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Administration Of Regulations For Federal Exploration, Mining, And Reclamation Of Public And Indian Coal Lands

Department of the Interior

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-148623

Dear Mr. Chairman:

This is our report on the administration of the regulations of the Department of the Interior for surface exploration, mining, and reclamation of public and Indian coal lands. Our review was undertaken pursuant to the October 6, 1971, joint request from you and the ranking minority member of the Subcommittee, to whom this report is also being sent.

The contents of the report were discussed with Department of the Interior officials; however, written comments were not obtained.

We plan to make no further distribution of this report unless copies are specifically requested, and then we shall make distribution only after agreement has been obtained from you or after public announcement has been made concerning the contents of the report.

Sincerely yours,

Comptroller General
of the United States

Enclosure

The Honorable Henry S. Reuss
Chairman, Conservation and
Natural Resources Subcommittee
Committee on Government Operations
House of Representatives

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-148623

Dear Mr. Vander Jagt:

This is our report on the administration of the regulations of the Department of the Interior for surface exploration, mining, and reclamation of public and Indian coal lands. Our review was undertaken pursuant to the October 6, 1971, joint request from you and the Chairman of the Subcommittee, to whom this report is also being sent.

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Sincerely yours,

Elmer B. Staats

Comptroller General
of the United States

Enclosure

The Honorable Guy Vander Jagt
Ranking Minority Member
Conservation and Natural Resources
Subcommittee
Committee on Government Operations
House of Representatives

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ABBREVIATIONS

BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
GAO	General Accounting Office

COMPTROLLER GENERAL'S REPORT
TO THE CONSERVATION AND NATURAL
RESOURCES SUBCOMMITTEE
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES

ADMINISTRATION OF REGULATIONS FOR SURFACE EXPLORATION, MINING, AND RECLAMATION OF PUBLIC AND INDIAN COAL LANDS

Department of the Interior B-148623

D I G E S T

WHY THE REVIEW WAS MADE

At the joint request of the Chairman and the ranking minority member of the Conservation and Natural Resources Subcommittee of the House Committee on Government Operations, the General Accounting Office (GAO) reviewed the Department of the Interior's administration of its regulations of January 18, 1969, concerning surface exploration, mining, and reclamation of public lands (43 CFR 23) and Indian lands (25 CFR 177).

GAO's review was limited to the administration of the regulations for coal resources. GAO also considered whether

--the Department was applying the regulations consistent with the mandates of the National Environmental Policy Act of 1969 and

--the regulations provided assurance that valuable resources were not being depleted without protection of environmental values.

GAO's review was made in Arizona, Colorado, Montana, New Mexico, North Dakota, and Wyoming and in the Department's headquarters offices in Washington, D.C.

Background

In January 1972 the Department estimated that 41 million acres of the 825 million acres of public land had coal deposits. Of the 41 million acres, 1.6 million were covered by prospecting permits or mining leases. The Department also estimated that 13.5 million acres of the 50 million acres of Indian lands had coal deposits. Of the 13.5 million acres, 700,000 were covered by coal prospecting permits or mining leases.

The Department's January 18, 1969, regulations do not provide specific technical requirements for exploration, mining, or reclamation activities. Such requirements are based on examinations (called technical examinations) of the effects that the proposed mining operations will have upon the environment and are included as special stipulations in permits or leases granted by the Department to the mining operators.

Permits and leases on public and Indian lands are administered by the Department's Bureau of Land Management (BLM) and the Bureau of Indian Affairs (BIA), respectively. The Department's Geological Survey is responsible for providing scientific and technical advice to both BLM and BIA.

During the period January 18, 1969, to November 1, 1971, the Department issued 258 permits and 38 leases for coal exploration and mining on public and Indian lands. BLM had 529 permit and 115 lease applications pending at November 1, 1971; BIA had none.

FINDINGS AND CONCLUSIONS

Surface exploration, mining, and reclamation regulations

The Department's regulations, if properly implemented, should help in protecting environmental values.

Although the regulations have been established for more than 3 years, they were not being implemented effectively with regard to several significant areas. For the 65 permits and leases covered by its review (53 for BLM and 12 for BIA), GAO found that:

--The required technical examinations had not been conducted for 35 of the permits and leases. The purpose of a technical examination is to determine the effects that the proposed exploration or mining would have on the environment and to serve as a basis for formulating appropriate reclamation requirements. (See p. 12.)

--Some permittees were operating without approved exploration plans--an essential element of control in protecting the environment--and some plans had been approved without technical examinations. (See p. 14.)

--Some compliance and performance bonds covering the requirements, including reclamation, of leases or permits had not been obtained from the operators. The amounts of some of those that had been obtained were not sufficient to cover the estimated cost of the reclamation requirements of the permits or leases. (See p. 16.)

--Some of the reports required to be submitted by the operators to the Department at various stages of the operations on such matters as grading and backfilling, planting, and abandoning operations had not been submitted. (See p. 20.)

BLM has issued formal instructions to its field offices to implement the Department's regulations, but the Survey and BIA have not. GAO believes that the issuance of such instructions would assist field personnel in administering and implementing the regulations. (See p. 25.)

Documentation of the results of technical examinations, onsite visits, and other activities required by the regulations was not always prepared.

With regard to Indian lands, GAO believes that the Indian landowners were adequately consulted by BIA as to the actions proposed for permits or leases on their lands as required by the Department's regulations. (See p. 22.)

The Department requires an applicant to submit a $10 fee with each permit and lease application for coal exploration or mining. The fee was to recover the cost of processing the applications. Because personnel costs have nearly doubled since the amount of the fee was established and because the regulations now require a more comprehensive evaluation of the application than previously required, GAO believes that the adequacy of the fee associated with processing an application for a coal permit or lease should be appraised. (See p. 24.)

Implementation of National Environmental Policy Act of 1969

The Department's regulations require consideration of the ecological factors for coal permits and leases issued on public and Indian lands. To implement the environmental Act, the Council on Environmental Quality requires that each Federal agency prepare formal procedures for the preparation of environmental impact statements.

