

**Supporting Statement for
Administrative Appeal Procedures
(OMB Control Number 1010-0121)
(Expiration Date: July 31, 2002)**

A. Justification

1. What circumstances make this collection of information necessary?

The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Minerals Management Service (MMS) performs the royalty management functions for the Secretary.

DOI is responsible for matters relevant to mineral resource development on Federal and Indian lands and in the Outer Continental Shelf (OCS). The Secretary is responsible for managing the production of minerals from Federal and Indian lands and from the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries.

On January 12, 1999, DOI published a proposed rule in the Federal Register (64 FR 1930) to revise the appeals process. Proposed 43 CFR part 4, subpart J, would have established a new 1-step process for appeals of royalty orders. Among other actions, the proposed rule would have replaced the current regulations at 30 CFR part 290 and 43 CFR part 4, subpart E, as they relate to appeals of royalty orders. MMS submitted an information collection request entitled “Preliminary Statement of Issues and Fee Waiver” to cover the information collection requirements in that proposed rule. OMB approved that request on April 13, 1999, and assigned OMB Control Number 1010-0121.

MMS received numerous negative comments about some of the provisions in the proposed rule. Consequently, on May 13, 1999, MMS published a final rule in the Federal Register (64 FR 26240) making final only those portions of the January 1999 proposed rule that received few, if any, comments. For example, rather than finalizing the substantive procedural changes in the proposed rule, the regulations in 30 CFR part 290 were separated into two subparts—Subparts A and B—and rewritten using plain English principles. Subpart A relates to appeals for Offshore Minerals Management (OMM), and Subpart B relates to appeals for the Minerals Revenue Management (MRM) program. Subpart J of 43 CFR part 4 was added to the final rule to incorporate specific time frames required in the Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA) of 1996. However, the final rule does not contain the substantive changes required to change the appeals process from a 2-step to a 1-step process as originally proposed in the proposed rule.

MMS is revising this information collection request (ICR) to cover the reporting requirements contained in the final rule. These requirements are located in 30 CFR parts 250 and 290 (Attachment 1).

2. How, by whom, and for what purpose will the information be used?

Any party who is adversely affected by an order or written notice from MMS or a delegated State may appeal any disputed issues by submitting the following information to MMS:

a. OMM appeals (§§ 250.1409 and 290.4):

- A written Notice of Appeal with a copy of the decision or order you are appealing.
- A nonrefundable processing fee of \$150 for each decision or order you appeal.

b. MRM appeals (§§ 290.105 and 290.106):

- A written Notice of Appeal with a copy of the decision or order you are appealing.
- A statement of reasons or written arguments or briefs
- If you are a designee, a written Notice of Appeal to the lessees for the leases in the order you appealed.
- If you are a lessee and you wish to join an appeal filed by your designee, a Notice of Joinder.

MMS and DOI Office of Hearings and Appeals personnel use this information to review, research, and try to reach closure on disputed issues.

3. Does the collection involve the use of information technology, does it reduce the burden, and to what extent?

Our Government Paperwork Elimination Act Plan indicates that electronic submission is not applicable to this information collection because the Notice of Appeal and statement of reasons are unique to each appeal. However, the Notice of Appeal may be telefaxed to MMS. The appellant determines whether or not to telefax and is not required to do so.

4. Is the information duplicated by any other Federal agency, and can similar information be used or modified for this collection?

The information requested is not available from any other source. The information is readily available only in the files of the appellant.

5. What is the agency doing to minimize the burden on small businesses or other small entities?

Small businesses or small entities are among potential respondents. Each small business that receives an order or decision will have appeal rights. Small businesses must file a Notice of Appeal in order to appeal. Each MMS order will contain the appropriate information regarding how to appeal the order, where to send the appeal, and will provide a toll-free telephone number in case further assistance is required. All appellants, including small businesses, have the option of participating in the Alternative Dispute Resolution (ADR) process at any time during the appeals process. Therefore, an appellant can bypass this appeals process if it chooses to settle the dispute using the ADR process.

6. What are the consequences to the Federal program or policy activity if the information is not collected or is collected less frequently; and are there any technical or legal obstacles to reducing the burden?

MMS is required by law, specifically RSFA, to resolve disputes on a timely basis. Lack of a Notice of Appeal would create technical and legal obstacles for resolving disputed issues. We must receive a Notice of Appeal in order to analyze the appellant's arguments regarding the validity of an order or decision.

7. Are there any special circumstances that require exceptions to 5 CFR 1320.5(d)(2) requiring respondents to: (i) report more often than quarterly, (ii) prepare written responses in fewer than 30 days after receipt, (iii) submit more than an original and two copies of any document, or (iv) retain records for more than 3 years?

