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

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

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

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

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

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

(a) Any person who provides documents under this part in response to a request by BSEE to inform a decision on whether open access or nondiscriminatory access was denied may claim that some or all of the information contained in a particular document is confidential. If you claim confidential treatment, then when you provide the document to BSEE 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 BSEE 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, BSEE may assume that there is no objection to public disclosure of the document in its entirety.

(b) In making data and information you submit available to the public, BSEE will not disclose documents exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552)

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and will follow the procedures set forth in the implementing regulations at 43 CFR part 2 to give submitters an opportunity to object to disclosure.

(c) BSEE retains the right to make the determination with regard to any claim of confidentiality. BSEE 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 BSEE follow in rendering a decision on whether a grantee or transporter has provided open and nondiscriminatory access?

BSEE will begin processing a complaint upon receipt of a processing fee or granting a waiver of the fee. The BSEE 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 BSEE take to remedy denial of open and nondiscriminatory access?

If the BSEE 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 BSEE will take to require the grantee or transporter to remedy the denial of open access or nondiscriminatory access. The remedies BSEE would require must be consistent with BSEE's statutory authority, regulations, and any limits thereon due to Congressional delegations to other agencies. Actions BSEE 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 a BSEE order to provide open access or nondiscriminatory access. Penalties will begin to accrue 60 days after the

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grantee or transporter receives the order to provide open and nondiscriminatory access if it has not provided such access by that time. However, if BSEE 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 de-

cision of the BSEE 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 BSEE 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 BSEE 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 BSEE Director; or
- (2) The Assistant Secretary for Land and Minerals Management.

PARTS 292-299 [RESERVED]