

**U.S. DEPARTMENT OF THE INTERIOR  
MINERALS MANAGEMENT SERVICE  
MINERALS REVENUE MANAGEMENT**

**SURETY INSTRUMENT POSTING INSTRUCTIONS**

These instructions provide your company with the Minerals Revenue Management's (MRM) requirements for submission of an acceptable surety instrument, including demonstrating financial solvency in lieu of other surety instruments. Acceptable surety instruments include: an Administrative Appeal Bond; an irrevocable Letter of Credit; a book-entry Certificate of Deposit; and a book-entry U.S. Treasury Security (57 FR 44991, September 30, 1992). In addition, under 30 CFR 243.8 (2004) you may request to use a demonstration of financial solvency (self-bond), for Federal leases only, and, if approved, would not need to post a surety instrument as mentioned above. If you are providing a surety or demonstration of financial solvency on behalf of other persons, you must inform Minerals Management Service (MMS) in writing of the names, addresses, and Taxpayer Identification Numbers (TIN) of the other persons, including the lessees, for which you are providing a surety or demonstration of financial solvency.

Your surety instrument amount must include the principal of the appeal and interest in the amount MRM requires. Interest, as used in these instructions, is computed at the rate specified in 26 U.S.C. 6621(a)(1) and (2) (1994). Failure to comply may void your stay of payment and subject you to civil penalties under 30 CFR 241, Subpart B (2004). Your surety instrument document must include the appealed bill number(s) or a short description of the appeal. Mail the surety instrument to one of the following addresses:

For Courier Delivery  
(not including Express Mail)

Minerals Management Service  
Minerals Revenue Management  
DFC, Building 85  
Room A-614, Document Processing Team  
Denver, Colorado 80225-0165

For U.S. Postal Service Mail Service  
(including Express Mail)

Minerals Management Service  
Minerals Revenue Management  
Office of Enforcement  
P.O. Box 5810, MS 370B2  
Denver, Colorado 80217-5760

**BONDS**

Use the enclosed Form MMS-4435, Administrative Appeal Bond, with no modifications. The bond must be issued by a qualified surety company that is approved by the Department of the Treasury (see Department of the Treasury Circular No. 570, revised periodically in the *Federal Register*). Form MMS-4435 replaces all previously accepted bond forms.

**LETTERS OF CREDIT (LOC)**

Use the enclosed sample irrevocable Form MMS-4436, Letter of Credit, with no modifications. The LOC must have a minimum coverage period of one year and be automatically renewable up to five years. The LOC must be issued by a bank that has a minimum Fitch rating of the following:

- \* "C" for an LOC of less than \$1 million
- \* "B/C" for an LOC between \$1 million and \$10 million
- \* "B" for an LOC over \$10 million

The person submitting the LOC is responsible for verifying that the bank provides a current rating to MRM. **This rating must be submitted with each new or extended LOC.** If the issuing bank's rating falls below the minimum acceptable level, a satisfactory replacement surety must be submitted within 14 days or MRM will

draw down the existing LOC. When an LOC is renewed or extended, the LOC amount must be increased to cover an additional year's interest, or an amount as otherwise specified by the MRM. If the bank issuing the LOC chooses not to renew the existing LOC, it must provide MRM with a notice of its decision not to renew 30 days prior to the LOC expiration. The company requesting surety for an appeal must provide a satisfactory replacement surety to MRM 14 days before the existing LOC expires. If a replacement LOC is not provided, MRM will draw on the existing LOC for the total amount due on the appealed amount and interest computed through the date of the draw.

If your bank becomes insolvent, MRM will require an immediate replacement surety unless the current LOC is transferred, in whole, and completely honored by the receiving institution. If a replacement surety is not found, MRM will draw down the total amount due on the existing LOC.

### **CERTIFICATES OF DEPOSIT (CD)**

You must request in writing to use a CD. Submit the request to:

Chief, Office of Enforcement  
Minerals Management Service  
P.O. Box 25165, MS 370B2  
Denver, Colorado 80225-0165

Or by email to:

[debtcoll@mms.gov](mailto:debtcoll@mms.gov)

The MRM will only accept a book-entry CD that explicitly assigns the CD to MMS, Associate Director for MRM. The CD must meet all conditions established in the Form MMS-4437, Assignment of Certificate of Deposit. To obtain a copy of these conditions, please call (303) 231-3801.

