



## **DEPARTMENT OF THE INTERIOR**

### **Office of Natural Resources Revenue**

**[Docket No. ONRR-2011-0008; DS63644000 DRT000000.CH7000 234D1113RT;**

**OMB Control Number 1012-0006]**

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

**AGENCY:** 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 revise a currently approved information collection to expand its scope to include the mineral estate underlying Osage County, Oklahoma (“Osage Mineral Estate”).

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

**ADDRESSES:** All comment submissions must (1) reference “OMB Control Number 1012-0006” in the subject line; (2) be sent to ONRR before the close of the comment period listed under **DATES**; and (3) be sent using the following method:

*Electronically via the Federal eRulemaking Portal:* Please visit <https://www.regulations.gov>. In the Search Box, enter the Docket ID Number for this ICR renewal (“ONRR-2011-0008”) and click “search” to view the publications associated with the docket folder. Locate the document with an open comment period and click the “Comment Now!” button. Follow the prompts to submit your comment prior to the close of the comment period.

*Docket:* To access the docket folder to view the ICR **Federal Register** publications, go to <https://www.regulations.gov> and search “ONRR-2011-0008” to view renewal notices recently published in the **Federal Register**, publications associated with prior renewals, and applicable public comments received for this ICR. ONRR will make the comments submitted in response to this notice available for public viewing at <https://www.regulations.gov>.

*OMB ICR Data:* OMB also maintains information on ICR renewals and approvals. You may access this information at <https://www.reginfo.gov/public/do/PRASearch>. Please use the following instructions: Under the “OMB Control Number” heading enter “1012-0006” and click the “Search” button located at the bottom of the page. To view the ICR renewal or OMB approval status, click on the latest entry (based on the most recent date). On the “View ICR—OIRA Conclusion” page, check the box next to “All” to display all available ICR information provided by OMB.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, please contact Kimberly Werner, Financial Services, ONRR, by telephone at (303) 231-3801 or email to [Kimberly.Werner@onrr.gov](mailto:Kimberly.Werner@onrr.gov). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** Through this revision, ONRR seeks authority to collect information related to the paperwork requirements under 30 CFR part 1243 and the Bureau of Indian Affairs’ (“BIA”) proposed regulations at 25 CFR part 226, subpart O to post a surety or bond, or demonstrate financial solvency. ONRR uses forms ONRR-

4435, ONRR-4436, and ONRR-4437 as part of these information collection requirements.

Pursuant to the PRA, 44 U.S.C. 3501, *et seq.*, and 5 CFR 1320.5, all information collections, as defined in 5 CFR 1320.3, require approval by OMB. ONRR 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.

As part of ONRR's continuing effort to reduce paperwork and respondent burdens, ONRR is inviting the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information in accordance with the PRA and 5 CFR 1320.8(d)(1). This helps ONRR to assess the impact of its 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 is especially interested in public comments addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of ONRR's estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. ONRR will include or summarize each comment in its request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask ONRR in your comment to withhold your personal identifying information from public review, ONRR cannot guarantee that it will be able to do so.

*Abstract: (a) General Information:* The Federal Oil and Gas Royalty Management Act of 1982 (“FOGRMA”) directs the Secretary of the Interior (“Secretary”) to “establish a comprehensive inspection, collection and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and to collect and account for such amounts in a timely manner.” 30 U.S.C. 1711. ONRR performs these and other mineral revenue management responsibilities for the Secretary. *See* U.S. Department of the Interior Departmental Manual, 112 DM 34.1 (Sept. 9, 2020). FOGRMA and ONRR’s regulations at 30 CFR Chapter XII do not apply to the Osage Mineral Estate.

