



DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR-2011-0008; OMB Control Number 1012-0006; DS63636400

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Agency Information Collection Activities; Suspensions Pending Appeal and Bonding

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

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), ONRR is proposing to renew an information collection. Through this Information Collection Request renewal (ICR), ONRR seeks renewed authority to collect information related to the paperwork requirements necessary to post a surety or bond or demonstrate financial solvency.

DATES: Your written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: All comment submissions must (1) reference “Office of Management and Budget (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 methods:

- *Electronically via the Federal eRulemaking Portal:* Please visit <https://www.regulations.gov>. 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” button. Follow the prompts to submit your comment prior to the close of the comment period.

- *Email Submissions:* Please submit your comments to ONRR_regulationsmailbox@onrr.gov with the OMB Control Number (“OMB Control No. 1012-0006”) listed in the subject line of your email. Email submissions must be postmarked on or before 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: Jessica Polacek, Financial Services, ONRR, by telephone at (303) 231-3070 or email to Jessica.Polacek@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: 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.

ONRR published a 60-day notice on September 18, 2023 (88 FR 63973) to renew this ICR and expand the covered information collections to Osage lands. In the 60-day notice, ONRR included content from the Bureau of Indian Affairs (BIA) proposed rule "Mining of the Osage Mineral Estate for Oil and Gas," published on January 13, 2023 (88 FR 2430). The proposed rule would set forth an appeals process for a lessee of the Osage

Mineral Estate, which was previously accounted for in the 60-day notice for this ICR renewal. However, the BIA did not publish a final rule. ONRR is therefore publishing this 30-day notice without Osage content to ensure a timely renewal of the existing collections. Accordingly, this 30-day notice seeks authority to collect information related to the paperwork requirements at 30 CFR part 1243 to post a surety or bond or demonstrate financial solvency.

ONRR did not receive any comments in response to the *Federal Register* 60-day notice available at www.regulations.gov. ONRR reached out to less than ten members of industry soliciting comments and received no responses.

Comments that you submit in response to this 30-day 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.

(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 (December 9, 2020).

For Federal lands only, Section 4(l), “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.

ONRR regulations at 30 CFR part 1243 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.

(b) Information Collections: Regulations at 30 CFR part 1243 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, pursuant to 30 U.S.C. 1724(l) and its implementing regulations at 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: 30 CFR 1243.1 states that lessees or recipients of ONRR orders may suspend compliance with an order if they appeal at 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 at 30 CFR 1241.55(b)(2) and 1241.63(b)(2), the 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 <https://onrr.gov/references/forms?tabs=appeal-surety>.

(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, 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 at 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 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 at 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 (Federal leases only, not applicable to Indian leases): 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. 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 \$56 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 one year of estimated interest (necessary to protect ONRR against interest rate fluctuations). ONRR only accepts book-entry TS.

Title of Collection: Suspensions Pending Appeal and Bonding.

OMB Control Number: 1012-0006.

Form Number: Forms 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: 275 Federal or Indian appellants.

Total Estimated Number of Annual Responses: 110

Estimated Completion Time per Response: 2 hours.

Total Estimated Number of Annual Burden Hours: 220

Respondent's Obligation: Mandatory

Frequency of Collection: Annual and on occasion.

Total Estimated Annual Nonhour Burden Cost: There are no additional recordkeeping costs associated with this information collection. However, ONRR estimates three appellants per year will pay a \$56 fee to obtain credit data from a business information or credit reporting service, which is a total "non-hour" cost burden of \$168 per year (3 appellants per year x \$56 = \$168).

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.*).

April Lockler,
Acting Director of the Office of Natural Resources Revenue.