This collection of information is consistent with the provisions at 5 CFR 1320.5(d)(2)(i) through (iv) except for (iv):

a. In accordance with 30 U.S.C. 1713(b), Indian oil and gas records must be maintained for 6 years after the records are generated; and

b. In accordance with 30 U.S.C. 1724(f), Federal oil and gas records must be maintained for 7 years from the date the obligation becomes due.

There are no special circumstances with respect to 5 CFR 1320.5(d)(2)(v) through (viii), as the collection is not a statistical survey and does not use statistical data classifications; nor does it include a pledge of confidentiality not supported by statute or regulation or require proprietary, trade secret, or other confidential information not protected by agency procedures.

8. What efforts did the agency make to consult with the public and a representative sample of respondents?

As required in 5 CFR 1320.8(d), MMS published a 60-day review and comment notice in the Federal Register on February 28, 2002 (67 FR 9316) (Attachment 2). We received comments from one organization, and those comments can be viewed in their entirety on our web site at: http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm. A summary of the comments and our responses follow:

Comment: The commenter noted that OMB Control Number 1010-0121 was originally assigned to an information collection request (ICR) entitled "Preliminary Statement of Issues and Fee Waiver" that would have required specific information in connection with a one-step appeal process proposed by MMS at 64 FR 1930 (January 12, 1999). However, the one-step process was later abandoned, and the information collection was never used.

Response: We agree with the commenter that this ICR was originally associated with the proposed rule cited above and that the one-step appeals process was later abandoned. The intent of this revision is to make this ICR more representative of the reporting requirements that were codified in the final rule on May 13, 1999 (64 FR 26240).

Comment: The commenter questions whether appeals of orders (i.e., pleadings, briefs, bonds) truly satisfy the definition of an "information collection" under the Paperwork Reduction Act (PRA).

Response: Under the PRA, any information requested to initiate an appeal or audit is considered a reporting requirement and needs OMB approval. Once the appeal or audit process begins, information requested then is exempt from the PRA. Therefore, the initial Notice of Appeal and serving your Notice of Appeal on the lessees for the leases in the order you are appealing (§ 290.105) are considered reporting requirements under the PRA and require OMB approval. However, we have now determined that the statement of reasons is not a reporting requirement necessary to begin the appeal process. Therefore, we agree with the commenter that the statement of reasons is part of the administrative appeals process and exempt from the PRA. We have removed the burden hours associated with preparing the statement of reasons from this ICR. We continue to maintain that surety bonds are information collections and are currently covered under OMB Control Number 1010-0006.

Comment: The commenter states that neither the quoted regulations nor the notice of revision specifically describe the information that would be required to appear on the Notice of Appeal, statement of reasons, notice to affected lessees, etc.

Response: After excluding the statement of reasons (see response), we believe the remaining information requested is described sufficiently in the regulations and no additional explanation is necessary. For example, in their Notice of Appeal, the regulations state the appellant must submit a copy of the order he/she is appealing, and on the check for the processing fee, the appellant must identify the order he/she is appealing. Any information provided by the lessee in addition to that required in the regulations is discretionary.

Comment: The commenter asked MMS to clarify whether appellants would be required to insert an OMB Control Number on appeal documents and identify any consequences of a missing OMB Control Number.

Response: The OMB Control Number has nothing to do with the information that is submitted for an appeal nor is it used for tracking purposes. OMB assigns the OMB Control Number to an ICR once it is approved. The only place an OMB Control Number will appear is on a form that has been approved by OMB. Therefore, appellants are not required to insert the OMB Control Number on their Notices of Appeal, and there are no consequences, such as appeal dismissal, if the number is missing.

9. Will payments or gifts be provided to respondents?

No payments or gifts will be provided to the respondents.

10. What assurance of confidentiality is provided to respondents?

Commercial or financial information submitted to DOI relative to minerals removed from Federal and Indian leases may be proprietary. Trade secrets and proprietary information are protected in accordance with standards established by the Federal Oil and Gas Royalty Management Act of 1982, as amended (30 U.S.C. 1733), the Freedom of Information Act (5 U.S.C. 552(b)(4)), and DOI regulations (43 CFR 2). The Indian Minerals Development Act of 1982 (25 U.S.C. 2103) provides that all information related to any Indian minerals agreement covered by the Act in the possession of DOI shall be held as privileged proprietary information. Storage of such information and access to it is controlled by strict security measures.

11. Does the information collected include any questions of a sensitive nature?

None of the information requested is considered sensitive.

