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documented circumstances, this information will be released. MMS will not consider anonymous comments. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Regulatory Planning and Review (Executive Order 12866)

This is not a significant rule under Executive Order 12866 and does not require review by the Office of Management and Budget (OMB).

a. The proposed rule would 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 a few formal complaints and approximately ten informal hotline complaints regarding open and nondiscriminatory access. Based upon the number of OCSLA open and nondiscriminatory complaints FERC received, and the comments MMS received at the public workshops and to the ANPRM, MMS expects to receive approximately five formal complaints and fifty calls to the MMS Hotline in the first year, and fewer in subsequent years once the regulations have been applied in a series of cases. MMS conducted an economic analysis to estimate the net benefits from implementation of the proposed regulations. An analytic baseline was established to represent the current state of shipper and pipeline transactions on the OCS. Projected costs and benefits from the proposed complaint program are incremental with respect to the baseline. Results from the analysis indicate that net benefits to shippers/producers and the public could range from $0.12 million to $0.59 million, with a most likely estimate of $0.23 million for the projected number of complaints in the first year and fewer in subsequent years. MMS decisions favorable to complainants would increase revenue received by shippers/producers, and royalty payments would also increase. 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 pipelines. Baseline benefits to shippers/producers and the public, before subtracting compliance costs and decreases in tariff revenue, would be within the range of $4.6 million to $28.5 million, with a most likely estimate of $14.0 million.

The proposed rule would not create an adverse effect upon the ability of the United States offshore oil and gas industry to compete in the world marketplace, nor would the proposal 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 type of complaints which the proposed rule would address 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 would 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. Conceptually, the economy would benefit if additional reserves are recovered and sold. Regardless, MMS concludes that direct annual costs to industry for the entire proposed rule would not exceed the $100 million threshold.

b. This proposed rule would not create inconsistencies with other agencies' actions. 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 proposed rule. By deferring to the FERC when FERC has retained and exercised jurisdiction, MMS has structured the proposed rule to ensure that it would not create any inconsistencies with FERC's actions.

c. This proposed rule would not affect entitlements, grants, loan programs, or the rights and obligations of their recipients. The rule would simply include requirements for the filing and processing of complaints concerning open and nondiscriminatory access on the OCS.

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

Regulatory Flexibility (RF) Act

MMS has determined that this proposed rule would not have a significant economic effect on a substantial number of small entities. While the rule would affect some small entities, the economic effects of the rule would not 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. Of the small companies to be affected by the proposed rule, almost all producers that ship production on or across the OCS are represented by the North American Industry Classification System (NAICS) code 211111 (crude petroleum and natural gas extraction). 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) and 486210 (natural gas transmission pipelines). Within this second group, approximately 180 of 220 are small companies.

This proposed 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 that 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 producers and shippers would benefit financially, and the public could benefit from conservation of reserves. On the other hand, pipelines 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 profitability of pipeline service providers fitting the small company criteria. However, any relief provided to a shipper would bring the rates to where they should have been under the OCSLA. Thus, there would not be a significant impact on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The proposed rule will not cause the business practices of any of these companies to change.

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.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

proposed rule would not change significantly the cost of transporting oil or gas on pipelines on the OCS. Indeed, the effect of the proposed rule should be to decrease transportation costs overall. Based on economic analysis:

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

b. This rule would 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 would 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.

Paperwork Reduction Act (PRA) of 1995

The proposed rule would require a new information collection (IC), and MMS is submitting an IC request to OMB for review and approval under section 3507(d) of the PRA. The title of the collection of information is ''30 CFR Part 291, Subpart A, Open and Nondiscriminatory Movement of Oil and Gas.'' 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 would not be 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 IC does not include questions of a sensitive nature. MMS will protect information considered proprietary according to the Federal Oil and Gas Royalty Management Act of 1982, as amended (30 U.S.C. 1733), the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2), as well as documents protected by the Trade Secrets Act, 18 U.S.C. 1905.

The rule proposes to implement 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. MMS intends to use the submitted information 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 also provided as an option.

Shippers submitting a complaint will be 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.

MMS estimates that the total annual reporting and recordkeeping ''hour'' burden for the rule is 255 hours. See the table below for a breakdown of requirements and hour burdens.

Citation 30 CFR 291	Reporting and recordkeeping requirement	Hour burden	Average number annual responses	Annual burden hours
105, 106, 108, 110	Submit complaint (with fee) to MMS and affected parties. Request confidential treatment and respond to MMS decision.	50	5	250
108(a)	Request alternative payment method	0.5	2	1
108(b)	Request waiver or reduction of fee	1	4	4
107	Submit answer to a complaint	Information required after an investigation is opened against a specific entity is exempt under the PRA (5 CFR 1320.4).		0
109	Submit required information for MMS to make a decision.			
113, 114(a)	Submit appeal on MMS final decision.			
Total Burden			11	255

The rule (§§ 291.106(b) and 108) also proposes 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.

As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting and cost burdens in the proposed rule. You may submit your comments either by e-mail (*OIRA_DOCKET@omb.eop.gov*) or by fax (202) 395–6566 directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior. Please provide MMS with a copy of your comments so that we can summarize all written comments and address them in the final rule. Refer to the Addresses section for MMS mailing information.

OMB has up to 60 days to approve or disapprove this collection of information but may respond after 30 days. Therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. However, MMS will consider all comments received during the comment period for this notice of proposed rulemaking.

MMS specifically solicits comments on the following questions:

1. Is the proposed collection of information necessary for MMS to properly perform its functions, and will it be useful?

2. Are the estimates of the burden hours of the proposed collection reasonable?

3. Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

4. Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

Federalism (Executive Order 13132)

According to Executive Order 13132, the proposed rule would not have significant Federalism effects. The proposed rule would not change the role or responsibilities of Federal, State, and local governmental entities. The proposed rule does not relate to the structure and role of States and would

not have direct, substantive, or significant effects on States. A Federalism Assessment is not required.

