

**§ 243.11 May I appeal the MMS bond-approving officer's determination of my surety amount or financial solvency?**

Any decision on your surety amount under subpart B or your financial solvency under subpart C is final and is not subject to appeal.

**§ 243.12 May I substitute a demonstration of financial solvency for a bond posted before the effective date of this rule?**

If you appealed an order before June 14, 1999 and you submitted an MMS-specified surety instrument to suspend compliance with that order, you may replace the surety with a demonstration of financial solvency under this part at an administratively convenient time, such as when the surety instrument is due for renewal.

**Subpart B—Bonding Requirements**

**§ 243.100 What standards must my MMS-specified surety instrument meet?**

(a) An MMS-specified surety instrument must be in a form specified in MMS instructions. MMS will give you written information and standard forms for MMS-specified surety instrument requirements.

(b) MMS will use a bank-rating service to determine whether a financial institution has an acceptable rating to provide a surety instrument adequate to indemnify the lessor from loss or damage.

(1) Administrative appeal bonds must be issued by a qualified surety company which the Department of the Treasury has approved.

(2) Irrevocable letters of credit or certificates of deposit must be from a financial institution acceptable to MMS with a minimum 1-year period of coverage subject to automatic renewal up to 5 years.

**§ 243.101 How will MMS determine the amount of my bond or other surety instrument?**

(a) The MMS bond-approving officer may approve your surety if he or she determines that the amount is adequate to guarantee payment. The amount of your surety may vary de-

pending on the form of the surety and how long the surety is effective.

(1) The amount of the MMS-specified surety instrument must include the principal amount owed under the order plus any accrued interest we determine is owed plus projected interest for a 1-year period.

(2) Treasury book-entry bond or note amounts must be equal to at least 120 percent of the required surety amount.

(b) If your appeal is not decided within 1 year from the filing date, you must increase the surety amount to cover additional estimated interest for another 1-year period. You must continue to do this annually on the date your appeal was filed. We will determine the additional estimated interest and notify you of the amount so you can amend your surety instrument.

(c) You may submit a single surety instrument that covers multiple appeals. You may change the instrument to add new amounts under appeal or remove amounts that have been adjudicated in your favor or that you have paid if you:

(1) Amend the single surety instrument annually on the date you filed your first appeal; and

(2) Submit a separate surety instrument for new amounts under appeal until you amend the instrument to cover the new appeals.

**Subpart C—Financial Solvency Requirements**

**§ 243.200 How do I demonstrate financial solvency?**

(a) To demonstrate financial solvency under this part, you must submit an audited consolidated balance sheet, and, if requested by the MMS bond-approving officer, up to 3 years of tax returns to the MMS, Debt Collection Section using:

(1) The U.S. Postal Service or private delivery at P.O. Box 5760, MS 3031, Denver, CO 80217-5760; or

(2) Courier or overnight delivery at MS 3031, Denver Federal Center, Bldg. 85, Room A-212, Denver, CO 80225-0165.

(b) You must submit an audited consolidated balance sheet annually, and, if requested, additional annual tax returns on the date MMS first determined that you demonstrated financial

## § 243.201

## 30 CFR Ch. II (7–1–00 Edition)

solvency as long as you have active appeals, or whenever MMS requests.

(c) If you demonstrate financial solvency in the current calendar year, you are not required to redemonstrate financial solvency for new appeals of orders during that calendar year unless you file for protection under any provision of the U.S. Bankruptcy Code (Title 11 of the United States Code), or MMS notifies you that you must redemonstrate financial solvency.

### § 243.201 How will MMS determine if I am financially solvent?

(a) The MMS bond-approving officer will determine your financial solvency by examining your total net worth, including, as appropriate, the net worth of your affiliated entities.

(b) If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is greater than \$300 million, you are presumptively deemed financially solvent, and we will not require you to post a bond or other surety instrument.

(c) If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is less than \$300 million, you must submit the following to the MMS Debt Collection Section by one of the methods in § 243.200(a):

(1) A written request asking us to consult a business-information, or credit-reporting service or program to determine your financial solvency; and

(2) A nonrefundable \$50 processing fee:

(i) You must pay the processing fee to us following the requirements for making payments found in 30 CFR 218.51. You are not required to use Electronic Funds Transfer (EFT) for these payments;

(ii) You must submit the fee with your request under paragraph (c)(1) of this section, and then annually on the date we first determined that you demonstrated financial solvency, as long as you are not able to demonstrate financial solvency under paragraph (a) of this section and you have active appeals.

(d) If you request that we consult a business-information or credit-reporting service or program under paragraph (c) of this section:

(1) We will use criteria similar to that which a potential creditor would use to lend an amount equal to the bond or other surety instrument we would require under subpart B;

(2) For us to consider you financially solvent, the business-information or credit-reporting service or program must demonstrate your degree of risk as low to moderate:

(i) If our bond-approving officer determines that the business-information or credit-reporting service or program information demonstrates your financial solvency to our satisfaction, our bond-approving officer will not require you to post a bond or other surety instrument under subpart B;

(ii) If our bond-approving officer determines that the business-information or credit-reporting service or program information does not demonstrate your financial solvency to our satisfaction, our bond-approving officer will require you to post a bond or other surety instrument under subpart B or pay the obligation.

### § 243.202 When will MMS monitor my financial solvency?

(a) If you are presumptively financially solvent under § 243.201(b), MMS will determine your net worth as described under §§ 243.201(b) and (c) to evaluate your financial solvency at least annually on the date we first determined that you demonstrated financial solvency as long as you have active appeals and each time you appeal a new order.

(b) If you ask us to consult a business-information or credit-reporting service or program under § 243.201(c), we will consult a service or program annually as long as you have active appeals and each time you appeal a new order.

(c) If our bond-approving officer determines that you are no longer financially solvent, you must post a bond or other MMS-specified surety instrument under subpart B.