BLM's procedures do not comply with the Council's implementing guidelines because they do not outline the criteria to determine when and under what circumstances environmental impact statements should be prepared. GAO believes that BLM should revise its procedures to comply with Council guidelines. (See pp. 28 to 31.)

BIA has not developed any procedures for the preparation of environmental impact statements under the environmental Act, and GAO believes that BIA should develop procedures for the preparation of environmental impact statements for those cases in which the statements are required.

RECOMMENDATIONS OR SUGGESTIONS

The Secretary of the Interior should clarify the requirements of the Department's regulations by providing guidance as to

- --the timing and scope of technical examinations and the submission and approval of exploration and mining plans,
- --the required amount of performance bonds,
- --the need for adequate documentation of the results of the activities conducted under the regulations, and
- --the need for documented periodic reviews of the administration of the regulations. (See p. 27.)

The Secretary should appraise the adequacy of the fee associated with processing an application for a coal permit or lease. (See p. 27.)

The Secretary should also require BLM to revise its procedures to comply with Council guidelines and BIA to adopt procedures for the preparation of environmental impact statements for those cases in which the statements are required. (See p. 31.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

The matters in this report were discussed with Department officials who stated that appropriate actions would be taken by BLM, BIA, and the Survey to develop procedures which would clarify the requirements of the regulations and to require adequate documentation of the results of the activities conducted under the regulations.

Department officials agreed to make a study to determine the costs associated with processing applications for coal permits and leases and indicated that fees would be adjusted, if warranted.

BLM and BIA officials stated that they would issue procedures for preparation of environmental impact statements to meet the requirements of Council guidelines.

CHAPTER I

INTRODUCTION

At the request of the Chairman and the ranking minority member of the Conservation and Natural Resources Subcommittee of the House Committee on Government Operations, we examined the Department of the Interior's administration of its regulations of January 18, 1969, concerning surface exploration, mining, and reclamation of public lands (43 CFR 23) and Indian lands (25 CFR 177). (See app. I.) We also considered whether the Department was applying the regulations consistent with the mandates of the National Environmental Policy Act of 1969 (83 Stat. 852), and whether the regulations provided assurance that valuable resources were not being depleted without protection of environmental values. As requested, our review was limited to the administration and enforcement of the regulations for the exploration, mining, and reclamation of coal resources.

Our review was made in Colorado, Montana, New Mexico, North Dakota, Wyoming, and Arizona and in Washington, D.C.

In January 1972 the Department's Geological Survey estimated that 41 million acres of the 825 million acres of public lands administered by the Department had coal deposits. Of the 41 million acres, 1.6 million were covered by coal-prospecting permits or coal-mining leases. The Survey also estimated that 13.5 million acres of the 50 million acres of Indian lands administered by the Department had coal deposits. Of the 13.5 million acres, 700,000 were covered by coal-prospecting permits or coal-mining leases. On November 1, 1971, the Department was administering 265 coal leases on public lands and nine coal leases on Indian lands. Under these 265 and nine coal leases, only 40 and three lessees, respectively, were actually mining coal.

The issuance of permits for exploration and leases for mining coal on public land, except such lands as those in national parks, is provided for under the Mineral Lands Leasing Act, as amended (30 U.S.C. 181), and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351). The issuance of permits or leases for coal exploration or mining on Indian land is provided for primarily under the act of

May 11, 1938 (52 Stat. 347), for mining on tribal lands and the act of March 3, 1909 (35 Stat. 781), for mining on allotted Indian lands.

A coal permit can be issued by the Secretary of the Interior for a 2-year period to allow a coal operator to explore for coal deposits. Coal leases are generally issued for periods in excess of 2 years and allow lessees to extract known coal deposits from public or Indian lands by surface or underground mining methods.

Permits and leases on public and Indian lands are administered by the Department's Bureau of Land Management (BLM) and its Bureau of Indian Affairs (BIA), respectively. BLM field offices, until January 1971, processed and approved applications for both permits and leases. Since January 1971 BLM headquarters in Washington, has approved permits and leases. BIA field offices issue permits and leases to explore and mine coal on Indian lands.

Although BLM and BIA are responsible for the administration of the regulations, the Survey plays a major role in their implementation. The Survey is responsible for providing scientific and technical advice to both BLM and BIA to assist them in making decisions on approving permits and leases. The Survey submits reports to BLM and BIA before action is taken on permits and leases. The reports contain recommendations on (1) whether a permit or lease should be issued, (2) the acreage to be covered, (3) the rental rate on the acreage under permit or lease, (4) the royalty rate on the coal produced, and (5) the bonus bid--a one-time payment for the privilege of obtaining a permit or lease. The Survey also supervises the technical aspects of (1) leasing activities, including compliance with the terms and conditions of both permits and leases, operating regulations, and statutes, and (2) the collection of and accounting for royalties.

Permits and leases are issued on public and Indian lands in the following manner.

1. For lands where prospecting or exploratory work is necessary to determine the existence or workability of a coal deposit, a prospecting permit may be

issued by BLM for a primary term of 2 years, and, under certain conditions, it may be extended for a 2-year period. The existence of coal deposits on Indian lands is known, but relatively little information is available on the nature of the coal. Therefore BIA issues an exclusive prospecting permit on Indian lands after advertising for bids or after successful negotiations between the operator and the landowners. The permit includes an option to lease. The permittee then explores the land included in the permit to determine the exact location and depth of the coal seam, which should be included in a lease for extracting the coal.

2. Prior to the expiration of the permit, if the permittee can show that the lands contain coal in quantities sufficient to support a commercial operation, he is entitled to a preference-right lease for all the lands or part of the lands. Such a lease is awarded without competition.

3. Other than in the case of a preference-right lease, lands which are known to contain coal deposits in sufficient quantities to support a commercial operation and which are available for leasing are leased under competitive-bid procedures to the applicant who submits the highest bid. BLM leases are for indeterminate periods subject to readjustment or renewal at 20-year periods, but BIA leases cannot exceed 10 years unless the coal is produced in paying quantities.

