



[4335-30]

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR-2011-0008; DS63644000 DR2000000.CH7000 178D0102R2]

Agency Information Collection Activities: Suspensions Pending Appeal and Bonding

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), ONRR is inviting comments on the renewal of a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. This ICR covers the paperwork requirements in the regulations under 30 CFR 1243.

DATES: Submit written comments on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this ICR to ONRR by using one of the following three methods: (Please use “ICR 1012-0006” as an identifier in your comment).

1. Electronically go to <http://www.regulations.gov>. In the entry titled “Enter Keyword or ID,” enter “ONRR-2012-0006” and then click “Search.” Follow the instructions to submit public comments. ONRR will post all comments.
2. Email comments to Mr. Luis Aguilar, Regulatory Specialist, at Luis.Aguilar@onrr.gov.
3. Hand-carry or mail comments, using an overnight courier service, to ONRR. Our courier address is Building 53, Entrance E-20, Denver Federal Center, West 6th

Ave. and Kipling St., Denver, Colorado 80225. Visitor parking is available near entrance E-20, with a phone to request entry. Call Mr. Armando Salazar at (303) 231-3585 or Ms. Janet Giron at (303) 231-3088 to gain entrance.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Ms. Kimberly Werner, Office of Enforcement (OE), ONRR, at (303) 231-3801 or email to *Kimberly.Werner@onrr.gov*. For other questions, contact Mr. Luis Aguilar, at (303) 231-3418, or email to *Luis.Aguilar@onrr.gov*. You may also contact Mr. Aguilar to obtain copies (free of charge) of (1) the ICR and (2) the regulations that require the subject collection of information. You may also review the information collection request online at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION:

Abstract: The Secretary of the United States Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). Under various laws, the Secretary's responsibility is to manage mineral resources production on Federal and Indian lands and the OCS, collect the royalties and other mineral revenues due, and distribute the funds collected. The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. ONRR performs the minerals revenue management functions for the Secretary and assists the Secretary in carrying out the Department's trust responsibility for Indian lands. We have posted those laws pertaining to mineral leases on Federal and Indian lands and the OSC at

http://www.onrr.gov/Laws_R_D/PubLaws/default.htm.

I. General Information

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share in an amount or value of production from the leased lands. The lessee is required to report various kinds of information to the lessor relative to the disposition of the minerals, such as developing, transporting, processing, purchasing, or selling such minerals. The information collected includes data necessary to ensure that production is accurately valued and that royalties are appropriately paid.

If ONRR determines that a lessee has not properly reported or paid, we may issue an order to pay, a Notice of Noncompliance, or a Civil Penalty Notice requiring correct reporting or payment. Lessees then have a right to appeal ONRR's determination(s).

II. Information Collection

Regulations at 30 CFR part 1243 govern the submission of appropriate surety instruments to suspend compliance with orders or decisions and to stay the accrual of civil penalties (if the Office of Hearings and Appeals grants a lessee's petition to stay accrual of civil penalties), pending administrative appeal for Federal and Indian leases. For Federal oil and gas leases, under 30 U.S.C. 1724(l) and its implementing regulations in 30 CFR part 1243, appellants who are requesting a suspension without providing a surety must submit information to demonstrate financial solvency. This ICR covers the burden hours associated with submitting financial statements or surety instruments required to stay an ONRR order, decision, or accrual of civil penalties.

Stay of Payment Pending Appeal

Title 30 CFR 1243.1 states that lessees or recipients of ONRR orders may suspend compliance with an order if they appeal under 30 CFR part 1290. Pending appeal, ONRR

may suspend the payment requirement if the appellant submits a formal agreement of payment in case of default such as a bond or other surety; for Federal oil and gas leases, the appellant may demonstrate financial solvency. If the Office of Hearings and Appeals grants a lessee's, or other recipient of a Notice of Noncompliance or Civil Penalty Notice, request to stay the accrual of civil penalties under 30 CFR 1241.55(b)(2) and 1241.63(b)(2), the lessee or other recipient must post a bond or other surety; for Federal oil and gas leases, the appellant may demonstrate financial solvency.

ONRR accepts the following surety types: form ONRR-4435, Administrative Appeal Bond; form ONRR-4436, Letter of Credit; form ONRR-4437, Assignment of Certificate of Deposit; Self-bonding; and U.S. Treasury Securities.