The Osage Mineral Estate is held in trust by the United States for the benefit of the Osage Nation. *See* Osage Allotment Act of June 28, 1906, Pub. L. No. 59-321, § 3, 34 Stat. 539, as amended. BIA’s regulations at 25 CFR part 226 contain requirements specific to the Osage Mineral Estate, and, historically, BIA has performed compliance activities related to those requirements. In conjunction with this ICR, BIA has published a proposed rule in the **Federal Register** on January 13, 2023 (88 FR 2430) that would require a lessee of the Osage Mineral Estate to submit to ONRR certain forms already authorized in this ICR for Federal and non-Osage Indian lands. Accordingly, this ICR

revision adds information collections specific to oil and gas royalty and production reporting for the Osage Mineral Estate.

For Federal lands only, Section 4(1), “Stay of Payment Obligation Pending Review,” of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (“RSFA”) requires ONRR to evaluate any person, ordered by the Secretary or a delegated State to pay any obligation (other than an assessment) subject to RSFA, to determine whether that person is entitled to a stay of the order without bond or other surety instrument, pending an administrative or judicial proceeding, based on the financial solvency of that person.

Regulations under 30 CFR part 1243 and proposed regulations under 25 CFR part 226, subpart O, govern the suspension of orders or decisions pending administrative appeal for Federal and Indian leases. For Federal leases, these regulations allow an appellant to submit information demonstrating financial solvency in lieu of providing a surety. For 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.

BIA has published a proposed rule in the **Federal Register** on January 13, 2023 (88 FR 2430) that would require lessees of the Osage Mineral Estate to submit the forms authorized by this ICR to ONRR. Accordingly, this ICR revision adds information collections specific to posting an ONRR-specified surety instrument under 30 CFR part 1243 subpart B within the time period that ONRR prescribes to secure the financial interest of the Osage Mineral Estate.

This ICR remains unchanged in its application and effect as to all leases previously subject to the information collections described below, which includes all

Federal leases onshore and offshore and all Indian leases held in trust by the United States, except for the Osage Mineral Estate.

If ONRR determines that a lessee did not properly report, pay, or both, 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.

*(b) Information Collections:* Regulations under 30 CFR part 1243 and proposed regulations under 25 CFR part 226, subpart O, govern the submission of appropriate surety instruments to suspend compliance with an order or decision, 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 as follows:

*(1) 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 recipient of a notice of noncompliance or civil penalty notice's request to stay the accrual of civil penalties under 30 CFR 1241.55(b)(2) and 1241.63(b)(2), 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:

- (i) Form ONRR-4435, *Administrative Appeal Bond*;
- (ii) Form ONRR-4436, *Letter of Credit*;
- (iii) Form ONRR-4437, *Assignment of Certificate of Deposit*;
- (iv) *Self-bonding (Federal leases only)*; and
- (v) *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 resolution. 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>.

*(2) 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 and proposed regulations at 25 CFR 226.179, 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 and proposed regulations at 25 CFR 226.179 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 resolution, 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 and proposed regulations at 25 CFR 226.179 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 (Federal leases only, not applicable to Indian or the Osage Mineral Estate leases):* 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 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 will select 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.

*Title of Collections:* Suspensions Pending Appeal and Bonding.

*OMB Control Number:* 1012-0006.

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

*Type of Review:* Revision to a currently approved collection.

*Respondents/Affected Public:* Businesses.

*Total Estimated Number of Annual Respondents:* 107 appellants.

*Total Estimated Number of Annual Responses:* 107.

*Estimated Completion Time per Response:* The time per response is 120 mins.

The average completion time is calculated by first multiplying the estimated annual burden hours (214 burden hours) by 60 to obtain the total annual burden minutes. Then the total annual burden minutes (12,840) is divided by the estimated annual responses (107).

*Total Estimated Number of Annual Burden Hours:* 214 hours.

*Respondent's Obligation:* Mandatory.

*Frequency of Collection:* Annually and on occasion.

*Total Estimated Annual Non-Hour Burden Cost:* ONRR identified no “non-hour cost” burden associated with this collection of information.

*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).

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.

The authority for this action is the PRA (44 U.S.C. 3501, *et seq.*).

**Howard Cantor,**

*Director, Office of Natural Resources Revenue.*