Takings (Executive Order 12630)

DOI certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. MMS has drafted this rule in plain language and has consulted with the Department of the Interior's Office of the Solicitor throughout the rulemaking process.

Unfunded Mandates Reform Act (UMRA) of 1995

This rule does not contain any unfunded mandates to State, local, or tribal governments, nor would it impose significant regulatory costs on the private sector. Anticipated costs to the private sector would be far below the $100 million threshold for any year that was established by UMRA.

National Environmental Policy Act (NEPA) of 1969

MMS has analyzed this rule according to the criteria of NEPA and 516 Departmental Manual 6, Appendix 10.4C, ''issuance and/or modification of regulations.'' MMS has reviewed the criteria of the Categorical Exclusion Review (CER) for this action and concluded: ''The proposed rulemaking does not represent an exception to the established criteria for categorical exclusion, and its impacts are limited to administrative, economic, or technological effects . . . . Therefore, preparation of an environmental document will not be required, and further documentation of this CER is not required.''

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. MMS invites your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the rule clearly stated?

2. Does the rule contain technical language or jargon that interferes with its clarity?

3. Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

4. Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the rule? What else can be done to make the rule easier to understand?

Send a copy of any comments on how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.* Please use ''Open and Nondiscriminatory Movement'' and the approved Regulatory Identification Number (RIN) 1010–AD17 as an identifier in your message.

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

In accordance with Executive Order 13211, this proposed regulation would not have a significant adverse effect on the nation's energy supply, distribution, or use. The regulations would provide for a complaint process to ensure open and nondiscriminatory access on the OCS. If implemented, the regulation would not impact significantly the way industry does business, and accordingly should not affect their approach to energy development or marketing. Nor would the proposed rule otherwise significantly impact energy supply, distribution, or use.

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

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

List of Subjects in 30 CFR Part 291

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

Dated: January 31, 2007.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, MMS proposes to add to title 30 of the Code of Federal Regulations a new Part 291 as follows:

TITLE 30—MINERAL RESOURCES

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

Sec.

Authority: 43 U.S.C. 1331 *et seq.*, 31 U.S.C. 9701, section 342 of the Energy Policy Act of 2005.

§ 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 Outer Continental Shelf (OCS) open and nondiscriminatory access to a pipeline;

(b) Explains the procedures MMS will employ to determine whether violations of the requirements of the Outer Continental Shelf Lands Act (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.

§ 291.101 What definitions apply to 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, pipeline end terminals, 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 copy of 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 [THE ACTUAL PHONE NUMBER WILL BE IN FINAL RULE].

(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 Alternative Dispute Resolution (ADR) either before or after you file a complaint. To make a request, call the MMS Hotline [THE ACTUAL PHONE NUMBER WILL BE IN FINAL RULE] 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 persons;

(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?

You may file a complaint 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.

§ 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 (MMS Director) 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 section 291.111 for confidentiality, serve the redacted copy and proposed form of a protective agreement on all persons named in the complaint.

§ 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 not consider 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 to the MMS Policy and Management Improvement Office by one of the following methods:

(1) By Electronic Funds Transfer using the Federal Reserve Communications System (FRCS) link to the Financial Service Fedwire Deposit System; or

(2) By check or an alternative method, only if you request and MMS authorizes use of this option before the date the processing fee is due.

(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 May 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 Ooffice 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:

(i) You must pay the entire processing fee within 30 days of the date you receive the decision; and

(ii) That decision 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 not consider your answer; or

(3) Make determinations adverse to you on 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 do I request that MMS treat the information I provide as confidential?

(a) Any person who provides documents under this subpart may claim that some or all of the information contained in a particular document is:

(1) Exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552;

(2) Information referred to in the Trade Secrets Act, 18 U.S.C. 1905; or

(3) Otherwise exempt by law from public disclosure.

(b) If you claim confidential treatment under paragraph (a) of this section, 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.

(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 5 days before its public disclosure.

§ 291.112 How will MMS decide whether a grantee or transporter has provided open and nondiscriminatory access?

MMS will not process a complaint unless the processing fee is paid or MMS grants a waiver. 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 remedy the denial of open access or nondiscriminatory access. 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 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 under this paragraph;

(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 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. A 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) If the MMS Director expressly makes a decision effective upon issuance or if the Assistant Secretary for Land and Minerals Management issues or concurs in a decision for the Department under this part, that decision is the final decision for the Department and you have exhausted your administrative remedies.

[FR Doc. E7–6197 Filed 4–5–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[USCG–2007–2737]

RIN 1625–AA08

Regattas and Marine Parades; Great Lakes Annual Marine Events

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend special local regulations for annual regattas and marine parades in the Captain of the Port Lake Michigan zone. This proposed rule is intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after regattas or marine parades. This proposed rule will establish restrictions upon, and control the movement of, vessels in a specified area immediately prior to, during, and immediately after regattas or marine parades.

DATES: Comments and related materials must reach the Coast Guard on or before June 5, 2007.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2007–2737 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *Delivery:* Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2007–2737), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time, click on ''Simple Search,'' enter the last five digits of the docket number for this rulemaking, and click on ''Search.'' You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

SUPPLEMENTARY INFORMATION:

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Coast Guard Sector Lake Michigan (SPW) at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This proposed rule will remove the specific entries from table 1 found in 33 CFR 100.901, Great Lakes annual marine events that apply to regattas and marines parades in the Captain of the Port Lake Michigan zone and list each regatta or marine parade as a subpart. This proposed rule will also add several