When one of the surety types is selected and put in place, appellants must maintain the surety until completion of the appeal. If the appeal is decided in favor of the appellant, ONRR returns the surety to the appellant. If the appeal is decided in favor of ONRR, then we will take action to collect the total amount due or draw down on the surety. We draw down on a surety if the appellant fails to comply with requirements relating to amount due, timeframe, or surety submission or resubmission. Whenever ONRR must draw down on a surety, we must draw down the total amount due, which is defined as unpaid principal plus the interest accrued to the projected receipt date of the surety payment. Appellants may refer to the Surety Instrument Posting Instructions, which are on our web site at <http://www.onrr.gov/compliance/appeals.htm>.

Forms and Other Surety Types

Form ONRR-4435, Administrative Appeal Bond

Appellants may file Form ONRR-4435, Administrative Appeal Bond, which ONRR uses to secure the financial interests of the public and Indian lessors during the entire administrative and judicial appeal process. Under 30 CFR 1243.4, appellants are required to submit their contact and surety amount information on the bond to obtain the benefit of suspension of an obligation to comply with an order. The bond must be issued by a qualified surety company that the U.S. Department of the Treasury approves (see Department of the Treasury Circular No. 570, revised periodically in the *Federal Register*). The Director for ONRR or the delegated bond-approving officer maintains these bonds in a secure facility. After the appeal has concluded, ONRR may release and return the bond to the appellant or collect payment on the bond. If collection is necessary for a remaining balance, ONRR will issue a demand for payment to the surety company with a notice to the appellant. We will also include all interest accrued on the affected receivable.

Form ONRR-4436, Letter of Credit

Appellants may choose to file form ONRR-4436, Letter of Credit, with no modifications. Requirements at 30 CFR 1243.4 continues to apply. The Director or the delegated bond-approving officer maintains the Letter of Credit (LOC) in a secure facility. The appellant is responsible for verifying that the bank provides a current Fitch rating to ONRR. After the appeal has been concluded, we may release and return the LOC to the appellant or collect payment on the LOC. If collection is necessary for a remaining balance, we will issue a demand for payment, which includes all interest assessed on the affected receivable, to the bank with a notice to the appellant.

Form ONRR-4437, Assignment of Certificate of Deposit

Appellants may choose to secure a debt by requesting to use a Certificate of Deposit (CD) from a bank with the required minimum rating and submitting form ONRR-4437, Assignment of Certificate of Deposit. Requirements at 30 CFR 1243.4 continues to apply. Appellants must file the request with ONRR prior to the invoice due date. We will accept a book-entry CD that explicitly assigns the CD to the Director. If collection of the CD is necessary for an unpaid balance, we will return unused CD funds to the appellant after total settlement of the appealed issues, including applicable interest charges.

Self-bonding

For Federal oil and gas leases, regulations at 30 CFR 1243.201, provide that no surety instrument is required when a person representing the appellant periodically demonstrates, to the satisfaction of ONRR, that the guarantor or appellant is financially solvent or otherwise able to pay the obligation. Appellants must submit a written request to “self-bond” every time a new appeal is filed. To evaluate the financial solvency and exemption from requirements of appellants to maintain a surety related to an appeal, ONRR requires appellants to submit a consolidated balance sheet, subject to annual audit. In some cases, we also require copies of the most recent tax returns (up to 3 years) filed by appellants.

In addition, appellants must annually submit financial statements, subject to annual audit, to support their net worth. ONRR uses the consolidated balance sheet or business information supplied to evaluate the financial solvency of a lessee, designee, or payor seeking a stay of payment obligation pending review. If appellants do not have a consolidated balance sheet documenting their net worth or if they do not meet the \$300 million net worth requirement, ONRR selects a business information or credit reporting

service to provide information concerning an appellant's financial solvency. ONRR charges the appellant a \$50 fee each time we need to review data from a business information or credit reporting service. The fee covers our costs in determining an appellant's financial solvency.

