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DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR-2011-0008; DS63644000 DR2000000.CH7000 189D0102R2;

OMB Control Number 1012-0006]

Agency Information Collection Activities: Submission to the Office of Management and Budget for Review and Approval; Suspensions Pending Appeal and Bonding

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice of extension.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we, the Office of Natural Resources Revenue (ONRR), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION DATE IN THE FEDERAL REGISTER]** for the assurance of consideration.

ADDRESSES: You may submit your written comments on this ICR to the Office of Management and Budget's Desk Officer for the Department of the Interior by email to OIRA_Submission@omb.eop.gov; or via facsimile to (202) 395-5806. Please also mail a copy of your comments to Mr. Luis Aguilar, Regulatory Specialist, P.O. Box 25165, MS 64400, Denver, Colorado 80225-0165, or by email to luis.aguilar@onrr.gov. Please reference "OMB Control Number 1012-0006" in your comments.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Ms. Kimberly Werner, Office of Enforcement and Appeals (OEA), 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, at no cost, of (1) the ICR, (2) any associated forms, and (3) the regulations that require us to collect the information. You may view the ICR at <http://www.reginfo.gov/public/do/PRAMain> and select “Information Collection Review,” then select “Department of the Interior” in the drop-down box under “Currently Under Review.”

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public’s reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format. We published a notice, with a 60-day public comment period soliciting comments on this collection of information, in the FEDERAL REGISTER on June 19, 2017 (82 FR 27868). We received the following comments in response to the notice: “We respectfully offer the following scenario on this process from start to finish: (1) Upon demand letter from the ONRR, Fieldwood Energy responds with correspondence requesting the ONRR accept Area–Wide Bonds currently filed with the BOEM for our various entities, which incidentally total excess of \$23 million, to secure the nominal Administrative Appeals in lieu of separate specific Appeal bonds. It should be noted that none of the monetary

demands from ONRR have come close to exceeding \$1 million; (2) In the event, the use of and Area-Wide bond is rejected by ONRR, Fieldwood then must approach the commercial surety market to negotiate terms with prospective sureties for the amount required by ONRR – this may entail the production of recent financial information as well as operational plans on Fieldwood leading up to several calls and discussions with the surety. This may also require the establishment of new relationships with sureties who do not know our company – all of which is time consuming and not done overnight; and (3) Ultimately, Fieldwood obtains a surety bond and files it with your office. So, it is quite customary for this process to take days and not several hours of our staff’s time.

“The two burden hours for the majority of the typical requests received are adequate. On some occasions, we might have to have a little more internal dialogue or research if we do not have all the information for the appeal upfront. Generally, those requests fall in the 2–4 hour burden. For the most part, however, 2 hours is generally the amount of burden hours needed. There again, for clarification, this is the internal burden time for our staff. It would take generally 48–72 hours for our surety to turn around the request.

“For WPX who has an existing surety bond line, 2 hours are probably sufficient labor hours. However, for companies that do not have bond line or have used up their capacity, the amount of time spent securing the security bond could take much longer.”

Once again, we are soliciting comments on this ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of ONRR; (2) will this information be processed and used in a timely manner; (3) is the estimate of the burden accurate; (4) how might ONRR enhance the quality, usefulness, and clarity of the information collected;

and (5) how might ONRR minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your Personally Identifiable Information (PII), such as your address, phone number, email address, or other personal identifying 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 your PII from public view, we cannot guarantee that we will be able to do so.

Abstract: The Secretary of the United States Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands and the Outer Continental Shelf (OCS). Under various laws, the Secretary's responsibilities are to manage mineral resources production from 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 input from Indian beneficiaries. ONRR performs the royalty management functions and assists the Secretary in carrying out the Department's responsibility for Indian lands. We have posted those laws pertaining to mineral leases on Federal and Indian lands and the OCS at http://onrr.gov/Laws_R_D/PubLaws/default.htm

I. General Information

If ONRR determines that a lessee has not properly reported or paid royalties and other mineral revenues, we may issue an order to pay additional royalties, a Notice of Noncompliance, or a Civil Penalty Notice requiring correct reporting or payment. Lessees then have a right to appeal ONRR determinations.

Implementing regulations at 30 CFR part 1243 govern the suspension of 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 leases. These regulations require an appellant to submit information demonstrating financial solvency in lieu of providing a surety. For those appellants who are not financially solvent or for appeals involving Indian leases, ONRR requires appellants to post a surety instrument to secure the financial interest of the public and Indian lessors during the entire administrative or judicial appeal process. This ICR covers the burden hours that appellants incur when submitting the financial statements or surety instruments, subject to annual audit, that are required to stay an ONRR order, decision, or accrual of civil penalties.

II. Information Collections

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, or for Federal oil and gas leases, 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 an appellant selects and puts one of the surety types in place, the appellant 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 the 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 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 must submit their contact and surety amount information on the bond to obtain the benefit of suspension of an obligation to comply with an order. A surety company that the U.S. Department of the Treasury approves (see Department of the Treasury Circular No. 570, as revised periodically in the *Federal Register*) must issue the bond. The ONRR Director or the ONRR-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 also will include all interest accrued on the affected bill.

