

SUBCHAPTER B—APPEALS

PART 1290—APPEAL PROCEDURES

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AUTHORITY: 5 U.S.C. 301 *et seq.*; 43 U.S.C. 1331.

SOURCE: 64 FR 26257, May 13, 1999, unless otherwise noted. Redesignated at 75 FR 61087, Oct. 4, 2010.

§ 1290.100 What is the purpose of this part?

This part tells you how to appeal Office of Natural Resources Revenue (ONRR) or delegated State orders concerning reporting to the Minerals Revenue Management (MRM) and the payment of royalties and other payments due under leases subject to this part.

[71 FR 51752, Aug. 31, 2006, as amended at 78 FR 30206, May 22, 2013]

§ 1290.101 What leases are subject to this part?

This part applies to:

- (a) All Federal mineral leases onshore and on the Outer Continental Shelf (OCS); and
- (b) All federally-administered mineral leases on Indian tribal and individual Indian mineral owners' lands, regardless of the statutory authority under which the lease was issued or maintained.

[64 FR 26257, May 13, 1999, as amended at 78 FR 30206, May 22, 2013]

§ 1290.102 What definitions apply to this part?

Assessment means any fee or charge levied or imposed by the Secretary or a delegated State other than:

- (1) The principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;
- (2) Any interest; or
- (3) Any civil or criminal penalty.

Delegated State means a State to which ONRR has delegated authority to perform royalty management functions under an agreement or agreements under regulations at 30 CFR part 1227.

Designee means the person designated by a lessee under 30 CFR 1218.52 to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

IBLA means the Interior Board of Land Appeals.

Indian lessor means an Indian tribe or individual Indian mineral owner with a beneficial or restricted interest in a property that is subject to a lease issued or administered by the Secretary on behalf of the tribe or individual Indian mineral owner.

Lease means any agreement authorizing exploration for or extraction of any mineral, regardless of whether the instrument is expressly denominated as a "lease," including any:

- (1) Contract;
- (2) Net profit share arrangement;
- (3) Joint venture; or
- (4) Agreement the Secretary approves under the Indian Mineral Development Act, 25 U.S.C. 2101 *et seq.*

Lessee means any person to whom the United States, or the United States on behalf of an Indian tribe or individual Indian mineral owner, issues a lease subject to this part, or any person to whom all or part of the lessee's interest or operating rights in a lease subject to this part has been assigned.

Notice of Order means the notice that ONRR or a delegated State issues to a lessee that informs the lessee that ONRR or the delegated State has issued an order to the lessee's designee.

Obligation means:

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(1) A lessee's, designee's or payor's duty to:

(i) Deliver oil or gas royalty in kind; or

(ii) Make a lease-related payment, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, interest, penalty, civil penalty, or assessment; and

(2) The Secretary's duty to:

(i) Take oil or gas royalty-in-kind; or

(ii) Make a lease-related payment, refund, offset, or credit, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, or interest.

(3) The obligations identified in paragraphs (1)(i) and (2)(i) of this definition are nonmonetary obligations. The obligations identified in paragraphs (1)(ii) and (2)(ii), including the requirement to compute the amount of such obligations, are monetary obligations.

Order, for purposes of this part only, means any document issued by ONRR or a delegated State that contains mandatory or ordering language that requires the recipient to do any of the following for any lease subject to this part: Report, compute, or pay royalties or other obligations, report production, or provide other information.

(1) Order includes:

(i) An order to pay (Order to Pay) or to compute and pay (Order to Perform a Restructured Accounting); and

(ii) An ONRR or delegated State decision to deny a lessee's, designee's, or payor's written request that asserts an obligation due the lessee, designee, or payor (Denial).

(2) Order does not include:

(i) A non-binding request, information, or guidance, such as:

(A) Advice or guidance on how to report or pay, including a valuation determination, unless it contains mandatory or ordering language; and

(B) A policy determination;

(ii) A subpoena;

(iii) An order to pay that ONRR issues to a refiner or other person involved in disposition of royalty taken in kind;

(iv) A Notice of Noncompliance or a Notice of Civil Penalty issued under 30 U.S.C. 1719 and 30 CFR part 1241, or a decision of an administrative law judge or of the IBLA following a hearing on

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the record on a Notice of Noncompliance or Notice of Civil Penalty;

(v) A "Dear Payor," "Dear Operator," or "Dear Reporter" letter unless it explicitly includes the right to appeal in writing; or

(vi) Any correspondence that does not include the right to appeal in writing.