U.S. Treasury Securities

Appellants may choose to secure their debts by requesting to use a U.S. Treasury Security (TS). Appellants must file the letter of request with ONRR prior to the invoice due date. The TS must be a U.S. Treasury note or bond with maturity equal to or greater than 1 year. The TS must equal 120 percent of the appealed amount plus 1 year of estimated interest (necessary to protect ONRR against interest rate fluctuations). ONRR only accepts book-entry TS.

III. OMB Approval

We are requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge the duties of the office and also may result in loss of royalty and other payments. Proprietary information submitted to ONRR under this collection is protected, and there are no questions of a sensitive nature included in this information collection. A response is mandatory in order to suspend compliance with an order pending appeal.

IV. Data

Title: Suspensions Pending Appeal and Bonding.

OMB Control Number: 1012-0006.

Bureau Form Numbers: forms ONRR-4435, ONRR-4436, and ONRR-4437.

Frequency: Annually and on occasion.

Estimated Number and Description of Respondents: 105 Federal or Indian appellants.

Estimated Annual Reporting and Recordkeeping “Hour” Burden: 210 hours.

The following table shows the estimated annual burden hours by CFR section and paragraph. We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary.

Respondents’ Estimated Annual Burden Hours

Citation 30 CFR Part 1243	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses	Annual Burden Hours
1243.4(a)(1); 1243.6; 1243.7(a); 1243.8(a)(2) and (b)(2); 1243.101(b); 1243.202(c)	How do I suspend compliance with an order? (a) If you timely appeal an order, and if that order or portion of that order: (1) Requires you to make a payment, and you want to suspend compliance with that order, you must post a bond or other surety instrument or demonstrate financial solvency * * *.	2 hours	40 (surety instruments: Forms ONRR-4435, ONRR-4436, ONRR-4437, or TS)	80
1243.200(a) and (b); 1243.201 (c)(1), (c)(2)(i) and (c)(2)(ii) and (d)(2)	How do I demonstrate financial solvency? (a) To demonstrate financial solvency under this part, you must submit an audited consolidated balance sheet, and, if requested by the ONRR bond-approving officer, up to 3 years of tax returns to the ONRR, * * *. (b) You must submit an audited consolidated balance sheet annually, and, if requested, additional annual tax returns on the date ONRR first determined that you demonstrated financial solvency as long as you have active appeals, or whenever ONRR requests. * * *	2 hours	65 self-bonding submissions	130
TOTAL BURDEN			105	210

Estimated Annual Reporting and Recordkeeping “Non-hour” Cost Burden: There are no additional recordkeeping costs associated with this information collection. However, ONRR estimates 5 appellants per year will pay a \$50 fee to obtain credit data from a

business information or credit reporting service, which is a total “non-hour” cost burden of \$250 per year (5 appellants per year x \$50 = \$250).

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

IV. Request for Comments

Comments: Section 3506(c)(2)(A) of the PRA requires each agency to “* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.”

Agencies must specifically solicit comments to: (1) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (2) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (3) enhance the quality, usefulness, and clarity of the information that ONRR collects; and (4) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting “non-hour cost” burden to respondents or record-keepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods that you use to estimate (1) major cost factors, including system and technology acquisition, (2) expected useful life of capital equipment, (3) discount rate(s), and (4) the period over

which you incur costs. Capital and startup costs include, among other items, computers and software that you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Federal government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. We also will post the ICR at http://www.onrr.gov/Laws_R_D/FRNotices/ICR0122.htm.

Public Comment Policy: ONRR will post all comments, including names and addresses of respondents at <http://www.regulations.gov>. Before including Personally Identifiable Information (PII), such as your address, phone number, email address, or other personal information in your comment(s), you should be aware that your entire comment (including PII) may be made available to the public at any time. While you may ask us, in your comment, to withhold PII from public view, we cannot guarantee that we will be able to do so.

ONRR Information Collection Coordinator: Jeffrey Parrillo (202) 208-7072

Authority

The authorities for this action are the Mineral Leasing Act of 1920 (30 U.S.C. 192), Outer Continental Shelf Lands Act (43 U.S.C. 1353), Indian Mineral Development Act of 1982 (Pub. L. 97-382—Dec. 22, 1982), and the Paperwork Reduction Act of 1995 (44

U.S.C. 3501 *et seq.*).

Gregory J. Gould,

Director,

Office of Natural Resources Revenue.

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