SURFACE EXPLORATION, MINING, AND RECLAMATION REGULATIONS

On January 18, 1969, the Department issued new regulations for surface exploration, mining, and reclamation of public and Indian lands, to avoid, minimize, or correct damage to the environment and hazards to public health and safety. The new regulations do not apply to permits and leases for oil and gas or to minerals underlying lands, which are owned by someone other than the owner of the mineral rights. The regulations apply only to those permits and leases issued, extended, or readjusted after

January 18, 1969, and require that:

1. For a permit or lease application, a technical examination be made by BLM or BIA and the Survey of the effects the proposed exploration or mining operations would have on the environment.

2. On the basis of the examination, BLM or BIA and the Survey formulate requirements to be followed by the operator in reclaiming the land. A permit or lease is generally issued after these requirements have been formulated.

3. Prior to commencing operations under a permit or lease, an exploration or mining plan be submitted by the operator and be approved by the Survey after consultation with BLM or BIA.

4. Upon approval of the plan, a performance bond, adequate to cover the estimated reclamation cost, be filed by the operator.

5. Reports be submitted by the operator at various stages of operation.

6. On the basis of such reports, inspections be made by the Survey, BLM, or BIA of the exploration, mining, or reclamation activities.

7. BIA consult with the Indian landowners to explain the actions proposed under the regulations, such as technical examinations, exploration and mining plans, reports, and inspections.

The regulations for surface exploration, mining, and reclamation on public and Indian lands are essentially the same except for the bonding requirements which are discussed in the following chapter.

The Survey, BLM, and BIA have the authority under the regulations to inspect the permit or lease premises at any time, to determine compliance with the permit or lease conditions and the requirements of the approved plan.

The regulations do not provide specific requirements for exploration, mining, or reclamation activities. The specific technical requirements for such activities are based on the technical examination and are included as special stipulations in the permit or lease.

CHAPTER 2

ADMINISTRATION OF THE SURFACE EXPLORATION, MINING, AND RECLAMATION REGULATIONS

The Department's regulations, if properly implemented, should help in protecting environmental values. Although the regulations have been established for more than 3 years, they were not being implemented effectively with regard to several significant areas. For the 65 permits and leases covered by our review (53 for BLM and 12 for BIA), we found that:

--The required technical examinations had not been conducted for 35 of the permits and leases. The purpose of a technical examination is to determine the effects that the proposed exploration or mining would have on the environment and to serve as a basis for formulating appropriate reclamation requirements. (See p. 12.)

--Some permittees were operating without approved exploration plans--an essential element of control in protecting the environment--and some plans had been approved without technical examinations. (See p. 14.)

--Some required compliance and performance bonds had not been obtained from the operators. The amounts of some of those that had been obtained were insufficient to meet the estimated cost of the reclamation requirements of the permits or leases. (See p. 16.)

--Some of the reports required to be submitted by the operators to the Department at various stages of their operations on such matters as grading and backfilling, planting, and abandoning of operations had not been submitted. (See p. 20.)

Our findings on these items and other matters specified in the Subcommittee's request are discussed in the following sections of this chapter.

PERMITS AND LEASES ISSUED OR PENDING

During the period January 18, 1969, to November 1, 1971, the Department issued 258 permits and 38 leases for coal exploration and mining on public and Indian lands, as follows:

	Permits	Leases
Public lands	235	32
Indian lands	23	6
	258	38

BLM had 529 permit and 115 lease applications pending on November 1, 1971; BIA had none.

We reviewed 65 of the permits and leases which were subject to the regulations. We noted that only 15 permittees and two lessees had actually done any exploring or mining; at the time of our fieldwork only one lessee was still mining.

In determining the impact of the cutoff date for the new regulations, January 18, 1969, we examined into the number of permits and leases issued during the 6-month period prior to that date and concluded that there had been no attempt to process permits or leases in a manner designed to avoid the requirements of the regulations.

TECHNICAL EXAMINATIONS AND PERMIT AND LEASE REQUIREMENTS

The regulations require BLM and BIA, in connection with an application for a permit or lease, to conduct a technical examination of the effects that the proposed exploration or surface-mining operations will have upon the environment and to formulate permit or lease requirements to protect nonmineral resources and reclaim affected land and water. The reclamation requirements to be contained in the lease or permit are to be based upon the data developed from the technical examination. The Survey mining supervisor is required to participate with BLM and BIA in both the technical examination and the formulation of the permit or lease requirements.

The applicant for a permit or lease is required to furnish certain general information, such as applicant's name and address, statement of citizenship and qualifications, maps identifying the location of the lands to be explored or mined, and the known character and extent of the coal deposits. BLM requires a statement of the operator's interest in other public coal leases, permits, or applications in the same State, because an operator may not hold more than 46,080 acres under permits and leases in any one State. This information assists Department officials in conducting technical examinations and determining whether a permit or lease should be issued.

During a technical examination consideration must be given to the control of soil erosion and the prevention of air and water pollution and of hazards to public health and safety. Although the required technical examination serves as a basis for issuance or denial of a permit or lease and as the basis for permit or lease requirements, we found that technical examinations had not been conducted for 35 of the 65 permits and leases we reviewed.

We believe that, when the permit or lease requirements were based on technical examinations, the requirements imposed, if complied with, were adequate to assist in protecting the Government's interest and effecting the reclamation of the lands.

Our findings as to the procedures followed by BLM and BIA for conducting technical examinations follow.

BLM

Our review of 40 permits and 13 leases issued by BLM showed that 23 had been issued, extended, or readjusted without the required technical examinations. However, 17 of the 23 permits and leases included permit and lease requirements, but six did not. Department officials advised us that some permit and lease requirements had been formulated on the basis of technical expertise and general knowledge of the land rather than on the basis of technical examinations of the specific lands involved.

BLM headquarters issued instructions in February 1970 which stated that technical examinations were to be based on

data available in the field office and were to be supplemented by field examinations of the proposed operation, when necessary. The instructions included a technical examination checklist to be used by field personnel conducting such examinations and included samples of permit and lease requirements.