Party means ONRR, any person who files a Notice of Appeal, and any person who files a Notice of Joinder in an appeal under this part.

[64 FR 26257, May 13, 1999, as amended at 71 FR 51752, Aug. 31, 2006; 78 FR 30206, May 22, 2013; 79 FR 62050, Oct. 16, 2014]

§ 1290.103 Who may file an appeal?

(a) If you receive an order that adversely affects you or your lessee, you may appeal that order except as provided under § 1290.104.

(b) If you are a lessee and you receive a Notice of Order, and if you contest the order, you may either appeal the order or join in your designee's appeal under § 1290.106.

§ 1290.104 What may I not appeal under this part?

You may not appeal:

(a) An action that is not an order, as defined in this part; or

(b) A determination of the surety amount or financial solvency under 30 CFR part 243, parts B or C.

[64 FR 26257, May 13, 1999, as amended at 78 FR 30206, May 22, 2013]

§ 1290.105 How do I appeal an order?

(a)(1) You may appeal to the Director, Office of Natural Resources Revenue (ONRR Director), by filing a Notice of Appeal in the office of the official issuing the Order:

(i) Within 30 days from service of an Order to Pay or a Denial involving Federal or Indian mineral leases, or an Order to Perform a Restructured Accounting involving Indian mineral leases or Federal solid mineral or geothermal leases; or

(ii) Within 60 days from service of an Order to Perform a Restructured Accounting involving Federal oil and gas leases if a delegated State issued the Order to Perform a Restructured Accounting.

(2) If the ONRR Director, or other most senior career professional responsible for the ONRR royalty management program, issued the Order to Perform a Restructured Accounting for a Federal oil and gas lease, then you may appeal that order to the IBLA within 60 days under §1290.108.

(3) For appeals to the ONRR Director under paragraph (a)(1) of this section, within the same 30-day or 60-day period, whichever is applicable, you must file in the office of the official issuing the Order to Pay, Order to Perform a Restructured Accounting, or Denial, a statement of reasons, or written arguments, or brief that includes the arguments on the facts or law that you believe justify reversal or modification of the Order to Pay, Order to Perform a Restructured Accounting, or Denial.

(4) If you are a designee, when you file your Notice of Appeal, you must concurrently serve your Notice of Appeal on the lessees for the leases in the Order to Pay, Order to Perform a Restructured Accounting, or Denial you appealed.

(b) You may not request and will not receive an extension of time for filing the Notice of Appeal.

(c) If the office of the official issuing the order does not receive the Notice of Appeal within the time provided in paragraph (a) of this section, the Notice of Appeal will be considered timely if the office of the official issuing the order receives:

(1) The Notice of Appeal not later than 10 days after the required filing date; and

(2) The officer with whom the Notice of Appeal must be filed determines that the Notice of Appeal was transmitted to the proper office before the filing deadline in paragraph (a) of this section.

(d) If the Notice of Appeal is filed after the grace period provided in paragraph (c) of this section and was not transmitted to the proper office before the filing deadline in paragraph (a) of this section, the ONRR Director will not consider the Notice of Appeal and the case will be closed.

(e) The officer with whom the Notice of Appeal is filed will send the appeal and accompanying papers to the ONRR Director.

(f) The ONRR Director will review the record and render a decision in the case.

(g) If an order involves Indian leases, the Director, Bureau of Indian Affairs will exercise the functions vested in the ONRR Director.

[64 FR 26257, May 13, 1999, as amended at 76 FR 38561, July 1, 2011; 79 FR 62051, Oct. 16, 2014]

§ 1290.106 How do lessees join a designee's appeal and how does joinder affect the appeal?

(a) If you are a lessee, and your designee files an appeal under §1290.103, you may join in that appeal within 30 days after you receive your designee's Notice of Appeal under §1290.105(a)(2) by filing a Notice of Joinder with the office or official that issued the order.

(b) If you join in an appeal under paragraph (a) of this section, you are deemed to appeal the order jointly with the designee, but the designee must fulfill all requirements imposed on appellants under this part and 43 CFR part 4, subparts E and J. You may not file submissions or pleadings separately from the designee.