12. What is the estimated reporting and recordkeeping “hour” burden?

The estimated annual reporting and recordkeeping burden is 265 hours. The table below is a breakdown of the burden hours by CFR section and paragraph:

30 CFR Section	Requirement	Annual Number of Responses	Burden Hours per Response	Annual Burden Hours
250.1409 (a); (b)(2)	(a) When you receive the Reviewing Officer's final decision, you have 60 days to either pay the penalty or file an appeal in accordance with 30 CFR part 290 * * * (b) If you file an appeal, you must either: (1) [see § 250.1409(b)(1) below] or (2) Notify the Regional Adjudication Office * * * that you want your lease-specific/area-wide bond on file to be used as the bond for the penalty amount * * *	10	1	10
250.1409 (b)(1);	(b) If you file an appeal, you must either: (1) Submit a surety bond * * * or (2) [see § 250.1409(b)(2) above] * * *	(1)		
290.4(a), (b)(1)	For your appeal to be filed, MMS must receive all of the following within 60 days after you receive the decision or order: (a) A written Notice of Appeal together with a copy of the decision or order you are appealing * * * (b) A nonrefundable processing fee of \$150 paid with the Notice of Appeal * * * (1) Identify the order you are appealing on the check or other form of payment * * *	10	10	100
290.7(a)(2)	(a) The decision or order is effective during the 60-day period for filing an appeal * * * unless (1) * * * or (2) you post a surety bond under 30 CFR 250.1409 pending the appeal * * *	(1)		
290.105 (a)(1) and (2)	(a) You may appeal an order to the Director, Minerals Management Service * * * by filing a Notice of Appeal in the office of the official issuing the order within 30 days from service of the order * * * (1) Within the same 30-day period, you must file * * * a statement of reasons or written arguments or briefs * * * (2) If you are a designee, when you file your Notice of Appeal, you must serve your Notice of Appeal on the lessees for the leases in the order you appealed.	150 (2)	1	150
290.106(a)	(a) If you are a lessee, * * * you may join in that appeal * * * by filing a Notice of Joinder with the office or official that issued the order.	10	.5	5
Totals		180		265

(1) Burden covered in OMB Control Number 1010-0006.

(2) The statement of reasons required in 30 CFR 290.105(a)(1) is part of the administrative appeals process and is exempt from the Paperwork Reduction Act of 1995. Consequently, the burden for preparation of the statement of reasons is not included in this information collection request.

13. What is the estimated reporting and recordkeeping “non-hour” cost burden of the collection of this information, excluding any costs identified in Items 12 and 14?

This collection of information does not require capital and start-up costs by respondents. However, in 30 CFR 290.4(b)(1), we propose to charge and collect a processing fee for each appeal filed on OMM orders. We estimate that 10 respondents will file this initial fee of \$150 for a total of \$1,500.

14. What is the estimated annualized cost to the Federal Government?

The total annualized cost to the Federal Government is approximately \$24,000. We estimate that it will take 3 hours for docketing each Notice of Appeal. This includes (1) receiving the Notice of Appeal; (2) confirming the payment of the processing fee if applicable; and (3) generating a letter to document receipt of the appeal. We estimate the burden to the Federal Government for processing 160 Notices of Appeal is 480 hours (160 Notices of Appeals x 3 hours). Using an estimate of \$50 per hour, we estimate that the annual costs for processing this information is \$24,000 per year (480 hours x \$50). The processing of any lessee joinders is included in this estimate.

15. Is the agency requesting any program changes or adjustments reported in Items 13 and 14 of the Form OMB 83-I?

The current hours in OMB's inventory of 36,100 burden hours is reduced (adjustment) to 265 hours. This reduction of 35,835 hours is due to (1) removing 13,350 burden hours associated with preparing and submitting the statement of reasons (adjustment) and (2) reducing burden hours by 22,485 to account for the difference between the appeal requirements offered for comment in the proposed rule and the appeal requirements actually implemented in the final rule (program change).

16. Are there plans for tabulation and publication of the results of the information collection?

The data collected will not be tabulated and published for statistical use.

17. Is the agency seeking approval to not display the expiration date?

No. MMS is not seeking an exemption to display the expiration date of the OMB approval.

18. Is the agency requesting exceptions to the certification statement in Item 19 of Form OMB 83-I?

To the extent the topics apply to this collection of information, we are not requesting exceptions to the "Certification of Paperwork Reduction Act Submissions."

B. Collections of Information Employing Statistical Methods

This section is not applicable. We will not employ statistical methods in this information collection.