

## § 291.112

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

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

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

- (a) Makes findings of fact and conclusions of law; and
- (b) Renders a decision determining whether the complainant has been denied open and nondiscriminatory access.

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

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

- (a) Ordering grantees and transporters to provide open and nondiscriminatory access to the complainant;
- (b) Assessing civil penalties of up to \$10,000 per day under 30 CFR part 250, subpart N, for failure to comply with an MMS order to provide open access or nondiscriminatory access. Penalties will begin to accrue 60 days after the grantee or transporter receives the

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order to provide open and nondiscriminatory access if it has not provided such access by that time. However, if MMS determines that requiring the construction of facilities would be an appropriate remedy under the OCSLA, penalties will begin to accrue 10 days after conclusion of diligent construction of needed facilities or 60 days after the grantee or transporter receives the order to provide open and nondiscriminatory access, whichever is later, if it has not provided such access by that time;

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

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

### **§ 291.114 How do I appeal to the IBLA?**

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

### **§ 291.115 How do I exhaust administrative remedies?**

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

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

- (1) The MMS Director; or
- (2) The Assistant Secretary for Land and Minerals Management.