BLM issued 25 of the above 40 permits and five of the 13 leases after the issuance of the February 1970 instructions. However, we found that technical examinations had not been conducted for 10 of these permits and leases.

Although departmental officials were unable to provide us with the reasons for not conducting the technical examinations, they advised us that detailed instructions would be issued to provide guidance to field personnel for making technical examinations, including requirements for documentation to support the type of examination conducted and the permit and lease requirements formulated.

BIA

BIA did not conduct technical examinations for the six permits and six leases we reviewed, which were subject to the regulations. However, three of the permits and all the leases included permit and lease requirements. We were advised by BIA field personnel that no guidelines or instructions had been received from headquarters to assist them in conducting technical examinations or in developing the permit or lease requirements and that, in their opinion:

--Formal technical examinations were unnecessary because the land was well known to field personnel.

--Standard permit and lease provisions were adequate to protect the surface of the affected lands until operations began and exploration or mining plans were submitted.

--Prospecting methods under permits generally had not had adverse effects on the land.

Department officials told us that instructions would be developed to assist field personnel in conducting and documenting technical examinations and in formulating related permit or lease requirements in accordance with the regulations.

EXPLORATION AND MINING PLANS

The regulations require that, before an operator commences any surface operations to explore or mine for coal on public or Indian lands, a plan be filed by the operator and approved by the Survey. Our review showed that some permittees were operating without approved exploration plans and that some plans had been approved without technical examinations.

On the basis of the size and nature of the operation and the permit or lease requirements established by the technical examination, the Survey may require the following information for an exploration or mining plan.

	Exploration plan	Mining plan
Description of area	X	X
Copies of map or aerial photograph	X	X
Statement of proposed operation methods and location of primary support roads	X	X
Size and location of structure facilities to be built		X
Description of measures to be taken to prevent or control fire, soil erosion, water pollution, damage to fish and wildlife or other natural resources, and health and safety hazards	X	X
Estimate of quantity of water to be used and pollutants expected to enter waters		X
Design for necessary impoundment, treatment or control of runoff water, and drainage from workings		X
Statement of the proposed manner and time of performance of work to reclaim disturbed areas		X

The Survey approves, requests revisions of, or disapproves a plan on the basis of an analysis of the above information. Our review showed that an exploration plan normally consisted of a notice of intent to explore and a map of the

proposed drilling locations and their related depths. We were advised by BLM, BIA, and Survey officials that surface damage resulting from exploration activities was not material and that additional information was not considered necessary for an exploration plan. Although the Department agreed that surface damage resulting from exploration activities was not material, the Survey is preparing instructions which will require information in the exploration plan, such as the methods of reclaiming drill holes, exterminating fires, preventing air pollution, preventing soil erosion, and using water in drilling operations.

For the 40 BLM permits we examined, seven exploration plans had been approved by the Survey without technical examinations and seven other permittees had conducted exploration operations without approved plans. All six BIA permits we examined had exploration plans approved by the Survey without technical examinations.

Only two of the 13 BLM leases we reviewed had approved mining plans. The two plans showed all the required information and were approved after a technical examination had been conducted. However, one lessee conducted mining operations without an approved plan.

An exploration or a mining plan may be amended by mutual consent of the Survey and the permittee or lessee. We found no evidence of amended mining plans, and the only amendments to approved exploration plans were maps showing revised drilling locations and related depths.

Because exploration and mining plans provide an essential element of control in protecting and enhancing the environment, we believe the Department should strengthen its procedures to insure that exploration and mining plans are submitted and carefully evaluated before operations begin and that such plans are developed in accordance with the regulations.

BONDING REQUIREMENTS

The Department's general mining regulations, which provide for permits for exploration and leases for mining coal on public and Indian lands, require that an operator have a compliance bond to cover all terms of a permit or lease, including reclamation. The minimum compliance bond is $1,000. In addition, the Department's 1969 reclamation regulations require a performance bond to cover the estimated cost of reclamation. The mimimum amount of a performance bond is $2,000. Our review showed that some of the compliance and performance bonds were not obtained. None of those obtained were based on documented cost analyses and some were not adequate to meet the reclamation requirements of a permit or lease.

BLM

The compliance bond amount, which must be at least $1,000, is established by the Survey. The compliance bond amount is generally based on the amount of production anticipated and the amount of reclamation required after cessation of the operation. The compliance bond requirement may be satisfied if an operator holds a $75,000 nationwide bond or a $25,000 statewide bond.

The performance bond amount is established by the BLM district manager. We were advised by a BLM official that the amount recommended was based on the character and nature of the reclamation requirements of the approved exploration or mining plan and on the estimated costs to reclaim the land. We were advised by Survey officials that the estimated cost of reclamation was determined on a judgmental basis by the field personnel who relied on their experience and technical expertise rather than on a detailed cost analysis. The performance bond requirement may be met by a deposit of cash, negotiable bonds, or a nationwide or statewide bond.

We found that 13 leases and permits which had approved exploration or mining plans had compliance bonds, but that two of the 13 did not have performance bonds to satisfy the requirements of the regulations.

At the time of our fieldwork in April 1972, we visited the only active surface-mining operation that was subject to the regulations. At the time of our visit, about 138 acres of the 8,363 acres under lease had been disturbed by the operator, 13 had been graded and planted, and another 13 were being reclaimed. In our opinion, the mining operations were not polluting any streams or causing any siltation or acid mine drainage. The operator advised us that water pollution was not a problem in this particular location because of the scarcity of water in the area.

We did conclude, however, that the $2,000 performance bond and the $20,000 compliance bond were not adequate to satisfy the requirements of the mining plan for this active mining operation. In January 1972 the responsible BLM district manager stated that the $2,000 performance bond was not adequate and recommended that it be increased to $15,000 unless the operator's $20,000 compliance bond was adequate to meet the reclamation requirements. BLM's authority to require increases in the amount of the performance bond allows it to make adjustments for the amounts necessary to cover revised estimates of the cost of reclamation. The Survey mining supervisor considered the $20,000 compliance bond adequate to insure compliance with any condition of the lease, and no change was made in the amount of the performance bond. We were advised by the Survey mining supervisor that the average cost of reclaiming land under this lease was about $350 per acre.

