



[4335-30]

**DEPARTMENT OF THE INTERIOR**

**Office of Natural Resources Revenue**

**[Docket No. ONRR-2011-0008; DS63644000 DR2000000.CH7000 190D1113RT;**

**OMB Control Number 1012-0006]**

**Agency Information Collection Activities: Suspensions Pending Appeal and Bonding**

**AGENCY:** Office of the Secretary, Office of Natural Resources Revenue, Interior.

**ACTION:** Notice of information collection; request for comment.

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**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the Office of Natural Resources Revenue (ONRR) is proposing to renew an information collection. Through this Information Collection Renewal (ICR), ONRR seeks renewed authority to collect information related to the paperwork requirements under 30 CFR part 1243 to post a surety or bond, or demonstrate financial solvency.

**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 through 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 to ONRR by using an overnight courier service.

Our courier address is Building 85, MS 64400B, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

**FOR FURTHER INFORMATION CONTACT:** For questions on technical issues, contact Ms. Kimberly Werner, Financial Services, 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 of the ICR and the regulations requiring ONRR to collect the information. There is no cost to request copies of these documents.

**SUPPLEMENTARY INFORMATION:** In accordance with the PRA, ONRR provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continued information collections. This helps ONRR assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand ONRR's information collection requirements and provide the requested data in the desired format.

ONRR publishes this notice to elicit comments on the proposed ICR. ONRR is especially interested in public comment addressing the following issues mentioned in the Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(1): (1) Is the collection necessary to perform the proper functions of ONRR; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might ONRR enhance the quality, utility, and clarity of the information to be 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. ONRR will post all comments, including names and addresses of respondents at <http://www.regulations.gov>. ONRR will include or summarize each comment in our request to OMB to approve this ICR. 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 can ask ONRR, in your comment, to withhold your PII from public view, ONRR cannot guarantee that it will be able to do so. ONRR will post the ICR at [https://www.onrr.gov/Laws\\_R\\_D/FRNotices/ICR0122.htm](https://www.onrr.gov/Laws_R_D/FRNotices/ICR0122.htm).

### **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 (1) manage mineral resource production, (2) collect royalties and other mineral revenues due, and (3) disburse the funds collected. ONRR posted the laws pertaining to mineral leases on Federal and Indian lands and the OCS at [http://www.onrr.gov/Laws\\_R\\_D/PubLaws/default.htm](http://www.onrr.gov/Laws_R_D/PubLaws/default.htm).

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.

### *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 or its designee must report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling such minerals.

If ONRR determines that a lessee did not properly report or pay, it may issue orders, notices of noncompliance, and civil penalty notices to compel corrective reporting, payment, or both. Lessees have a right to appeal ONRR's determinations.

### *Information Collections*

Regulations under 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 under 30 CFR part 1243, an appellant 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 and 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 the case of default, such as a bond or other surety; for Federal oil and gas leases, the appellant may alternatively 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 alternatively 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 one of the surety types and puts it in place, the appellant must maintain the surety until the appeal's completion. If the appeal is decided in favor of the appellant, ONRR will return the surety to the appellant. If the appeal is decided in favor of ONRR, then ONRR will take action to collect the total amount due or draw down on the surety. ONRR will 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 draws down on a surety, it reduces the total amount due, which is defined as the unpaid principal plus the interest accrued to the projected receipt date of the surety payment. Appellants may refer to the Surety Instrument Posting Instructions, available on our web site at <http://www.onrr.gov/compliance/appeals.htm>.

## *Forms and Other Surety Types*

### *A. Form ONRR-4435, Administrative Appeal Bond*

An appellant 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 processes. Under 30 CFR 1243.4, an appellant is required to submit its 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*). ONRR's Director, or the delegated bond-approving officer, maintains the bonds in a secure facility. After an appeal's conclusion, 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. ONRR will also include all interest accrued on the affected receivable.

### *B. Form ONRR-4436, Letter of Credit*

An appellant may choose to file form ONRR-4436, Letter of Credit, with no modifications. Requirements under 30 CFR 1243.4 continue to apply. ONRR's 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's conclusion, ONRR may release and return the LOC to the appellant or collect payment on the LOC. If collection is necessary for a remaining

balance, ONRR will issue a demand for payment that includes the principal amount plus the interest assessed on the receivable, to the bank with a notice to the appellant.

*C. Form ONRR-4437, Assignment of Certificate of Deposit*

An appellant 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 under 30 CFR 1243.4 continue to apply. The appellant must file the request with ONRR prior to the invoice due date. ONRR will accept a book-entry CD that explicitly assigns the CD to ONRR's Director. If collection of the CD is necessary for an unpaid balance, ONRR will return unused CD funds to the appellant after total settlement of the appealed issues, including applicable interest charges.

*D. Self-bonding*

For Federal oil and gas leases, regulations under 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. The appellant 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, ONRR also requires copies of the most recent tax returns (up to three years) filed by the appellant.

In addition, an appellant must annually submit financial statements, subject to annual audit, to support its 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 the appellant does not have a consolidated balance sheet documenting its net worth, or if it does not meet the \$300 million net worth requirement, ONRR selects a business information or credit reporting service to provide information concerning the appellant's financial solvency. ONRR charges the appellant a \$50 fee each time it reviews data from a business information or credit reporting service. The fee covers ONRR's cost to determine an appellant's financial solvency.

#### *E. U.S. Treasury Securities*

An appellant may choose to secure its debts by requesting to use a U.S. Treasury Security (TS). The appellant 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 one 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.

#### **OMB Approval**

ONRR is 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 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.

#### **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. ONRR has not included in its estimates certain requirements performed in the normal course of business and considered usual and customary.

**Respondents’ Estimated Annual Burden Hours**

| <b>Citation<br/>30 CFR<br/>Part 1243</b>                                                             | <b>Reporting and Recordkeeping<br/>Requirement</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <b>Hour<br/>Burden</b> | <b>Average<br/>Number of<br/>Annual<br/>Responses</b>                                   | <b>Annual<br/>Burden<br/>Hours</b> |
|------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|-----------------------------------------------------------------------------------------|------------------------------------|
| 1243.4(a)(1);<br>1243.6;<br>1243.7(a);<br>1243.8(a)(2)<br>and (b)(2);<br>1243.101(b);<br>1243.202(c) | <b>How do I suspend compliance with an order?</b><br>(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<br>(surety instruments:<br>Forms<br>ONRR-4435,<br>ONRR-4436,<br>ONRR-4437,<br>or TS) | 80                                 |
| 1243.200(a)<br>and (b);<br>1243.201<br>(c)(1),<br>(c)(2)(i) and<br>(c)(2)(ii)<br>and (d)(2)          | <b>How do I demonstrate financial solvency?</b><br>(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, * * *.<br>(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                                |
| <b>TOTAL BURDEN</b>                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                        | 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.

### **Request for 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.

ONRR will summarize written responses to this notice and address them in its ICR submission for OMB approval, including appropriate adjustments to the estimated burden. ONRR will provide a copy of the ICR to you without charge upon request.

ONRR also will post the ICR at

*[http://www.onrr.gov/Laws\\_R\\_D/FRNotices/ICR0122.htm](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 ONRR in your comment to withhold PII from public view, ONRR cannot guarantee that it will be able to do so.

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.

(Authority: Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*)

**Kimbra G. Davis,**

*Director,*

*Office of Natural Resources Revenue.*

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