The CD must be updated annually to cover one-year prospective interest. You may choose a new CD, LOC, or Bond to cover this additional amount. If collection of the CD is necessary, unused CD funds will be returned to the person posting the CD after total payment of the appealed issue.

### **U.S. TREASURY SECURITIES (TS)**

You must request in writing to use a TS. Submit the request to:

Chief, Office of Enforcement  
Minerals Management Service  
P.O. Box 5760, MS 370B2  
Denver, Colorado 80217-5760

Or by email to:

[debtcoll@mms.gov](mailto:debtcoll@mms.gov)

The MRM will only accept a book-entry TS as surety for an appeal. The TS must be a U.S. Treasury note or bond with maturity equal to or greater than one year. Treasury Strips or "Zero-Coupon" Treasury obligations will not be accepted. The TS must equal 120 percent of the appealed amount plus accrued interest (necessary to protect MMS against interest rate fluctuations). Complete an MRM Power of Attorney and Agreement Form, available by calling (303) 231-3801. Have your bank deal directly with the Federal Reserve Bank (FRB) of Kansas City, Denver Branch, at (303) 572-2300. You, the person posting the TS, assume all responsibilities associated with a TS for any transfer and safekeeping fees levied by the FRB. Please note that a fee will be charged by FRB at the time of book-entry transfer.

## **SELF-BONDING (FEDERAL LEASES ONLY)**

You must request in writing to self-bond every time you file a new appeal. In order to receive approval to self-bond, send your written request, including the bill number(s) and the amount you are appealing, along with an audited consolidated balance sheet to:

For Courier Delivery  
(not including Express Mail)

Minerals Management Service  
Office of Enforcement, MS 370B2  
Denver Federal Center  
Bldg. 85, Room A-614  
Denver, Colorado 80225-0165

For U.S. Postal Service Mail  
(including Express Mail)

Minerals Management Service  
Office of Enforcement  
P.O. Box 5760  
Denver, Colorado 80217-5760

Or by email to:

[debtcoll@mms.gov](mailto:debtcoll@mms.gov)

Your audited consolidated balance sheet may be part of your annual report to shareholders.

To determine financial solvency, MMS will examine your total net worth including, as appropriate, the net worth of your affiliated entities. If your net worth, minus the amount we would require as surety for all orders you have appealed, is greater than \$300 million, you are presumptively deemed financially solvent and will not be required to post a bond or other surety instrument. You must submit an audited consolidated balance sheet, and tax returns if required, annually. Your financial solvency will be evaluated annually on the date that you first demonstrated financial solvency as long as you have active appeals.

If your net worth, minus the amount we would require as surety for all orders you have appealed, is less than \$300 million, you must submit the following along with your request, including your audited consolidated balance sheet:

- (1) A written request asking us to consult a business-information or credit-reporting service to determine your financial solvency.
- (2) A \$50 non-refundable filing fee. Your check must be made payable to MMS and include "Filing Fee" and your TIN in the memo section. This fee must be submitted annually on the date we first determined you to be financially solvent as long as you have active appeals and do not meet the \$300 million net worth requirement.

You must submit an audited consolidated balance sheet, and tax returns if required, annually. Your financial solvency will be evaluated annually on the date that you first demonstrated financial solvency as long as you have active appeals.

In order to determine your financial solvency, we will use criteria similar to that which a potential creditor would use to lend an amount equal to the surety instrument we would require. The business-information or credit-reporting agency must demonstrate your degree of risk as low to moderate. If it is determined that you are financially solvent to our satisfaction, you will not be required to post a bond or other surety instrument. If it is determined that financial solvency was not demonstrated, you will be required to post a bond or other surety instrument.

## **DRAW DOWN PROCEDURES**

The MRM will draw down on any surety type as soon as an appellant fails to comply with requirements, whether due to amount, time frames, or unacceptable surety submission, resubmission, or if you do not pay at the conclusion of your unsuccessful appeal (unless you request a continuation of the stay to appeal to the IBLA or a Federal Court). Whenever MRM must draw on a surety, the total amount due, and therefore to be drawn down, will be defined as unpaid principal plus interest accrued to the projected receipt date of the surety payment.

If you have any questions, please contact the Office of Enforcement at (303) 231-3801 or FAX (303) 231-3362.

11/26/07