On the basis of the estimated cost to reclaim the disturbed land, we estimated that bonds in the amount of $43,750 would be required to insure reclamation of the disturbed lands which had not been reclaimed at the time of our visit. We were advised by a Department official that the amount of the bond required by this operator would be reviewed and that an appropriate revision would be made, if necessary.

BIA

BIA's bonding requirements differ from BLM's requirements because:

1. Compliance bonds are based on the amount of acreage.

2. The compliance and performance bonds may be reduced below the minimum when circumstances warrant.

A compliance bond must be furnished by an operator for all Indian lands under a permit or a lease, as follows.

Acres	Minimum amount of compliance bond required
Fewer than 80	$1,000
80 and fewer than 120	1,500
120 and not more than 160	2,000
For each additional 40 above 160	500

BIA, with the consent of the Indian landowners, may reduce the compliance bond below the minimum when the interests of the Indian landowners are fully protected.

The operator must file, in addition to a compliance bond, a performance bond to cover the costs of reclamation required by the approved exploration or mining plan. The amount of the performance bond is to be set by the BIA superintendent. We were advised by BIA officials that the minimum amount of the performance bond--$2,000--could be reduced when the amount of the compliance bond was sufficient to satisfy the reclamation requirements of the exploration or mining plan.

The six permits covered by our review had approved exploration plans and separate $5,000 compliance bonds, but none had performance bonds although operations had been conducted under four of these permits during the period January 18, 1969, to November 1, 1971. We were advised by BIA headquarters officials that the performance bonds had not been required because the $5,000 compliance bonds were considered adequate to cover the cost of reclaiming any surface damage.

An operator may file, in lieu of a compliance bond for each permit or lease, a $15,000 bond for all permits and leases in any one State, including those permits and leases extending into contiguous States. The $15,000 compliance bond covers 10,240 acres.

The six leases covered by our review were with one operator who had furnished a $15,000 compliance bond to cover the 16,030 acres included in the leases. This acreage exceeded the acreage covered by such a bond by about 56 percent. Performance bonds were not submitted for the six leases because no mining plans had been submitted or approved and because no operations were being conducted on the land under lease.

As a result of our discussions with Department officials, the Department directed the BIA field office to review the coverage provided by the operator's compliance bond. We were informed that appropriate changes to the bonding requirements were being made.

REPORTS AND INSPECTIONS

The regulations require an operator to submit reports to the Survey and BLM or BIA on (1) operations, (2) grading and backfilling, (3) planting, and (4) abandoning of operations. Our review showed that not all the reports required at various stages of the operation and at the end of the calendar year had been submitted.

During the period January 18, 1969, to November 1, 1971, active operations had commenced under two leases and 15 permits. Although the operators did not submit the required reports, they submitted annual, quarterly, or monthly data. We noted that the data furnished by the operators generally did not show information required by BLM or BIA, such as the number of acres reclaimed or the methods of reclamation. We noted also that four operators on lands administered by BLM had abandoned all or part of their operations without filing the required reports on abandonment of operations.

A Department official told us that instructions would be issued to field offices emphasizing the importance of obtaining the operation reports, abandonment reports, and other reports required by the regulations. The Survey is currently developing a form to be submitted by a lessee to meet the requirements of an operation report.

The Survey is responsible for inspecting lands included in a mining permit or lease. In September 1970 the Survey issued instructions that the optimum inspection policy should be three inspections a year for active leases, two a year for active permits, and one a year for inactive leases and permits. We were advised by a Survey official that this policy had been established as a guideline to field personnel in conducting inspections of exploration and mining sites.

We found that the Survey (1) made six inspections during calendar year 1971 of the only active mining operation under the regulations, (2) made inspections of BLM and BIA operating permit sites once a year, and (3) generally did not make inspections of nonoperating sites on BLM-administered land but did make inspections of BIA nonoperating permits and leases. The inspections were conducted by

Survey mining supervisors, and the inspection reports showed that the inspectors had considered whether the operators were complying with the regulations, terms and conditions of the permit or lease and approved plans, and the Department's general mining regulations.

We were advised by a BIA official that the superintendents inspected permit and lease sites on Indian lands but that reports were not prepared for such inspections. BLM district managers visited operating sites to determine compliance with the regulations and terms and conditions of the permit or lease and approved plan but did not prepare inspection reports.

Department officials told us that superintendents and district managers would be required to document their visits to permit or lease sites.

BIA's CONSULTATION WITH INDIAN LANDOWNERS

The Department's regulations require BIA superintendents to explain to the Indian landowners the actions proposed under the technical examinations, approved mining and exploration plans, reports, and inspections. We were advised by a BIA official that superintendents consulted with the Indian landowners individually or through their representative, the Tribal Council, before issuance of permits or leases and during the exploration or mining operations. The official stated that such consultations were not documented.

Prior to the issuance of a permit or lease, a resolution is passed by the Tribal Council authorizing a Tribal representative to act on behalf of the tribe for an application to explore or mine coal.

Memorandums prepared by field personnel of meetings held before the issuance of permits and leases indicated that the Indian representatives, aided by the Tribal attorney, took an active part in negotiations. During these meetings the method of exploration or mining, rent and royalty rates, and the reclamation methods to be used by the operators were discussed by the Tribal representative, the operators, the superintendents, and other BIA officials.

All Indian landowners, the operators, and BIA officials sign the permits or leases prior to their issuance for all tracts of land included in permits or leases. In the case of unknown landowners, the superintendent is authorized to execute permits and leases on their behalf. For example, one permit required the signatures of at least 64 landowners or heirs of the landowners. We found that 50 landowners had signed the permit and that the superintendent had signed on behalf of the remaining 14 landowners because these landowners were minors, were unlocatable, or were undetermined heirs to deceased landowners.

We believe that the Indian landowners were adequately consulted as to the actions proposed under permits or leases even though technical examinations had not been conducted.