Form ONRR-4436 [Letter of Credit]

Appellants may choose to file form ONRR-4436, Letter of Credit (LOC), with no modifications. Requirements at 30 CFR 1243.4 continues to apply. The ONRR Director or the ONRR-delegated bond-approving officer maintains the 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, ONRR 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 bill, to the bank with a notice to the appellant.

Form ONRR-4437 [Assignment of Certificate of Deposit]

Appellants may choose to secure a debt using a Certificate of Deposit (CD) from a bank with the required minimum Fitch rating and by submitting form ONRR-4437, Assignment of Certificate of Deposit. 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 provides 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) that appellants file.

In addition, appellants must annually submit financial statements, subject to 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. We charge 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 a book-entry TS.

III. OMB Approval

The information we collect under this ICR is essential in order to require response from appellants to suspend compliance with an order pending appeal.

We are requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge fiduciary duties and also may result in loss of royalty and other payments. ONRR protects the proprietary information received and does not collect items of a sensitive nature in this ICR.

IV. Data

Title: Suspensions Pending Appeal and Bonding, 30 CFR Part 1243

OMB Control Number: 1012-0006.

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

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses.

Total Estimated Number of Annual Respondents: 105 Federal or Indian appellants.

Total Estimated Number of Annual Responses: 105.

Estimated Completion Time per Response: 2 hours.

Total Estimated Number of Annual Burden Hours: 210 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: Annually and on occasion.

Total Estimated Annual Nonhour Burden Cost: There are no additional recordkeeping costs associated with this ICR. However, ONRR estimates that five 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).

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

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)	<p>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 * * *.</p>	2 hours	40 (Forms ONRR-4435, ONRR-4436, ONRR-4437; or TS)	80
1243.6	<p>When must I or another person meet the bonding or financial solvency requirements under this part? If you must meet the bonding or financial solvency requirements under §1243.4(a)(1), or if another person is meeting your bonding or financial solvency requirements, then either you or the other person must post a bond or other surety instrument or demonstrate financial solvency within 60 days after you receive the order or the Notice of Order.</p>	Burden hours covered under §1243.4(a)(1).		
1243.7(a)	<p>What must a person do when posting a bond or other surety instrument or demonstrating financial solvency on behalf of an appellant? If you assume an appellant’s responsibility to post a bond or other surety instrument or demonstrate financial solvency * * * (a) Must notify ONRR in writing * * * that you are assuming the appellant’s responsibility * * *.</p>	Burden hours covered under §1243.4(a)(1).		

Citation 30 CFR Part 1243	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses	Annual Burden Hours
1243.8(a)(2) and (b)(2)	<p>When will ONRR suspend my obligation to comply with an order?</p> <p>(a) <i>Federal leases.</i> * * * (2) If the amount under appeal is \$10,000 or more, ONRR will suspend your obligation to comply with that order if you:</p> <p>(i) Submit an ONRR-specified surety instrument under subpart B of this part within a time period ONRR prescribes; or</p> <p>(ii) Demonstrate financial solvency under subpart C.</p> <p>(b) <i>Indian leases.</i> * * * (2) If the amount under appeal is \$1,000 or more, ONRR will suspend your obligation to comply with that order if you submit an ONRR-specified surety instrument under subpart B of this part within a time period ONRR prescribes.</p>	Burden hours covered under §1243.4(a)(1).		
1243.101(b)	<p>How will ONRR determine the amount of my bond or other surety instrument?</p> <p>* * * (b) If your appeal is not decided within 1 year from the filing date, you must increase the surety amount to cover additional estimated interest for another 1-year period. You must continue to do this annually * * *.</p>	Burden hours covered under §1243.4(a)(1).		
1243.200(a) and (b)	<p>How do I demonstrate financial solvency?</p> <p>(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, * * *.</p> <p>(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. * * *</p>	2 hours	65 (Self-bonding submissions)	130

Citation 30 CFR Part 1243	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses	Annual Burden Hours
1243.201 (c)(1), (c)(2)(i) and (c)(2)(ii) and (d)(2)	<p>How will ONRR determine if I am financially solvent?</p> <p>*** (c) If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is less than \$300 million, you must submit ***:</p> <p>(1) A written request asking us to consult a business-information, or credit-reporting service or program to determine your financial solvency; and</p> <p>(2) A nonrefundable \$50 processing fee:</p> <p>(i) You must pay the processing fee ***.</p> <p>(ii) You must submit the fee with your request *** and then annually on the date we first determined that you demonstrated financial solvency, as long as you are not able to demonstrate financial solvency *** and you have active appeals.</p> <p>(d)*** (2) For us to consider you financially solvent, the business-information or credit-reporting service or program must demonstrate your degree of risk as low to moderate: ***</p>	Burden hours covered under §§1243.4(a)(1) and 1243.200(a) and (b).		
1243.202(c)	<p>When will ONRR monitor my financial solvency?</p> <p>*** (c) If our bond-approving officer determines that you are no longer financially solvent, you must post a bond or other ONRR-specified surety instrument under subpart B.</p>	Burden hours covered under §1243.4(a)(1).		
TOTAL BURDEN			105	210

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.

ONRR Information Collection Clearance Officer: Luis Aguilar (303) 231-3418.

Authority

The authorities for this action are the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1337) and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*).

Gregory J. Gould,

Director for Office of Natural Resources Revenue.

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