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Title 30 – Mineral Resources

Chapter II – Bureau of Safety and Environmental Enforcement, Department of the Interior **Subchapter C – Appeals**

Part 291 Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the Outer Continental Shelf Lands Act

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

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

Source: 76 FR 64462, Oct. 18, 2011, unless otherwise noted.

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

- (a) The Office of Management and Budget (OMB) has approved the information collection requirements in this part under 44 U.S.C. 3501 *et seq.*, and assigned OMB Control Number 1014-0012.
- (b) An agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.
- (c) We use the information collected to determine whether or not the shipper has been denied open and nondiscriminatory access to Outer Continental Shelf (OCS) pipelines as sections of 5(e) and (f) of the OCS Lands Act (OCSLA) require.
- (d) Respondents are companies that ship or transport oil and gas production across the OCS. Responses are required to obtain or retain benefits. We will protect information considered proprietary under applicable law.
- (e) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Sterling, VA 20166.

[76 FR 64462, Oct. 18, 2011, as amended at 81 FR 36154, June 6, 2016]

§ 291.100 What is the purpose of this part?

This part:

- (a) Explains the procedures for filing a complaint with the Director, Bureau of Safety and Environmental Enforcement (BSEE) alleging that a grantee or transporter has denied a shipper of production from the OCS open and nondiscriminatory access to a pipeline;
- (b) Explains the procedures BSEE will employ to determine whether violations of the requirements of the OCSLA have occurred, and to remedy any violations; and
- (c) Provides for alternative informal means of resolving pipeline access disputes through either Hotline-assisted procedures or alternative dispute resolution (ADR).

§ 291.101 What definitions apply to this part?

As used in this part:

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

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

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

Grantee means any person to whom BSEE 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 BSEE 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 BSEE.

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

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

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

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

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

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

§ 291.102 May I call the BSEE 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 BSEE Pipeline Open Access Hotline at 1-888-232-1713.

- (a) BSEE Hotline staff will informally seek information needed to resolve the dispute. BSEE 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 BSEE or FERC in docketed proceedings.
- (b) BSEE Hotline staff may provide information to you and give informal oral advice. The advice given is not binding on BSEE, the Department of the Interior (DOI), or any other person.
- (c) To the extent permitted by law, the BSEE Hotline staff will treat all information it obtains as non-public and confidential.
- (d) You may call the BSEE Hotline anonymously.
- (e) If you contact the BSEE Hotline, you may file a complaint under this part if discussions assisted by BSEE Hotline staff are unsuccessful at resolving the matter.
- (f) You may terminate use of the BSEE Hotline procedure at any time.

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

You may ask to use ADR either before or after you file a complaint. To make a request, call the BSEE at 1-888-232-1713 or write to us at the following address: Director, Bureau of Safety and Environmental Enforcement, Attention: Office of Policy and Analysis, 1849 C Street, NW., Mail Stop 5438, Washington, DC 20240-0001.

- (a) You may request that ADR be administered by:
 - (1) A contracted ADR provider agreed to by all parties;
 - (2) The Department's Office of Collaborative Action and Dispute Resolution (CADR); or
 - (3) BSEE 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, BSEE is not a party in an ADR proceeding.

[76 FR 64462, Oct. 18, 2011, as amended at 81 FR 36154, June 6, 2016]

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

- (a) You may file a complaint under this subpart if you are a shipper and you believe that you have been denied open and nondiscriminatory access to an OCSLA pipeline that is not a FERC pipeline.
- (b) Any person that believes its interests may be affected by precedents established by adjudication of complaints under this rule may submit a brief to BSEE. The brief must be served following the procedure set out in § 291.107. After considering the brief, it is within BSEE's discretion as to whether BSEE may:
 - (1) Address the brief in its decision;
 - (2) Not address the brief in its decision; or
 - (3) Include the submitter of the brief in the proceeding as a party.

§ 291.105 What must a complaint contain?

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

- (a) Clearly identify the action or inaction which is alleged to violate 43 U.S.C. 1334(e) or (f)(1)(A);
- (b) Explain how the action or inaction violates 43 U.S.C. 1334(e) or (f)(1)(A);
- (c) Explain how the action or inaction affects your interests, including practical, operational, or other non-financial impacts;
- (d) Estimate any financial impact or burden;
- (e) State the specific relief or remedy requested; and
- (f) Include all documents that support the facts in your complaint including, but not limited to, contracts and any affidavits that may be necessary to support particular factual allegations.

§ 291.106 How do I file a complaint?

To file a complaint under this part, you must:

- (a) File your complaint with the Director, Bureau of Safety and Environmental Enforcement at the following address: Director, Bureau of Safety and Environmental Enforcement, Attention: Office of Policy and Analysis, 1849 C Street, NW., Mail Stop 5438, Washington, DC 20240-0001; and
- (b) Include a nonrefundable processing fee of \$7,500 under § 291.108(a) or a request for reduction or waiver of the fee under § 291.109(a); and
- (c) Serve your complaint on all persons named in the complaint. If you make a claim under § 291.111 for confidentiality, serve the redacted copy and proposed form of a protective agreement on all persons named in the complaint.
- (d) Complaints shall not be filed later than 2 years from the time of the alleged access denial. If the complaint is filed later than 2 years from the time of the alleged access denial, the BSEE Director will not consider the complaint and the case will be closed.

[76 FR 64462, Oct. 18, 2011, as amended at 81 FR 36154, June 6, 2016]

§ 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, BSEE may disregard your answer. We consider your answer to be filed when the BSEE Director receives it at the following address: Director, Bureau of Safety and Environmental Enforcement, Attention: Office of Policy and Analysis, 1849 C Street, NW., Mail Stop 5438, 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 BSEE docket number (you may obtain the docket number by calling the Office of Policy and Analysis at (202) 208-1901);
 - (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.

[76 FR 64462, Oct. 18, 2011, as amended at 81 FR 36154, June 6, 2016]

§ 291.108 How do I pay the processing fee?

- (a) You must pay the processing fee electronically through the Fees for Services page on the BSEE Web site at <http://www.bsee.gov>, and you must include a copy of the *Pay.gov* confirmation receipt page with your complaint.
- (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.

[76 FR 64462, Oct. 18, 2011, as amended at 81 FR 36154, June 6, 2016]

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

- (a) BSEE 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 BSEE Office of Policy and Analysis 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 BSEE Office of Policy and Analysis will send you a written decision granting or denying your request for a fee waiver or a fee reduction.
 - (1) If we grant your request for a fee reduction, you must pay the reduced processing fee within 30 days of the date you receive our decision.
 - (2) If we deny your request, you must pay the entire processing fee within 30 days of the date you receive the decision.
 - (3) BSEE's decision granting or denying a fee waiver or reduction is final for the Department.

[76 FR 64462, Oct. 18, 2011, as amended at 81 FR 36154, June 6, 2016]

§ 291.110 Who may BSEE require to produce information?

- (a) BSEE may require any lessee, operator of a lease or unit, shipper, grantee, or transporter to provide information that BSEE 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 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) 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 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 decision 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.