PROCEDURES FOR PUBLIC NOTIFICATION AND CONSULTATION WITH FEDERAL AND STATE OFFICIALS

The Department established a procedure in April 1972 which provided that initial mining plans, major mining plan changes, and leases for mining of coal on public lands be posted in the appropriate Survey office for public inspection for at least 30 days. The Department did not have a procedure to give the public the opportunity to comment on pending applications for permits or leases or proposed exploration plans. We were advised by Department officials that consideration was being given to allowing the public to comment on pending applications for permits or leases and proposed exploration plans on a case-by-case basis when it was determined that a proposed operation might have an adverse effect on the environment.

We noted that the Survey, BLM, and BIA did not have any procedures to consult with Federal and State environmental, pollution control, and health and safety officials prior to approving an application for a permit or lease or an exploration or mining plan.

Department officials told us that the Survey, BLM, and BIA consulted with Federal and State environmental, pollution control, and health and safety officials on a case-by-case basis when it was determined that the Department's agencies did not have the required technical expertise within their organization, or when, in their opinion, the subject operation might have an adverse effect on the environment. A Department official advised us that instructions were being developed to provide guidance for such consultations.

COST OF ADMINISTERING REGULATIONS

BLM expended $155,000 for fiscal year 1972 to administer the regulations for all minerals subject to the regulations. The amount applicable to coal could not be identified.

The Survey and BIA did not maintain cost records which showed the cost of administering and enforcing the regulations for fiscal year 1972. However, the Survey advised us

that, beginning in fiscal year 1973, it was implementing a procedure to record the costs associated with administering and enforcing the regulations. Department officials told us that BIA would consider the feasibility of maintaining such cost data.

Application fees

In 1951 the Secretary established a $10 filing fee to accompany each application for a BLM permit for minerals other then oil and gas. A Department official informed us that this fee was established to recover the cost of processing the applications. In 1955 the Secretary required that the $10 filing fee also accompany each application for a lease, sublease, or assignment. Such a fee is retained as a service charge even though an application is rejected or withdrawn in whole or in part.

In 1938 the Secretary required that all BIA lease and assignment applications be accompanied by a $5 filing fee. In 1959 the Secretary increased the application fee from $5 to $10 for each BIA lease, permit, sublease, or assignment. The Secretary increased the fee to recover the cost of processing the applications. The fee is refunded if the application is disapproved.

Personnel costs have nearly doubled since the fees were established, and the procedures for processing applications have changed since the enactment of the regulations. For example, the regulations require that a technical examination be conducted in connection with each application for a permit or a lease on public and Indian lands.

We were advised by a Department official that the Department had not made an analysis to determine whether the fees were adequate to recover related costs.

We believe that the Department should appraise the adequacy of the fee associated with processing an application for a coal permit or lease.

HEADQUARTERS INSTRUCTIONS AND REVIEWS

BLM has issued formal instructions to its field offices to implement the regulations, but the Survey and BIA have not. We were advised by Department officials that both the Survey and BIA planned to issue formal implementing instructions; these instructions had not been issued as of June 30, 1972. In our opinion, the issuance of clarifying instructions would significantly assist field personnel in administering and implementing the regulations.

On February 18, 1970, BLM issued instructions which outlined BLM's responsibilities for technical examinations, reclamation requirements, exploration and mining plans, performance bonds, and compliance inspections. A March 6, 1970, Department decision stated that privately owned lands would be subject to the same special requirements for the protection and reclamation of the surface resources on public lands. On the basis of this decision, BLM revised its instructions on November 9, 1970, to subject both private and public lands to the regulations, regardless of whether the mineral rights were privately or publicly owned.

Our review showed that BLM was generally applying the regulations to coal surface exploration or mining operations, regardless of who owned the surface.

During the period from January 18, 1969, to June 30, 1972, BLM headquarters personnel conducted reviews of BLM's mineral-leasing program in seven field offices. A BLM official told us that the visits consisted of discussions with field personnel and a review of a limited number of case files but that such visits were not documented by written reports. Although another BLM official advised us that the field offices were experiencing very little difficulty implementing the regulations, our review at four of the field offices visited by BLM headquarters personnel showed that the regulations were not being properly implemented. (See p. 10.)

BIA headquarters officials made 14 visits to field offices to discuss the regulations with the Survey's mining supervisors, to negotiate permit and lease terms with mining companies and tribes, and to inspect plant facilities and

mining sites. We were advised by BIA officials that reports had not been prepared for these visits because such reports were not required. The officials also told us that, because of the lack of personnel, reviews had not been made of field offices' files and related data to determine the field offices' compliance with the regulations.

Survey headquarters personnel made 40 visits to field offices between January 18, 1969, and June 30, 1972, to review field operations and to determine their implementation of and compliance with the Department's general mining and reclamation regulations. But reports were not prepared for these visits.

Information furnished by the Survey indicated that headquarters officials had discussed the functions and responsibilities of the field personnel under the regulations governing surface mining and reclamation of lands, examined permits and leases, made technical examinations, conducted field investigations, and inspected mining operations.

We were advised by a Department official that no reviews had been made by the Office of Survey and Review (the Department's internal audit staff) of the administration and implementation of the surface-mining and reclamation regulations. The Department official told us that the regulations were subject to review by the Department but that such a review was not included in its audit plans.

A Department official told us that BLM's instructions were being revised to require documentation of technical examinations and related permit or lease requirements, exploration or mining plans, performance bonds, and onsite inspections. In addition, the official told us that the revised BLM instructions would subject oil and gas permits and leases to the regulations. Department officials told us that the proposed Survey and BIA instructions would also require documentation of the activities conducted under the regulations and that the revisions to BLM's instructions and the development of the Survey's and BIA's instructions would be coordinated between the agencies.

RECOMMENDATIONS TO THE SECRETARY OF THE INTERIOR

We recommend that the Secretary of the Interior clarify the requirements of the Department's regulations by providing guidance as to

--the timing and scope of technical examinations and related permit and lease requirements and the submission and approval of exploration and mining plans,

--the required amount of coverage to be provided by performance bonds,

--the need for adequate documentation of the results of the activities conducted under the regulations, and

--the need for periodic reviews of the administration of the regulations.