(c) If you are a lessee and you neither appeal nor join in your designee's appeal under this section, your designee's actions with respect to the appeal and any decisions in the appeal bind you.

(d) If you are a designee and you decide to discontinue participation in the appeal, you must serve written notice within 30 days before the next submission or pleading is due on:

(1) All lessees who have joined in the appeal under paragraph (a) of this section;

(2) The office or officer with whom any subsequent submissions or pleadings must be filed, including the IBLA; and

(3) All other parties to the appeal.

(e) If you have joined in the appeal under paragraph (a) of this section, and if the designee notifies you under paragraph (d) of this section that it declines to further pursue the appeal, you become an appellant and must then meet all requirements of this part and 43 CFR part 4, subparts E and J, as the appellant.

[64 FR 26257, May 13, 1999, as amended at 78 FR 30206, May 22, 2013]

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§ 1290.107 Where are the rules concerning the effect of the Department not issuing a decision in my appeal within the statutory time frame?

If your appeal involves monetary or nonmonetary obligations under Federal oil and gas leases, the rules concerning the effect of the Department not issuing a final decision in your appeal within the 33-month period prescribed under 30 U.S.C. 1724(h) are located in 43 CFR part 4, subpart J.

§ 1290.108 How do I appeal to the IBLA?

(a) Any party to a case adversely affected by an order the ONRR Director issues or a decision the ONRR Director or Director, Bureau of Indian Affairs issues under this part shall have a right of appeal to the IBLA under the procedures provided in 43 CFR part 4, subpart E.

(b) Notwithstanding 43 CFR 4.414(a), a party shall file an answer or appropriate motion within 60 days after service of the statement of reasons for appeal unless an extension of time is requested and granted.

[79 FR 62051, Oct. 16, 2014]

§ 1290.109 How do I request an extension of time?

(a) If you are a party to an appeal under this part, and you need additional time after the appeal commences under 43 CFR 4.904 for any purpose:

(1) You may obtain an extension of time under this section; and

(2) You must submit a written request for an extension of time to:

(i) The office or official with whom you must file a document before the required filing date; or

(ii) If you are not seeking an extension of time to file a document, to the office or official before whom the appeal is pending.

(b) If you are an appellant, and if your appeal involves monetary or nonmonetary obligations under Federal oil and gas leases, you must agree in writing in your request to extend the period in which the Department must issue a final decision in your appeal under 30 U.S.C. 1724(h) and 43 CFR 4.906,

by the amount of time for which you are requesting an extension.

(c) If you are any other party to an appeal involving monetary or nonmonetary obligations under Federal oil and gas leases, the office or official with whom you must file the request may require you to submit a written agreement signed by the appellant to extend the period in which the Department must issue a final decision in the appeal under 43 CFR 4.906, by the amount of time for which you are requesting an extension.

(d) The office or official with whom you must file your request may decline any request for an extension of time.

(e) You must serve your request on all parties to the appeal.

[64 FR 26257, May 13, 1999, as amended at 78 FR 30206, May 22, 2013]

§ 1290.110 How do I exhaust administrative remedies?

(a) To exhaust administrative remedies, you must appeal an Office of Natural Resources Revenue (ONRR) or delegated State order:

(1) To the ONRR Director (or the Director, Bureau of Indian Affairs when Indian lands are involved); and

(2) Subsequently to the Interior Board of Land Appeals under 30 CFR part 1290, and 43 CFR part 4.

(b) This section does not apply if an order was made effective by:

(1) The Assistant Secretary for Policy, Management and Budget;

(2) The Assistant Secretary for Indian Affairs; or

(3) The Interior Board of Land Appeals under 43 CFR part 4.

(4) The Interior Board of Land Appeals under 43 CFR part 4.

[64 FR 50753, Sept. 20, 1999, as amended at 76 FR 38561, July 1, 2011; 79 FR 62051, Oct. 16, 2014]

§ 1290.111 What happens if I do not pay or appeal an order?

If you neither pay nor appeal an order under this part, that order is the final decision of the Department, you have failed to exhaust administrative remedies as required under § 1290.110(a), and you may not contest the validity or merits of that order in any subsequent proceeding to enforce that order

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under 30 U.S.C. 1719 and part 1241 of
this chapter.

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[79 FR 62051, Oct. 16, 2014]