We recommend also that the Secretary of the Interior appraise the adequacy of the fee associated with processing an application for a coal permit or lease.

AGENCY ACTIONS

We discussed the matters in this report with Department officials who generally agreed that there was a need for improvements in administering and implementing the regulations. They indicated that appropriate action would be taken to:

--Develop instructions to clarify the requirements of the regulations. Such instructions will require the documentation of the activities conducted under the regulations, such as technical examinations and inspections.

--Provide for documented periodic reviews of the administration of the regulations by departmental personnel.

--Make a study to determine the costs associated with processing applications for coal permits and leases and adjust the fees, if warranted.

CHAPTER 3

IMPLEMENTATION OF

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

On January 1, 1970, the Congress enacted the National Environmental Policy Act of 1969. The purposes of the act are to declare a national policy which will encourage productive and enjoyable harmony between man and his environment, to promote efforts which will prevent or eliminate damage to the environment and biosphere and which will stimulate the health and welfare of man, to enrich the understanding of the ecological systems and natural resources to the Nation, and to establish the Council on Environmental Quality. Executive Order No. 11514, dated March 5, 1970, requires the Council to provide policy advice and guidance on Federal activities affecting the environment, to assist in the coordination of these activities, and to oversee the implementation of the act by Federal agencies.

Section 102 of the act requires (1) that the policies, regulations, and public laws of the United States be interpreted and administered in accordance with the policies of the environmental Act and (2) that all Federal agencies develop procedures which will insure that presently unquantified environmental amenities and values be given appropriate consideration in decisionmaking, along with economic and technical considerations. Section 102 also requires all Federal agencies to prepare a detailed statement to be included in every recommendation or report concerning legislation and other major Federal actions significantly affecting the quality of the human environment. Federal agencies are required, prior to preparing the detailed statements, to consult with, and obtain the comments of, any other Federal agency which has jurisdiction, by law or special expertise, with respect to any environmental impact involved.

The Council requires that each Federal agency prepare formal procedures to be followed in the preparation of environmental impact statements. The Council also requires that each Federal agency consult with the Council in the development of procedures to achieve consistency in dealing with

similar activities and to insure effective coordination among agencies in their review of proposed activities.

The January 18, 1969, Department regulations require a technical examination which gives consideration to the effect an exploration or mining operation will have upon the environment, such as soil erosion, air and water pollution, and hazards to public health and safety. (See p. 12.)

BLM

On December 28, 1970, BLM issued procedures for preparing environmental impact statements. We were advised by a BLM official that the procedures had been prepared after the Department had received comments from the Council on the Department's proposed environmental Act procedures. After consultations with the Council in late 1971, BLM, in May 1972, amended and updated its December 1970 procedures for preparation of environmental impact statements. BLM's procedures do not outline criteria to determine when and under what circumstances environmental impact statements should be prepared.

BLM's current procedures require field offices to prepare an environmental analysis of proposed land uses to determine whether an environmental impact statement should be prepared. We were advised by a BLM official that, in lieu of an environmental analysis, the field office may use the data obtained from a technical examination to determine the need for an environmental impact statement.

On February 4, 1971, the Assistant Secretary of the Interior for Mineral Resources advised the Chairman, Conservation and Natural Resources Subcommittee, House Committee on Government Operations, that the required technical examination report which BLM prepared served as the "backbone" of any environmental impact statement required by the environmental Act. Since January 18, 1969, 30 technical examinations have been made by BLM for 40 permits and 13 leases but environmental impact statements have not been prepared.

BLM contends that all BLM coal-mining actions affect the environment to some degree but that each

surface-coal-mining operation on BLM-administered lands does not have a significant impact on the environment. We were advised by a Council official that BLM could satisfy the Council's requirements under the environmental Act by preparing an environmental impact statement on its total coal permit and leasing program.

BIA

BIA contends that the environmental Act does not apply to Indian lands and that environmental impact statements are not necessary because BIA acts as a trustee for the Indians. On the basis of consultations with the Council, however, BIA is developing procedures for preparing environmental impact statements for projects on Indian lands, such as the construction of schools and roads and irrigation projects. A BIA official told us that procedures for environmental impact statements on such projects were being prepared because the projects are a significant Federal action since they were federally funded.

We were advised by a Council official that the development of Indian lands should not be burdened with the preparation of environmental impact statements on coal exploration and mining activities. The official stated that although such statements need not be prepared for coal exploration or mining on Indian lands, BIA must give adequate consideration to the purposes of the environmental Act to insure protection of the environment. We believe that BIA should develop procedures for the preparation of environmental impact statements for those cases in which the statements are required.

CONCLUSIONS

We believe that the Department's regulations require consideration of the ecological factors for coal permits and leases issued on public and Indian lands. Although the Council requires that each Federal agency prepare formal procedures to be followed in the preparation of environmental impact statements, we found that neither BLM nor BIA had fully complied with the requirements.

RECOMMENDATIONS TO THE SECRETARY OF THE INTERIOR

We recommend that the Secretary of the Interior require BLM to revise its procedures to comply with the Council guidelines and BIA to adopt procedures for the preparation of environmental impact statements for those cases in which the statements are required.

AGENCY ACTIONS

A Department official told us that BLM was developing procedures that would require an environmental analysis in connection with each mineral permit or lease application. Such an analysis will be required in addition to a technical examination. The procedures will outline the criteria to be used in determining when and under what circumstances environmental impact statements would be prepared. The official also told us that BLM would continually study its procedures for preparation of environmental impact statements to meet the requirements of the environmental Act.

A Department official also told us that BIA would issue procedures for the preparation of environmental impact statements to meet the requirements of the Council guidelines.

NINETY-SECOND CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B349-B
WASHINGTON, D.C. 20515

October 6, 1971

Mr. Elmer B. Staats
Comptroller General of the United States
441 G. Street, N.W.
Washington, D.C. 20548

Dear Mr. Staats:

The Interior Department published regulations in the Federal Register of January 18, 1969 concerning surface mining reclamation for public alnds (43 CFR, Part 23) and Indian lands (25 CFR, Part 177). The regulations apply only to permits, leases and contracts granted after the date of the regulations. Prior to their issuance, this subcommittee had commented extensively on the adequacy of earlier versions of those regulations.

Since these regulations were adopted, Congress enacted the National Environmental Policy Act of 1969 (Public Law 91-190; 83 Stat. 852). Section 102 of that act mandates (1) that "the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies" of the National Environmental Policy Act, and (2) that "all agencies of the Federal Government shall develop procedures which will "insure that presently unquantified environmental amenities and values" be given "appropriate consideration in decision making along with economic and technical considerations." Section 102 also requires "all agencies of the Federal Government" to prepare a "detailed statement" to be included in "every recommendation or report" concerning major "Federal actions significantly affecting the quality of the human environment," after consulting with, and obtaining the comments of, each "Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved." In Zabel v. Tabb, 430 F. 2nd 199, Fifth Circuit Court of Appeals ruled:

> "...This Act essentially states that every federal agency shall consider ecological factors when dealing with activities which may have an impact on man's environment."

The Interior Department published on October 2, 1971 revised procedures for NEPA statements (36 F.R. 19343).

In a letter dated February 4, 1971 to us, Assistant Secretary of the Interior Hollis M. Dole commented on the application of NEPA to the above regulations as follows:

> "Prior to the enactment of the National Environmental Policy Act of 1969, the Department of the Interior published regulations (43 CFR 23) on January 18, 1969. These regulations apply to mining operations under the Mineral Leasing Act (except oil and gas) and the Materials Act. They provide the Department with a tool for protecting surface nonmineral resources and reclaiming lands damaged as a result of surface mining. The regulations are being implemented through Bureau of Land Management manual instructions and require a technical examination on all permit, lease, and contract applications for minerals. As a result of the coordinated efforts of representatives of each resource discipline on the examination team, environmental protection and restoration stipulations are attached to each permit, lease, and license issued or granted. The technical examination report also serves as the backbone of any environmental statement submission which may be required by NEPA of 1969. The Bureau's instructions are currently being revised to include Federal mineral lands, the surface of which are not owned by the United States, and to include all operations on oil and gas leaseholds embracing Federal lands." (Emphasis supplied)

We are concerned whether the Interior Department is (a) responsibly, economically, and efficiently administering the surface mining reclamation regulations of January 18, 1969; (b) applying the regulations consistent with the mandates of NEPA. We are also concerned whether the Interior Department's regulations effectively protect the public interest in assuring that valuable resources are not depleted without adequate compensation, consideration of future needs, and protection of environmental values.

It would be most helpful to the Subcommittee if the General Accounting Office would investigate the Department's administration and enforcement of those regulations, particularly in regard to the exploration and development of coal resources.

In connection with this general investigation, we would particularly appreciate your investigating the following matters:

(a) the permits, leases, or contracts issued since the regulations were adopted;

[illegible] permits, leases, or [illegible] regulations;

(c) the information or data required by the Interior Department of each applicant for such permits, leases, or contracts, to enable officials to conduct technical examinations (43 CFR 23.5) of prospective surface exploration and mining operations prior to the issuance of a permit, lease, or contract;

(d) the procedures followed, and the adequacy thereof, in making such examinations;

(e) whether such applications and examinations provide an adequate basis upon which to determine whether a permit, lease, or contract should be issued or denied, and if issued, what conditions or requirements are needed to protect the public interest;

(f) what criteria Interior officials apply in determining whether the applicant's proposed land protection and reclamation measures will be effective;

(g) whether the conditions or requirements imposed by Interior officials under the regulations are adequate to insure protection of the public's interest and the reclamation of the lands;

(h) the adequacy of proposed exploration and mining plans (43 CFR 23.7 and 23.8) and the procedures and adequacy thereof applied by Interior officials in approving, or requiring modifications of, or disapproving such plans;

(i) whether a procedure has been established by Interior to give the public notice of, and opportunity to comment on, (1) pending applications for permits, leases, or contracts, and (2) proposed exploration and mining plans submitted pursuant to the regulations;

(j) the extent to which the administering officials consulted on each such application and plan with responsible State environmental, pollution control, health and safety officials concerning their approval and the conditions or requirements of such approval;

(k) the [illegible] of Indian [illegible] to which the "superintendent [illegible] which the [illegible] (25 CFR [illegible] adequately [illegible]; whether [illegible] such lands [illegible] of the [illegible] and at what [illegible] consideration of an application [illegible] consultation [illegible];

(l) the extent to which approved exploration or mining plans are amended or supplemented, the reasons therefor, and at whose initiation

(m) whether performance bonds with "satisfactory surety" or cash deposits are sufficient "to satisfy the reclamation requirements" under the regulations (43 CFR 23.9; 25 CFR 177.8).

(n) the adequacy and timeliness of reports which are required to be filed under the regulations (43 CFR 23.10; 25 CFR 177.9);

(o) the adequacy and frequency of on-site inspections to insure compliance with (1) the regulations; (2) the permit, lease, or contract conditions; and (3) the approved plans (43 CFR 23.10; 25 CFR 177.10);

(p) the costs associated with the administration and enforcement of these regulations at both the Washington and regional levels.

We also note that the two sets of regulations differ in several respects. For example, the regulations for Indian lands authorize the bond amount to be reduced to less than "the required minimum of $2,000" (25 CFR 177.8 (b)), while the regulations for public lands do not. The reasons for the various differences are not readily apparent. We request that you investigate why there are such differences and evaluate whether they should be continued.

We note that the regulations only apply to permits, leases, or contracts issued after their effective date. We would like you to investigate how significant this cut-off date is in regard to permits, leases, or contracts issued prior to that date and under which operations are just now beginning.

We request that the GAO provide to us a report of your findings and recommendations. Before finalizing your report, we would appreciate if your staff would discuss your proposed findings with our Subcommittee staff.

Sincerely,

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

GUY VANDER JAGT
Ranking Minority Member
Conservation and Natural Resources
Subcommittee

U.S. GAO, Wash., D.C.